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

DIVISION OF
CORPORATION FINANCE

March 16, 2018

Lisa A. Atkins
Bristol-Myers Squibb Company
lisa.atkins@bms.com

Re: Bristol-Myers Squibb Company
Incoming letter dated December 26, 2017

Dear Ms. Atkins:

This letter is in response to your correspondence dated December 26, 2017 concerning the shareholder proposal (the "Proposal") submitted to Bristol-Myers Squibb Company (the "Company") by Trinity Health 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 January 11, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/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: Catherine Rowan
Trinity Health
rowan@bestweb.net

March 16, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Bristol-Myers Squibb Company
Incoming letter dated December 26, 2017

The Proposal urges the Compensation and Management Development Committee to report annually on the extent to which risks related to public concern over drug pricing strategies are integrated into the Company's incentive compensation policies, plans and programs for senior executives.

We are unable to conclude that the Company has met its burden of demonstrating that it may exclude the Proposal under rule 14a-8(i)(7) as a matter relating to the Company's ordinary business operations. 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,

M. Hughes Bates
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

Catherine M. Rowan
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January 11, 2018

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 Bristol-Myers Squibb Company to omit proposal submitted by Trinity Health and co-filers

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trinity Health and a number of co-filers (together, the "Proponents") submitted a shareholder proposal (the "Proposal") to Bristol-Myers Squibb Company ("BMS" or the "Company"). The Proposal asks BMS's board to report to shareholders on the extent to which senior executive incentive compensation arrangements incorporate risks related to public concerns over drug pricing strategies.

In a letter to the Division dated December 26, 2017 (the "No-Action Request"), BMS 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. BMS argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with BMS's ordinary business operations; and Rule 14-8(i)(10), because BMS has substantially implemented the Proposal. As discussed more fully below, BMS has not met its burden of proving its entitlement to exclude the Proposal in reliance on either exclusion and the Proponents respectfully urge that BMS's request for relief should be denied.

The Proposal

The Proposal states:

> RESOLVED, that shareholders of Bristol-Myers Squibb Company ("BMS") urge the Compensation and Management Development Committee (the "Committee") to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into BMS's incentive compensation policies, plans and programs (together, "arrangements") for senior executives. The report should include, but need not be limited to, discussion of whether incentive compensation arrangements reward, or not penalize, senior executives for (i) adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding the level or rate of increase in prescription drug prices; and (ii) considering risks related to drug pricing when allocating capital.

Ordinary Business

Rule 14a-8(i)(7) permits a company to omit a proposal that "deals with a matter relating to the company's ordinary business operations. BMS makes several claims regarding the applicability of the ordinary business exclusion to the Proposal, none of which has merit.

First, BMS argues that compliance with the Commission's executive compensation disclosure requirements is a matter of ordinary business operations. The Proposal does not address such compliance, and asks for disclosure outside the scope of the Commission's requirements. BMS's contention, therefore, is not relevant to the Proposal and cannot serve as the basis for exclusion.

Next, BMS accuses the Proponents of "cloak[ing]" their true intentions "under the guise of executive compensation risk assessment" and urges that the "thrust and focus" of the Proposal is "the Company's drug pricing decision making concerning certain of its products." (No-Action Request, at 10) BMS's contention is at odds with the plain language of the Proposal.

The Proposal's resolved clause makes clear that the requested disclosure is not intended to address drug pricing generally, the prices of particular medicines, access to medicines or any other similar issue. Rather, the resolved clause deals solely with senior executive compensation arrangements and their relationship to pricing. The Proponents believe that senior executive incentives are a key way to communicate expectations,

balance objectives and address the mismatch that may exist between executive tenures and shareholder investment horizons.

Similarly, the supporting statement addresses several aspects of senior executive compensation: compensation philosophy, the role of incentives, the metrics currently used in BMS's incentive compensation arrangements and the risks created when high executive pay accompanies sizeable drug price increases. To make the case for why pricing-related risks should be considered when setting senior executive compensation arrangements, the supporting statement also discusses those risks. In no way does that material cancel out or negate the unambiguous language and clear focus of the Proposal on senior executive incentive compensation arrangements.

The Proposal is similar to a 2014 proposal at Gilead Sciences, Inc. (Feb. 21, 2014) asking that metrics related to patient access be incorporated into CEO incentive compensation arrangements. In its request for relief, Gilead argued that although the proposal was "camouflage[d]" as addressing senior executive compensation, its "main focus" was to "reduce the prices the Company charges for its products." The Staff disagreed and did not grant relief. BMS's effort to shift the subject from senior executive compensation to drug pricing mirrors Gilead's unsuccessful argument.[1]

Outside the drug company context, the Staff has also declined to allow exclusion on ordinary business grounds of proposals addressing the link between senior executive pay and some other factor. For example, in BB&T Corporation (Jan. 17, 2017), the proposal asked the company to consider the pay of all company employees when setting senior executive compensation and report to shareholders in the proxy statement about how it did so. BB&T argued unsuccessfully that the proposal's focus was general employee compensation and that the proposal could therefore be omitted on ordinary business grounds.

Even assuming the Proposal's subject were the pricing of pharmaceuticals, which the Proponents do not concede, drug prices are a matter of such consistent and sustained societal debate, with a sufficiently

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[1] That the Gilead proposal requested a policy change while the Proposal seeks disclosure does not affect the analysis. In its 1983 release accompanying changes to Rule 14a-8, the Commission repudiated the approach it had used to analyze disclosure proposals, deeming them not excludable on ordinary business grounds regardless of the disclosure subject. The Commission announced that disclosure proposals would be analyzed in the same way as proposals seeking a change in policy or behavior, by reference to the underlying subject matter rather than the form. (See Exchange Act Release No. 20091 (Aug. 16, 1983); Staff Legal Bulletin 14H (Oct. 22, 2015))

strong connection to BMS, to qualify as a significant social policy issue transcending ordinary business.

BMS makes much of a 2017 determination in which the Staff allowed exclusion of a proposal submitted to BMS asking for disclosure of price increases for the company's ten top-selling branded drugs; the rationale and criteria for those increases; and the legislative, regulatory, financial and reputational risks the increases create for BMS. (Bristol-Myers Squibb Company (Feb. 10, 2017) There, the Staff reasoned that the proposal could be excluded because it "relate[d] to the rationale and price increases for the company's top ten selling branded prescription drugs." But the 2017 proposal sought detailed data for ten drugs over a six-year period, which took the proposal further afield from the more general social policy issue of drug prices and drilled down into specific pricing decisions. Approaches to drug pricing seeking less detailed disclosure, by contrast, have tended to survive challenge on ordinary business grounds.

In the 2015 proxy season, proposals asked Gilead, Vertex and Celgene to report on the risks created by rising pressure to contain U.S. specialty drug prices. All three companies invoked the ordinary business exclusion, arguing that the proposals concerned the prices charged for their products, which was not a significant social policy issue, and would micromanage the companies by asking for information on a complex matter that shareholders would not be in a position to understand. (Gilead Sciences, Inc. (Feb. 23, 2015); Celgene Corporation (Mar. 19, 2015); Vertex Pharmaceuticals Inc. (Feb. 25, 2015) (together, the "drug pricing disclosure" proposals) The proponent successfully argued that high specialty drug prices are a significant social policy issue and that the broad focus on risks and trends obviated concerns over micromanagement.

BMS tries to distinguish those proposals by claiming, unconvincingly, that they "focus[ed] on restraining or containing prices with the goal of proving affordable access to prescription drugs." (No-Action Request, at 9) Unlike proposals submitted in the early 2000s, which asked drug companies to adopt a policy of price restraint, the drug pricing disclosure proposals sought risk disclosure; patient access concerns were only one of numerous factors about which disclosure was requested. And although the main thrust of the Proposal is senior executive compensation, the supporting statement does argue that drug pricing risk should be reflected in executive incentive arrangements because public perceptions that patients lack access may lead to negative log-term consequences for BMS: "Public outrage over high prices and their impact on patient access may force price rollbacks and harm corporate reputation."

BMS suggests that the Proposal can be read as focusing on legal compliance. (See No-Action Request, at 10) BMS points to the following sentence in support of that contention: "Public outrage over drug prices and their impact on patient access may force price rollbacks and harm corporate reputation." (Id.) That sentence cannot fairly be read as referring to legal compliance; rather, it posits that high prices can generate public pressure that leads a company to decide that cutting the price is preferable to enduring criticism.

BMS also argues that the Proposal "delves more deeply into the day-to-day affairs of the Company" than the drug pricing disclosure proposals. (No-Action Request, at 10) Puzzlingly, BMS characterizes "the primary focus of the Proposal's request" as "obtaining explanation and justification for price increases in the Company's products," which is at odds with the language of the Proposal. (Indeed, that description is better suited to the 2017 BMS proposal.)

The Proposal does not ask for any of that kind of information. Instead, it asks BMS to report on whether, and how, risks related to public concerns over drug pricing are reflected in senior executive compensation arrangements. Contrary to BMS's assertion, such a report would not require BMS to discuss decisions regarding the pricing of individual drugs.

The ways in which senior executive compensation arrangements take into account a particular business challenge are not, as BMS contends, "matters of a complex nature upon which shareholders as a group would not be in a position to make an informed judgment." (No-Action Request, at 12) Shareholders consider proxy statement disclosure explaining the link between strategic objectives or aspects of the business climate and executive compensation decisions when casting votes on ballot items. That disclosure may describe factors related to external pressures or risks. For instance, in its statement in opposition to a shareholder proposal on reserve-related compensation metrics, ConocoPhillips explained how climate change scenario planning and progress on low-carbon objectives were reflected in senior executive compensation arrangements. (See Proxy Statement filed on April 3, 2017, at 86) Accordingly, the Proposal cannot be said to micromanage BMS.

In addition to the general societal debate regarding high drug prices detailed in the responses to the Gilead and Vertex requests cited above, BMS has come under fire in the last few years regarding the prices of its hepatitis C and cancer drugs. In February 2017, BMS was identified as one of three makers of hepatitis C drugs that had engaged consulting firm Precision Health Economics to conduct an influence campaign justifying the high prices of hepatitis C drugs. (http://www.philly.com/philly/health/Big-Pharma-Quietly-Enlists-Leading-Professors-to-Justify-1000-Per-Day-Drugs.html)

BMS has also been criticized for the high prices of its HIV drug Sustiva (http://www.treatmentactiongroup.org/blog/bms-price-gouging-needs-end), and its cancer drugs were the focus of "The High Cost of Living With Cancer." (https://psmag.com/social-justice/high-cost-living-cancer-big-pharma-bristol-myers-81239) BMS's shift over the last several years to focus on immune-oncology drugs, which tend to have high price tags, seems likely to increase pricing-related pressures in the future.

The Proponents disagree that drug pricing is the subject of the Proposal. If the Staff believes that to be the case, however, the Proposal still should not be excluded on ordinary business grounds. The sustained intensity of the public debate over high prescription drug prices, combined with the scrutiny applied to BMS, make high drug prices a significant social policy issue for BMS.

In summary, the Proposal's "thrust and focus" is senior executive compensation, a topic that has consistently been deemed a significant social policy issue transcending ordinary business. Even if high drug prices were considered the Proposal's subject, the broad focus on policy, as opposed to details about specific medicines, takes it out of the realm of ordinary business. Finally, the Proposal asks an analysis of the relationship between an aspect of the business climate and senior executive pay arrangements, which is familiar territory for shareholders and thus not outside their knowledge or expertise. BMS has thus failed to meet its burden of establishing that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7).

Substantial Implementation

BMS argues that it has substantially implemented the Proposal, supporting omission under Rule 14a-8(i)(10), because its current Commission-mandated proxy statement disclosure satisfies the Proposal's request. But generic disclosure regarding incentive compensation arrangements and risk falls far short of what the Proposal seeks.

At no point does BMS state what it believes to be the essential objective of the Proposal, which is telling. Its only nod in that direction is a statement that existing disclosure regarding the impact of stock price declines on the value of long-term incentive awards is "generally aligned" with "what the Proposal seeks." (No-Action Request, at 6)

BMS points to proxy statement disclosures about compensation risk and the balancing of short- and long-term performance. BMS claims the Proposal has been implemented because:

- The Compensation Committee is responsible for overseeing compensation-related risks, which BMS asserts include reputational risk;
- The Commission's rules require BMS to disclose "compensation policies and practices as they relate to risk management," which BMS states includes risk related to public concern over drug pricing and reputational risk, and the Compensation Committee reviews and recommends inclusion of that disclosure in the proxy statement;
- The Company described in its most recent proxy statement changes made to senior executive compensation to "place greater emphasis on long-term performance"; and
- BMS has made disclosures about the effect of a falling stock price on the value of awards under long-term incentive plans.

The discussion of compensation risk in the proxy statement is generic and cursory. It states in its entirety:

> The Committee annually reviews the compensation programs from a risk perspective. Based on that review of our executive compensation arrangements as detailed beginning on page 19, the Committee believes that our compensation program does not encourage executives to take inappropriate risks that may harm shareholder value. Our compensation program achieves this by striking an appropriate balance between short-term and long-term incentives, using a diversity of metrics to assess performance under our incentive programs, using different forms of long-term incentives, placing caps on our incentive award payout opportunities, following equity grant practices that limit potential for timing awards and having stock ownership and retention requirements. (2017 Proxy Statement, at 55-56)

Missing from the disclosures BMS cites is any mention of drug pricing. The word "price" appears 108 times in the 2017 proxy statement; aside from a single mention of "PricewaterhouseCoopers, every use of the word price referred to BMS's stock price. Similarly, "pricing" appears in 16 places in the proxy statement, but each time as part of "repricing" of stock options. "Access" is used in several ways, including the proxy access right and the "notice and access" method of proxy distribution, but not in the context of patient access to medicines.

The core request of the Proposal is for the board to explain whether and how BMS's incentive compensation arrangements, individually and as a whole, incorporate public concern about high drug prices. Put another way,

the Proposal asks how incentive compensation arrangements encourage senior executives to behave consistent with the Company's professed goal of "providing access to our prescription medicines at fair prices . . . ." (https://www.bms.com/about-us/responsibility/position-on-key-issues/pricing.html)

It is not reasonable to assume that drug pricing risk figures into compensation decision making or arrangements in the same way other risks do. Indeed, risks may need to be taken into account in different ways when designing and implementing incentive compensation arrangements.

For example, the strategic risk of potential competition for a drug in its category might be addressed by trying to maximize revenue from the drug in the near term, which would suggest an aggressive revenue target for executive incentive compensation. Such a target, however, might exacerbate risks related to sales practices, such as the off-label promotion practices that led to enforcement actions and settlements throughout the industry (e.g., https://www.justice.gov/archive/opa/pr/2007/September/07_civ_782.html), or provoke regulatory or payer action aimed at lowering the price. How the Committee assesses and balances these risks in the context of senior executive incentive pay is the subject of the Proposal.

The proxy statement's descriptions of recent changes designed to emphasize long-term performance and of the impact of lower stock prices on the value of long-term incentive awards are too vague to satisfy the Proposal's request. Nothing in the disclosure explains how a long-term incentive program that uses both revenue and operating margin as metrics incorporates public concern over high drug prices, especially given that revenue is also a metric for the short-term incentive program. Lower stock prices can result from many factors—the proxy emphasizes the impact of the failed 2017 trial, for instance—and there is no explanation of the relationship between higher drug prices and a lower stock price.

The Proposal asks for reporting on whether and how senior executive compensation arrangements, individually and taken together, take into account pricing-related risks. BMS's existing disclosures, which do not mention drug pricing and simply describe compensation arrangements as required by the Commission's rules, fall far short of the requested discussion. Accordingly, exclusion on substantial implementation grounds would be inappropriate.

* * *

For the reasons set forth above, BMS has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7) or 14a-8(i)(10). The Proponents thus respectfully request that BMS'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 (718) 822-0820, or our attorney Beth Young at (718) 369-6169.

Sincerely,

Catherine Rowan
Director, Socially Responsible Investments

cc: Lisa A. Atkins
Senior Counsel, Bristol-Myers Squibb Company
Lisa.atkins@bms.com

Lisa A. Atkins
Senior Counsel

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December 26, 2017

VIA EMAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
E-mail: shareholderproposals@sec.gov

Re: *Stockholder Proposal of Trinity Health and Co-filers*[1]
Securities Exchange Act of 1934 – Rule 14a-8

Dear Ladies and Gentlemen:

This letter and the enclosed materials are submitted by Bristol-Myers Squibb Company (the "Company") to inform you that the Company intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the "2018 Proxy Materials") a stockholder proposal (the "Proposal") and a statement in support thereof (the "Supporting Statement") received from Trinity Health and co-filers (collectively, the "Proponents"). We have concurrently sent copies of this correspondence to the Proponents.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are emailing this letter and its attachments to the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents as notice of the Company's intent to omit the Proposal from the 2018 Proxy Materials. Rule 14a-8(k) and Section E of SLB 14D provide that shareholder 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 remind the Proponents that if the Proponents elect to submit any 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.

[1] The following stockholders have co-filed the Proposal: UAW Retiree Medical Benefits Trust, the Sister of St. Francis of Philadelphia, Boston Common Asset Management, LLC, Friends Fiduciary, American Baptist Home Mission Societies, Mercy Health, Daughters of Charity, Mercy Investment Services, Inc., School Sisters of Notre Dame Cooperative Investment Fund, Catholic Health Initiatives, and Monasterio De San Benito.

THE PROPOSAL

The Proposal states in relevant part:

> **RESOLVED**, that shareholders of Bristol-Myers Squibb Company ("BMS") urge the Compensation and Management Development Committee (the "Committee") to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into BMS's incentive compensation policies, plans and programs (together, "arrangements") for senior executives. The report should include, but need not be limited to, discussion of whether incentive compensation arrangements reward, or not penalize, senior executives for (i) adopting pricing strategies, or making and honoring commitments about pricing, that incorporation public concern regarding the level or rate of increase in prescription drug prices; and (ii) considering risk related to drug pricing when allocating capital.

The Proposal also includes a Supporting Statement that explains the Proponents' basis for submitting the Proposal.

BACKGROUND

On November 17, 2017, the Company received the Proposal, accompanied by a cover letter from Trinity Health dated November 13, 2017, and a letter from The Northern Trust Company dated November 13, 2017, verifying Trinity Health's stock ownership as of such date. Copies of the Proposal, the accompanying cover letter, the broker letter and all related correspondence for lead filer Trinity Health are attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rules 14a-8(i)(10) and 14a-8(i)(7) for the reasons discussed below.

ANALYSIS

We believe that the Company may properly exclude the Proposal pursuant to Rule 14a-8(i)(10), because the Proposal has already been substantially implemented through the oversight of the Compensation Management & Development Committee (the "Compensation Committee" or "Committee") of the Company's Board of Directors (the "Board"), and the executive compensation disclosures in the Company's annual proxy statements filed with the Commission. Additionally, we believe that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations.

1. **The Proposal May Be Excluded in Reliance on Rule 14a-8(i)(10), as the Company has Substantially Implemented the Proposal Through the Oversight of its Compensation Committee and its Proxy Statement.**

Rule 14a-8(i)(10) permits a company to exclude a proposal from its proxy materials if the company "has already substantially implemented the proposal," which does not require a proposal to be implemented in full or precisely as presented. *See Exchange Act Release No. 20091* (August 16, 1983). The exclusion set forth in Rule 14a-8(i)(10) is "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management." *See Exchange Act Release No. 12598* (July 7, 1976) (regarding the predecessor to Rule 14a-8(i)(10)). The Staff has stated that a proposal is considered substantially implemented when the company's practices are deemed consistent with the "intent of the proposal." *Aluminum Company of America* (January 16, 1996). Similarly, the Staff has expressed the view that a proposal is substantially implemented if the company's "policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (March 28, 1991). The Staff has consistently interpreted this to mean that a company has substantially implemented a proposal when it has put in place policies and procedures relating to the subject matter of the proposal or has implemented the essential objective of the proposal. *See, e.g*., *Exelon Corp.* (Feb. 26, 2010); *Anheuser-Busch Cos., Inc*. (Jan. 17, 2007); *ConAgra Foods, Inc*. (July 3, 2006). Furthermore, the company need not take the exact action requested and the company may exercise discretion in implementation without losing the right to exclude the proposal. *McKesson Corp*. (Apr. 8, 2011). Accordingly, even if a company has not implemented every detail of a proposal, the proposal may still be excluded where the company has substantially implemented it.

The Staff has consistently permitted the exclusion of shareholder proposals that have been substantially implemented through compliance with applicable laws and regulations. *See, e.g., Goldman Sachs* (March 15, 2012) (proposal requests that a committee of independent directors of the board assess how the company is responding to risks, including reputational risks, associated with the high levels of senior executive compensation at the company and report to shareholders); JPMorgan Chase & Co. (March 15, 2012) (same)*; Verizon Communications Inc.* (Feb. 21, 2007) (proposal that company disclose relationship between each independent director and the company that the board considered when determining such director's independence is excludable as substantially implemented because Item 407 of Regulation S-K requires disclosure of each nominee for director that is independent under stock exchange standards and the transactions considered by board in reaching that conclusion); *Eastman Kodak Co.* (Feb. 1, 1991) (proposal that company disclose in annual report all fines paid for violating environmental laws is excludable as substantially implemented because Item 103 of Regulation S-K requires disclosure of all fines exceeding $100,000); *see also King Pharmaceuticals Inc.* (Mar. 17, 2010) (proposal that board amend company bylaws to give holders of 10% of the company's common stock the power to call special shareholder meetings is excludable as substantially implemented because under relevant state law 10% of shareholders already have the authority to call special meetings); *Johnson & Johnson* (Feb. 17, 2006) (proposal that required the company to verify employment eligibility of current and future employees and to terminate any employee not authorized to work in the United States is excludable as substantially implemented on the basis that the company already was required to take such actions under federal law).

Here, the Proposal calls for the Compensation Committee to report annually to shareholders on "the extent to which risks related to public concern over drug pricing strategies

are integrated into [the Company's] incentive compensation polices, plans and programs." In addition, the Supporting Statement in the Proposals notes that "public outrage over drug prices and their impact on patient access may force price rollbacks and harm corporate reputation." The Compensation Committee is an independent committee of the Board, as disclosed in the Company's 2017 proxy statement and as required by the Compensation Committee's charter and by New York Stock Exchange rules. The Compensation Committee's charter, as noted in the Company's proxy statement, is available on the Company's website. The Compensation Committee's charter sets forth the duties and responsibilities of the Committee, which include, among other things, determining and approving the compensation of the Company's Chief Executive Officer (CEO) and other senior executive officers. The charter makes clear that the duties and responsibilities of the Committee encompass a determination of the risks relating to executive compensation, including, but not limited to, reputational risks. In particular, the charter provides that, in fulfilling its duties and responsibilities, the Committee (like all standing committees of the Board) shall, among other things, annually review incentive compensation programs to confirm incentive pay does not encourage unnecessary risk-taking.

The Commission's rules currently require the Company to provide significant disclosure regarding the material factors considered by the Compensation Committee in making compensation determinations for the named executive officers. This disclosure is set forth in the Compensation Discussion and Analysis ("CD&A") included in the Company's annual proxy statements. Instruction 3 to Item 402(b) of Regulation S-K provides that the CD&A should "focus on the material principles underlying the registrant's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions." In addition, Item 402(s) of Regulation S-K requires the Company to provide disclosure regarding its "compensation policies and practices as they relate to [its] risk management." The nature of the "risks" that may require disclosure under Item 402(s) is not limited—Item 402(s) relates to all risks, including risk related to public concern over drug pricing, reputational risks, among others. Item 402(s) requires disclosure of "the [Company's] policies and practices of compensating its employees, including non-executive officers, as they relate to risk management practices and risk-taking incentives" if those compensation policies and practices are reasonably likely to result in a material adverse effect on the Company. This disclosure requirement was tailored to "elicit disclosure about incentives in the company's compensation policies and practices *that would be most relevant to investors*." (emphasis added) *See* *Exchange Act Release No. 61175* (February 28, 2010). Further, as the Commission stated in footnote 38 to *Exchange Act Release No. 61175*, "...to the extent that risk considerations are a material aspect of the company's compensation policies or decisions for named executive officers, the company is required to discuss them as part of its [CD&A] under the current rules." The CD&A is reviewed by the Compensation Committee, and the Committee recommends its inclusion in the proxy statement, as stated in the Committee's report included in the proxy statement. Accordingly, the Company's board is required to assess precisely the issue presented in the Proposal—it is required to assess the risk associated with its compensation policies and decisions. As noted, after the Company's board has completed this assessment, "to the extent that risks arising from [the Company's] compensation policies and practices for its employees are reasonably likely to have a material adverse effect on the [Company], [the Company is required to] discuss the [Company's] policies and practices of

compensating its employees, including non-executive officers, as they relate to risk management practices and risk-taking incentives."

In response to Item 402(b) and Item 402(s), the Company already provides significant disclosure on the considerations underlying the Compensation Committee's executive compensation determinations in the CD&A, including risk-related considerations. In particular, the Company's description of its compensation philosophy in the CD&A beginning on page 38 of the Company's 2017 proxy statement (the "2017 Proxy Statement") for the 2017 annual meeting of shareholders ("2017 CD&A"), specifically notes that the Company "has structured its compensation program to closely align the interests of [its] executives with the those of [its] shareholders" and has also designed the compensation program with certain principles in mind, including "to implement best practices in compensation governance, including risk management and promotion of effective corporate policies." The 2017 Proxy Statement states on pages 18-19 that as a part of the administration of the Board's risk oversight function, the Compensation Committee annually conducts a worldwide review of the Company's compensation policies and practices to "determine whether incentive pay encourages excessive risk or inappropriate risk taking," and discusses the manner in which the Company and the Compensation Committee seek to address and mitigate risk-related issues arising from compensation practices, including by striking an appropriate balance between short-term and long-term incentives, using the Committee's ability to exercise downward discretion in determining incentive payouts, using a diversity of metrics to assess performance under the incentive programs, using different forms of long-term incentives, placing caps on the incentive award payout opportunities, following equity grant practices that limit potential for timing awards, having stock ownership and retention requirements and clawback provisions. As required by Item 402(s) and Item 402(b), this emphasis on risk management applies to all risks faced by the company—including drug pricing risk and reputational risk.

With regard to compensation practices, on page 29 of the 2017 CD&A the Company also disclosed "that aligning pay to the achievement of both [its] short-term and long-term goals, engagement, the achievement of [its] mission and the delivery of value to [its] shareholders is a cornerstone of [the Company's] compensation philosophy and program structure." The Company further noted its practice of refining its compensation programs as conditions change, while striving to maintain consistency in its philosophy and approach. Namely, the Company reported that, in responding to shareholder feedback regarding compensation practices in 2015, the Company revised its compensation practices to: (i) include three-year performance measurement periods in its long-term incentive program to ensure an appropriate and balanced focus on profitable growth, (ii) eliminate the non-GAAP earnings per share (EPS) metric overlap in the annual and long-term incentive plans, (iii) alter the mix of financial performance metrics in the long-term incentive plan and (iv) reduce the existing cap on the annual incentive award payout opportunities. The 2017 Proxy Statement at page 8. Indeed, contrary to the Proposal's Supporting Statement's incorrect assertion that "…incentive arrangements applicable to [the Company's] senior executives may not encourage them to take actions that result in lower short-term financial performance even when those actions may be in [the Company's] best long-term financial interests," collectively, these compensation program practices, including the recent design

changes, which place greater emphasis on long-term performance, significantly align executive compensation with shareholder value and discourage excessive or inappropriate risk-taking, are consistent with the Company's compensation philosophy and principles.

Furthermore, any negative impact from reputational risk is typically realized through a decline in a company's stock price. Our current long-term incentive (LTI) program (60% performance share units (PSUs) and 40% market share units (MSUs)) incorporates the Company's stock price into its performance measures and generally magnifies the impact of changes in stock price as well as relative total shareholder return (TSR) performance over the mid and longer-term. As illustrated in the 2017 CD&A at page 48, when the Company's stock price declines, the value of MSU awards decreases in two ways: (i) the number of shares earned goes down in proportion to the change in stock price and (ii) the value of those shares is less due to the lower stock price. Similarly, the value of PSU awards decreases in two ways: (i) the TSR metric reduces the number of shares earned (assuming the stock price declined more than the Company's peers' did) and (ii) the value of those shares is also less. This disclosure goes further to graphically illustrate how the decline in the Company's stock price from March 2016 through the end of 2016 is magnified in the value of its 2016 LTI awards. These disclosures are generally aligned with what the Proposal seeks—the extent to which reputational risk is integrated into the Company's incentive policies, plans and programs.

As discussed above, in compliance with Item 402(s) and Item 402(b) of Regulation S-K, the Company's Compensation Committee comprised of independent directors conducts an annual assessment of the goals and operational objectives of the Company's compensation structure through a robust risk management framework and provides substantial disclosure as to the relationship of the Company's compensation policies and practices to risk management, including reputational risk. The Company fully complied with the disclosure and assessment obligations of Item 402(b) and Item 402(s) of Regulation S-K in its 2017 Proxy Statement and intends to fully comply with these disclosure and assessment requirements in its 2018 proxy statement. As such, the assessment sought by the Proposal is undertaken annually as a means to satisfy the Commission's disclosure requirements and the information that would be included in the report requested in the Proposal is provided annually to shareholders in accordance with the Commission's disclosure requirements. Accordingly, the Proposal has been substantially implemented and the Company believes it may properly omit the Proposal and Supporting Statement from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(10).

2. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations.

We believe that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations. According to the *Exchange Act Release No. 34-40018* (May 21, 1998) (the "1998 Release"), the Commission explained that the ordinary business exclusion rests on two central considerations. The first consideration relates to the subject matter of a proposal; the 1998 Release provides 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." *Id*. The second consideration is the degree to which the proposal attempts to "micro-manage" a company by "probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment." *Id*. (*citing Exchange Act Release No. 12999* (November 22, 1976). In addition, in order to constitute "ordinary business," the proposal must not raise a significant social policy issue that would override its ordinary business subject matter, which the Proposal does not. *See id*.; Staff Legal Bulletin No. 14A (July, 12, 2002); Staff Legal Bulletin No. 14E (October 27, 2009) ("SLB 14E").

The Staff has also determined that where a shareholder proposal seeks to require that a board of directors conduct a risk analysis and issue a report for public review, it is the underlying subject matter of the report or risk assessment that is to be considered in determining whether the report or risk assessment involves a matter of ordinary business (*Release 34-20091* (August 16, 1983) and SLB 14E). *See also Sempra Energy* (January 12, 2012), in which the Staff concurred with the company's exclusion of a shareholder proposal seeking a board review of *Sempra's* management of specific risks, noting that "the underlying subject matter of these risks appears to involve ordinary business matters." As discussed below, the Proposal clearly relates to the Company's ordinary business operations as it addresses the manner in which the Company complies with the Commission's disclosure requirements. Additionally, the Proposal also relates to the Company's ordinary business operations because the underlying subject matter of the Proposal relates to how the Company makes specific pricing decisions regarding certain of its products.

With respect to compliance with the Commission's disclosure requirements, the Proposal seeks an annual report to shareholders from the Compensation Committee on the "extent to which risk related to public concern over drug pricing" are integrated into the Company's compensation practices. However, as discussed in Section **1.** above, the Company is already subject to requirements on this very topic. Specifically, the Commission's rules require the Company to discuss its policies and practices of compensating executives as they relate to risk management practices, if such policies and practices are reasonably likely to have a material adverse effect on the Company—for example, if such practices were reasonably likely to result in a material adverse effect on the reputation of the Company (disclosure specifically sought by the Proposal). Most notably, the Proposal's Supporting Statement notes that "[t]he high prices of some of [the Company's] cancer drugs have stirred controversy" and that "[p]ublic outrage over drug prices and their impact on patient access may force price rollbacks and harm corporate reputation." In addition, Item 402(s) provides specific examples of the types of disclosure that a registrant should consider addressing, if disclosure is required, including: (i) the general design philosophy of the registrant's compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practices relate to or affect risk taking by employees on behalf of the registrant, and the manner of their implementation; and (ii) the registrant's risk assessment or incentive considerations, if any, in structuring its compensation policies and practices or in awarding and paying compensation.

The Company's compliance with this disclosure requirement is an ordinary business matter, consistent with a long line of Staff precedent recognizing that a proposal addressing a company's compliance with state or federal laws and regulations is a matter relating to its ordinary business operations for purposes of Rule 14a-8(i)(7). *See, e.g., Yum! Brands, Inc.* (March 5, 2010) (concurring in the omission of a proposal seeking management verification of the employment legitimacy of all employees in reliance on Rule 14a-8(i)(7) because it concerned the company's legal compliance program); *Johnson & Johnson* (February 22, 2010) (same); *FedEx Corporation* (July 14, 2009) (concurring in the omission of a proposal seeking establishment of a committee to prepare a report on the company's compliance with state and federal laws governing proper classification of employees and independent contractors in reliance on Rule 14a-8(i)(7) because it concerned the company's general legal compliance program); *The AES Corporation* (March 13, 2008) (concurring in the omission of a proposal seeking an independent investigation of management's involvement in the falsification of environmental reports in reliance on Rule 14a-8(i)(7) because it concerned the company's general conduct of a legal compliance program); *and Coca-Cola Company* (January 9, 2008) (concurring in the omission of a proposal seeking adoption of a policy to publish an annual report on the comparison of laboratory tests of the company's product against national laws and the company's global quality standards in reliance on Rule 14a-8(i)(7) because it concerned the company's general conduct of a legal compliance program). Accordingly, similar to the above precedents, the Commission regulations specifically require the Company to provide disclosure on the very topic of the Proposal. To comply with this Commission requirement, the Company undertakes an annual assessment of the subject matter of the Proposal and provides the required disclosure relating to that topic in its proxy statement. Therefore, the manner in which the Company complies with this Commission requirement is an ordinary business matter for purposes of Rule 14a-8(i)(7).

With respect to the underlying subject matter of the Proposal, the Staff consistently has permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) when those proposals relate to how a company makes specific pricing decisions regarding certain of its products. *See, e.g.*, *Host Hotels & Resorts, Inc*. (Feb. 6, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board consider providing senior citizens and stockholders discounts on hotel rates, noting that discount pricing policy determinations is an ordinary business matter); *Equity LifeStyle Properties, Inc*. (Feb. 6, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on, among other things, "the reputational risks associated with the setting of unfair, inequitable and excessive rent increases that cause undue hardship to older homeowners on fixed incomes" and "potential negative feedback stated directly to potential customers from current residents," noting that the "setting of prices for products and services is fundamental to management's ability to run a company on a day-to-day basis"); *Ford Motor Co*. (Jan. 31, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to allow shareholders who purchased a new vehicle and "had no spare tire and hardware for mounting [the spare tire]…be able to purchase same from Ford Motor at the manufacturing cost of same," noting that "the setting of prices for products and services is fundamental to management's ability to run a company on a day-to-day basis"); *MGM Mirage* (Mar. 6, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal urging the board to implement a discount dining program for local residents); *Western Union Co*. (Mar. 7, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a

proposal requesting that the board review, among other things, the effect of the company's remittance practices on the communities served and compare the company's fees, exchange rates, and pricing structures with other companies in its industry, noting that the proposal related to the company's "ordinary business operations (i.e., the prices charged by the company)").

Although the Proposal does not specifically call for a discount as in the foregoing no-action letters, the Supporting Statement to the Proposal suggests that current prices of the Company's drugs are too high. *See, e.g., Supporting Statement for Proposal* (referring to "the high prices of some of [the Company's] cancer drugs have stirred controversy"). Similarly, the Staff has permitted exclusion of proposals requesting a report on how companies intend to respond to particular regulatory, legislative and public pressures relating to pricing policies or price increases. *See UnitedHealth Group Inc*. (Mar. 16, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a board report on how the company is responding to regulatory, legislative, and public pressures to ensure affordable health care coverage and the measures the company is taking to contain price increases of health insurance premiums as relating to ordinary business matters); *Johnson & Johnson* (Jan. 12, 2004) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board review pricing and marketing policies and prepare a report on how the company will respond to regulatory, legislative and public pressure to increase access to prescription drugs). The Company's ability to set prices and its rationale and criteria for adopting pricing strategies or allocating capital are ordinary business matters that should not be subject to shareholder oversight. Staff agreed with the Company's assertions earlier this year, and permitted the Company's exclusion of a similar proposal by some of the same proponents. *See Bristol-Myers Squibb Company* (Feb. 10, 2017) (permitting exclusion under Rule 14a-8(i)(7) regarding the disclosure of "the rationale and criteria used" to determine "the rates of price increases year-to-year of [the] company's top ten selling branded prescription drugs between 2010 and 2016, including the rationale and criteria used for these price increases, and an assessment of the legislative, regulatory, reputational and financial risks they represent for [the] company"). Here, similar to *Bristol-Myers Squibb Company* (Feb. 10, 2017), the Proposal only makes a passing reference to access to medicine, but instead squarely focuses on the Company's decisions on pricing strategies, including its rationale for allocating capital, which the Staff has previously determined to be ordinary business matters.

We are aware that, under limited circumstances, the Staff has declined to permit the exclusion of proposals relating to the pricing policies for pharmaceutical products. In all of those instances, however, the proposal focused on the company's fundamental business strategy with respect to its pricing policies for pharmaceutical products rather than on how and why the company makes specific pricing decisions regarding certain of those products. In particular, the request in each of those proposals appeared to focus on restraining or containing prices with the goal of providing affordable access to prescription drugs. *See Celgene Corp*. (Mar. 19, 2015) (declining to permit exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the risks to the company from rising pressure to contain U.S. specialty drug prices, noting that the proposal focused on the company's "fundamental business strategy with respect to its pricing policies for pharmaceutical products"); *Vertex Pharmaceuticals Inc*. (Feb. 25, 2015) (same); *Gilead Sciences, Inc*. (Feb. 23, 2015) (same); *Bristol-Myers Squibb Co*. (Feb. 21, 2000) (declining to permit

exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board create and implement a policy of price restraint on pharmaceutical products for individual customers and institutional purchasers to keep drug prices at reasonable levels and report to shareholders any changes in its pricing policies and procedures, noting that the proposal related to the company's "fundamental business strategy, i.e., its pricing for pharmaceutical products"); *Warner-Lambert Co*. (Feb. 21, 2000) (same); *Eli Lilly and Co*. (Feb. 25, 1993) (declining to permit exclusion under Rule 14a-8(i)(7) where the proposal requested that the company "seek input on its pricing policy from consumer groups, and to adopt a policy of price restraint," noting that the proposal related to "the [c]ompany's fundamental business strategy with respect to its pricing policy for pharmaceutical products"). Furthermore, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals couched as relating to executive compensation but whose thrust and focus is on an ordinary business matter. *See e.g., Apple Inc.* (Dec. 30, 2014) (permitting exclusion under Rule 14a-8(i)(7) where a proposal urged the compensation committee to determine incentive compensation for Apple's five most-highly compensated executives in part based on "a metric related to the effectiveness of Apple's policies and procedures designed to promote adherence to laws and regulations."); *Delta Air Lines, Inc.* (Mar. 27, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board prohibit payment of incentive compensation to executive officers unless the company first adopts a process to fund the retirement accounts of its pilots, noting that "although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of employee benefits").

Here the Supporting Statement makes only a passing reference to access to medicine in one line of the Supporting Statement, and tries to cloak the argument and overall presentation of the Proposal under the guise of executive compensation risk assessment. The majority of the Proposal however, including the Resolved clause, focuses on the Company's drug pricing decision making regarding certain of its products. And, although the Resolved clause summarily attempts to draw focus on strategy by asking the Company to report on "risks related to public concern over drug pricing strategies," this assertion quickly loses its authenticity once you read further into the Supporting Statement. Specifically, the Supporting Statement quickly reverts back to the Company's drug pricing decision making regarding particular drugs, noting "[t]he high prices of some of [the Company's] cancer drugs have stirred controversy" and addresses topics such as economic risks ("[t]he [Credit Suisse] report identified [the Company] as having the "greatest risk of future pricing pressures") and potential compliance considerations ("[p]ublic outrage over drug prices and their impact on patient access may force price rollbacks and harm corporate reputation."). By focusing on these topics, the Proposal provides additional bases for exclusion, as a proposal focusing on any of these topics may be excluded under Rule 14a- 8(i) (7). The Proposal delves much more deeply into the day-to-day affairs of the Company than those proposals described above that focused on companies' fundamental business strategy with respect to pricing policies for pharmaceutical products and on restraining prices with the goal of providing affordable access to prescription drugs. Unlike the requests in those proposals, the primary focus of the Proposal's request is on obtaining explanation and justification for price increases in the Company's products—namely, detailed information on drug pricing and capital allocation decisions that are squarely within management's exercise of its business judgment. These statements, read together with the Proposal's specific request, demonstrate that the Proposal

focuses on the ordinary business matter of how and why the Company makes specific pricing decisions regarding certain of its pharmaceutical products as well as capital allocation and not on a more general notion of fundamental business strategy. For this reason, the Proposal is excludable under Rule 14a-8(i)(7) as relating to ordinary business matters.

3. The Proposal Does Not Raise a Significant Social Policy Issue

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* the 1998 Release and Staff Legal Bulletin No. 14E (Oct 27, 2009). The Staff consistently has permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *Amazon.com, Inc*. (Mar. 27, 2015), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "disclose to shareholders reputational and financial risks it may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells" where the proponent argued that Amazon's sale of foie gras implicated a significant policy issue (animal cruelty). In granting no-action relief, the Staff determined that "the proposal relate[d] to the products and services offered for sale by the company." Similarly, in *PetSmart, Inc*. (Mar. 24, 2011), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal calling for suppliers to certify that they have not violated certain laws regarding the humane treatment of animals, even though the Staff had determined that the humane treatment of animals was a significant policy issue. In its no-action letter, the Staff specifically noted the company's view that the scope of the laws covered by the proposal were "fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping." *See also, e.g., CIGNA Corp*. (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp*. (Feb. 3, 2005) (permitting exclusion under Rule 14a- 8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter). In this instance, while the Proposal ostensibly touches on a social policy issue relating to the pricing of pharmaceutical drugs, similar to the precedents above, the Proposal's request focuses on ordinary business matters (*i.e*., the Company's specific pricing decisions regarding certain of its pharmaceutical products as well as capital allocation). Additionally, the Company currently has over 100 products that are marketed and sold in over 40 countries around the globe, including in key markets in the U.S., the European Union and Japan. The factors underlying price changes and allocation of capital are necessarily complex and vary by product, region and, in some cases, country, for a myriad of reasons, including due to, among other things, different healthcare regulatory regimes and differences in payment methods and programs depending on the jurisdiction in which a patient is located. *See Bristol-Myers Squibb Company Annual Report on Form 10-K for the Year Ended December 31, 2016* at 13-16 (discussing the Company's drug pricing policy and efforts to make its products more

affordable). By requesting such "intricate detail" in a report on this fundamental element of the Company's business strategy, the Proposal "prob[es] 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." Exchange Act Release No. 40018 (May 21, 1998).

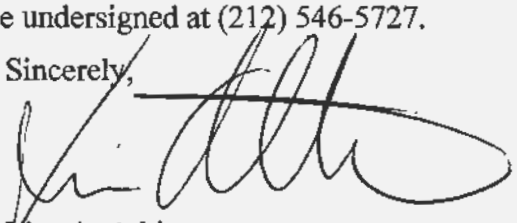
Accordingly, consistent with the precedents described above, the Company believes that the Proposal may be excluded from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

Based on the foregoing, we respectfully request the Staff's concurrence that it will take no action if the Company omits the Proposal from its 2018 Proxy Materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (212) 546-5727.

Sincerely,



Lisa A. Atkins
Senior Counsel

Enclosures

cc: Sandra Leung, Bristol-Myers Squibb Company
Katherine Kelly, Bristol-Myers Squibb Company
Jung Choi, Bristol-Myers Squibb Company

Catherine M. Rowan
Director, Socially Responsible Investments Trinity Health, via e-mail and Federal Express overnight delivery

Meredith Miller
Chief Corporate Governance Officer, UAW Retiree Medical Benefits Trust, via e-mail and Federal Express overnight delivery

Lauren Compere
Managing Director, Boston Common Asset Management, via e-mail and Federal Express overnight delivery

Donna Meyer, PhD
Director of Shareholder Advocacy, Mercy Investment Services, Inc, via e-mail and Federal Express overnight delivery

Colleen Scanlon
SVP & Chief Advocacy Officer, Catholic Health Initiatives, via e-mail and Federal Express overnight delivery

Rose Marie Stallbaumer
OSB, Investment Representative, Monasterio De San Benito, Federal Express overnight delivery

EXHIBIT A

Trinity Health
Livonia, MI

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

November 13, 2017

Katherine R. Kelly
Associate General Counsel and Corporate Secretary
Bristol-Myers Squibb Company
345 Park Ave.
New York, NY 10154

Dear Ms. Kelly,

Trinity Health is the beneficial owner of over $2,000 worth of stock in Bristol-Myers Squibb Company. 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.

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. The proposal asks the Compensation and Management Development Committee to report on the extent to which risks related to public concern over drug pricing strategies are integrated into our Company's incentive compensation policies, plans and programs. 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.

As the representative for Trinity Health, I am the primary contact for this shareholder proposal and intend to present it in person or by proxy at the next annual meeting of the Company. Other BMS shareholders may be co-filing this same proposal as well.

We look forward to speaking with you about this proposal at your convenience.

Sincerely,

Catherine Rowan

Catherine Rowan
enc

RESOLVED, that shareholders of Bristol-Myers Squibb Company ("BMS") urge the Compensation and Management Development Committee (the "Committee") to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into BMS's incentive compensation policies, plans and programs (together, "arrangements") for senior executives. The report should include, but need not be limited to, discussion of whether incentive compensation arrangements reward, or not penalize, senior executives for (i) adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding the level or rate of increase in prescription drug prices; and (ii) considering risks related to drug pricing when allocating capital.

SUPPORTING STATEMENT

As long-term investors, we believe that senior executive incentive compensation arrangements should reward the creation of sustainable long-term value. To that end, it is important that those arrangements align with company strategy and encourage responsible risk management.

A key risk facing drug companies is potential backlash against high prices. Public outrage over drug prices and their impact on patient access may force price rollbacks and harm corporate reputation. Investigations regarding pricing of prescription medicines may bring about broader changes, with some favoring allowing Medicare to bargain over drug prices. (E.g., https://democrats-oversight.house.gov/news/press-releases/cummings-and-welch-launch-investigation-of-drug-companies-skyrocketing-prices; https://democrats-oversight.house.gov/news/press-releases/cummings-and-welch-propose-medicare-drug-negotiation-bill-in-meeting-with) The high prices of some BMS cancer drugs have stirred controversy. (E.g., http://www.businessinsider.com/r-the-cost-of-cancer-new-drugs-show-success-at-a-steep-price-2017-4)

A recent Credit Suisse analyst report stated that "US drug price rises contributed 100% of industry EPS growth in 2016" and characterized that fact as "the most important issue for a Pharma investor today." The report identified BMS as having the "greatest risk of future pricing pressures" of major pharmaceutical firms. (*Global Pharma and Biotech Sector Review: Exploring Future US Pricing Pressure*, Apr. 18, 2017, at 3)

We are concerned that the incentive compensation arrangements applicable to BMS's senior executives may not encourage them to take actions that result in lower short-term financial performance even when those actions may be in BMS's best long-term financial interests. BMS uses revenue and non-GAAP earnings per share, along with a pipeline goal and individual performance factors, as metrics for the annual bonus, and revenue and non-GAAP operating margin as metrics for performance share unit awards. (2017 Proxy Statement, at 43-44, 47)

In our view, excessive dependence on drug price increases is a risky and unsustainable strategy, especially when price hikes drive large senior executive compensation payouts. For example, coverage of the skyrocketing cost of Mylan's EpiPen noted that a 600% rise in Mylan's CEO's total compensation accompanied the 400% EpiPen price increase. (See, e.g., https://www.nbcnews.com/business/consumer/mylan-execs-gave-themselves-raises-they-hiked-epipen-prices-n636591; https://www.wsj.com/articles/epipen-maker-dispenses-outsize-pay-1473786288; https://www.marketwatch.com/story/mylan-top-executive-pay-was-second-highest-in-industry-just-as-company-raised-epipen-prices-2016-09-13)

The disclosure we request would allow shareholders to better assess the extent to which compensation arrangements encourage senior executives to responsibly manage risks relating to drug pricing and contribute to long-term value creation. We urge shareholders to vote for this Proposal.

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

November 13, 2017

NORTHERN TRUST

TO WHOM IT MAY CONCERN,

Please accept this letter as verification that as of November 13, 2017 Northern Trust as custodian held for the beneficial interest of
Trinity Health 107,257 shares of Bristol-Myers Squibb.

As of November 13, 2017 Trinity Health has held at least $2,000 worth of Bristol-Myers Squibb 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 2017.

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,

Ryan Stack
Trust Officer
The Northern Trust Company
50 South La Salle Street
Chicago, Illinois 60603