

December 22, 2020

*Via email to shareholderproposals@sec.gov*

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

**Re: Notice of Intent to Exclude from 2021 Proxy Materials Shareholder Proposal  
of the National Center for Public Policy Research**

Ladies and Gentlemen:

This letter is submitted on behalf of American Express Company, a New York corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2021 Annual Meeting of Shareholders (the “2021 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof from the National Center for Public Policy Research (the “Proponent”). The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend an enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials in reliance on Rule 14a-8.

Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we have (i) submitted this letter and its exhibit to the Commission within the time period required under Rule 14a-8(j) and (ii) concurrently sent copies of this correspondence to the Proponent as notification of the Company’s intention to exclude the Proposal from its 2021 Proxy Materials.

Rule 14a-8(k) and 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 Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects 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 Company received the Proposal on November 23, 2020. A full copy of the Proposal is attached hereto as Exhibit A. The Proposal reads as follows:

Shareholders request that the American Express Company (“the Company”) issue a public report detailing the potential risks associated with omitting “viewpoint” and “ideology” from its written equal employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information.

## **Basis for Exclusion**

We hereby respectfully request the Staff concur in our view that the Proposal may be excluded from the Company’s 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations.

## **Analysis**

### **The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Involves Matters Related to the Company’s Ordinary Business Operations.**

#### *A. Background of Rule 14a-8(i)(7)*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business” operations. The Commission has provided guidance relating to this term and stated that “ordinary business” does not mean “ordinary” in the common meaning of the word, but rather the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission stated that the purpose 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,” and further identified two key considerations that underlie this policy. The first consideration is 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 Commission cited examples of such tasks, which included “management of the workforce, such as the hiring, promotion, and termination of employees.” *Id.* The second consideration is “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 judgement.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues,” the latter of which are not excludable under

Rule 14a-8(i)(7) because they “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C (June 28, 2005).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has long held that a proposal requesting the preparation of a report may be excludable under Rule 14a-8(i)(7) where the subject matter of the report involves the ordinary business of the issuer. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983). Furthermore, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (Oct. 26, 1999). As a result, when evaluating whether a proposal may be excluded under Rule 14a-8(i)(7), the primary focus is on the subject matter of the proposal rather than the action requested by the proponent.

Moreover, in Staff Legal Bulletin 14K (Oct. 16, 2019) (“SLB 14K”), the Staff noted that “a policy issue that is significant to one company may not be significant to another.” In this regard, the Staff stated in Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“SLB 14I”) that a “board acting . . . with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.” Furthermore, in Staff Legal Bulletin 14J (Oct. 23, 2018) (“SLB 14J”), the Staff indicated, and in SLB 14K confirmed, that a well-developed discussion of the board’s analysis that focuses on specific substantive factors can assist the Staff in evaluating a company’s no-action request.

*B. The Proposal Is Excludable Because It Relates To The Ordinary Business Matter Of Managing The Company’s Workforce*

The Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company’s management of the workforce. Notably, in *United Technologies Corp.* (Feb. 19, 1993), the Staff stated that “[a]s a general rule, [it] views proposals directed at a company’s employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company’s ordinary business operations.” Moreover, the Staff provided the following examples of excludable ordinary business categories: “employee health benefits, general compensation issues not focused on senior executives, *management of the workplace*, employee supervision, labor-management relations, employee hiring and firing, *conditions of the employment* and employee training and motivation.” *Id.* (emphasis added). The Commission went further and recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.”

Consistent with the 1998 Release, the Staff has recognized that a wide variety of proposals relating to relating to the management of a company’s workforce are excludable under Rule 14a-8(i)(7), including proposals addressing potential or perceived discrimination in the workplace. For example, in *Walmart, Inc.* (Apr. 8, 2019), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board prepare a report to “evaluate the risk of

discrimination that may result from the [company's] policies and practices for hourly workers taking absences from work or personal or family illness," noting that "the [p]roposal relates generally to the [c]ompany's management of its workforce." See also *Yum! Brands, Inc.* (Mar. 6, 2019) (concurring with the exclusion of a proposal relating to adopting a policy not to "engage in any Inequitable Employment Practice" as relating to the company's ordinary business matters); and *PG&E Corp.* (Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business matters). Most recently, in *Apple, Inc.* (Dec. 20, 2019), the Staff concurred in the exclusion of a proposal that is identical to the Proposal, noting that it "does not transcend the [c]ompany's ordinary business operations." See also *Alphabet Inc.* (Apr. 9, 2020), *recon. denied* (Apr. 22, 2020); *salesforce.com, inc.* (Apr. 9, 2020, *recon. denied* Apr. 22, 2020); and *Walgreens Boots Alliance, Inc.* (Nov. 26, 2020, *recon. denied* Dec. 10, 2020).

The *Apple* precedent is consistent with a long line of Staff letters concurring that proposals focused on company policies relating to employee political ideology and related requests to expand non-discrimination or equal employment opportunity policies do not raise significant policy issues and relate to a company's ordinary business operations. See *Costco Wholesale Corp.* (Nov. 14, 2014, *recon. denied* Jan 5, 2015) (concurring with the exclusion of a proposal requesting adoption of a company-wide Code of Conduct including an anti-discrimination policy that protects employees' right to engage in political and civic activities as "relating to [the company's] ordinary business operations" and, in particular, "policies concerning [the company's] employees"). Similarly, the Staff has permitted exclusion of a proposal requesting that antidiscrimination policies be amended to include the political participation of employees. See *CVS Health Corp.* (Feb. 27, 2015) (concurring with the exclusion of a proposal requesting the company amend its equal employment opportunity policy to explicitly prohibit discrimination based on political ideology, affiliation or activity, and to substantially implement the policy); *Bristol-Myers Squibb Co.* (Jan. 7, 2015) (concurring with the exclusion of a proposal requesting adoption of "anti-discrimination principles that protect employees' human right to engage, on their personal time, in legal activities relating to the political process . . . without retaliation in the workplace" as "relating to [the company's] ordinary business operation" and, in particular, "policies concerning [the company's] employees"); *Yum! Brands, Inc.* (Jan. 7, 2015, *recon. denied* Feb. 26, 2015) (same); and *Deere & Co.* (Nov. 14, 2014, *recon. denied* Jan. 5, 2015) (same).

Just as with the above-cited precedent, this Proposal focuses on management of the Company's workforce, an ordinary business matter. Specifically, the Proposal focuses on the Company's equal employment opportunity policy, which applies broadly to the Company's more than 64,000 employees, and whether the absence of specific wording covering "viewpoint" and "ideology" adversely affects employee welfare and performance, the Company's competitive position, hiring, retention and litigation risks, each of which are routine aspects of the Company's management of its workforce. As such, and consistent with the above-referenced precedent, the Proposal relates to the Company's ordinary business operations and does not focus on a significant policy issue that transcends the Company's ordinary business operations.

C. *In Light Of The Company's Existing Policies, Practices and Disclosures, The Actions Requested By The Proposal Do Not Transcend The Company's Ordinary Business Operations*

In the context of the Company's existing and robust policies, practices and disclosures relating to equal employment opportunity, anti-discrimination and inclusion, the differences between the Proposal's objective and what the Company has already done are not significant in relation to the Company, such that the Proposal does not present a policy issue that transcends the Company's ordinary business. Indeed, the Company's policies and practices are substantially similar to those of the other companies that have received an identical proposal from the same Proponent and successfully excluded the proposal under Rule 14a-8(i)(7). See *Apple Inc.* (Dec. 20, 2019, recon. denied Jan. 17, 2020) (concurring with the exclusion of a proposal and noting it "does not transcend the [c]ompany's ordinary business operations"); *Alphabet Inc.* (Apr. 9, 2020, recon. denied Apr. 22, 2020) (same); *salesforce.com, inc.* (Apr. 9, 2020, recon. denied Apr. 22, 2020) (same); and *Walgreens Boots Alliance, Inc.* (Nov. 25, 2020, recon. denied Dec. 10, 2020) (same).

In SLB 14I, the Staff indicated that including a "discussion that reflects the board's analysis of the particular policy issue raised and its significance" will "greatly assist the [S]taff with its review of no-action requests under Rule 14a-8(i)(7)." Accordingly our Nominating, Governance and Public Responsibility Committee (the "Committee") of the Company's Board of Directors ("Board"), which is comprised of independent directors who oversee the Company's corporate governance practices in their capacity as committee members, has carefully reviewed and considered a number of factors, detailed below, relating to the Proposal and the Company's existing anti-discrimination and equal employment opportunity policies, practices and disclosures. The Committee has concluded that, in light of the Company's existing policies and disclosures, the actions requested by the Proposal do not raise an issue that transcends the Company's ordinary business operations, and, therefore, the Proposal is not appropriate for a shareholder vote.

In reaching this determination, consistent with the Staff's guidance in Staff Legal Bulletin 14J and SLB 14K, the Committee considered the factors summarized below:

- ***The Company has extensive equal employment opportunity and anti-discrimination policies and practices, so there is not a significant difference between the objective of the Proposal and what the Company has already done.*** The Company is committed to maintaining an equal opportunity, non-discriminatory workplace environment that promotes inclusion and diversity. The Committee considered a number of Company policies, initiatives and public disclosures that support and demonstrate the Company's commitment.
  - The Company's Code of Conduct ("Code"), which applies to all of the Company's employees and, in a section titled "Diversity and Equal Employment Opportunity," affirms the Company's view of the importance of a "diverse workforce" with a "mix of backgrounds, *opinions* and talents" (emphasis added). The Code also re-affirms that the Company is "committed to equal employment opportunity and fair treatment" and that the Company makes "all employment decisions based on job-related qualifications and without regard to race, ethnicity, gender, gender identity, disability, religion, sexual orientation, marital status, citizenship, age or any other legally protected status in each of the countries in which we operate."

- The Company’s Human Rights Statement states the Company’s commitment to “treating every individual and client with dignity, fairness and respect” and “maintain[ing] a diverse workforce and a culture in which differences are embraced and our employees are enabled to reach their full potential.” The statement also reflects the Company’s commitment to “maintaining an environment that is free from discrimination and harassment of any kind.” The statement does not limit this protection to only certain employees.
- ***In addition to the policies described above, the Company maintains extensive efforts to promote inclusion and diversity in the workplace.***
  - The Company offers inclusive leadership training to its employees highlighting the role inclusive leadership plays in advancing the Company’s ability to attract, select, develop and retain a diverse workforce.
  - The Company, which refers to its employees as “colleagues,” has 16 Colleague Networks, with more than 100 chapters globally, that provide opportunities to support personal and professional development, skill building and career growth and play a significant role in creating an inclusive culture. Colleague Networks include the Black Engagement Network (BEN), Christian Network (SALT), Disability Awareness Network (DAN), Families at American Express Network, Generations Network (GEN), Millennial Network, Veterans Network (VET), Virtual Working Engagement Network (BlueEN) and Women’s Interest Network (WIN), are among the many networks.
  - As reported in the Company’s 2019-20 Environmental, Social and Governance Report, the Company launched an Office of Enterprise Inclusion, Diversity and Business Engagement to drive our strategy of creating a welcoming, equitable and inclusive workplace. One of the key pillars of the strategy is focused on the Company’s colleagues and “[c]reat[ing] a culture that respects, values and recognizes everyone by removing systemic barriers to achieve inclusion and advance that drives company success.”

Although the Company’s policies do not expressly reference “viewpoint” or “ideology” among the examples of protected personal characteristics, the Company’s policies and practices demonstrate that all employees are to receive equal and fair treatment and be protected from discrimination on the basis of a broad scope of characteristics. The Company’s Code of Conduct expressly recognizes the importance of a diverse workforce, including diversity of “opinions,” which is comparable to the concepts of “viewpoint” and “ideology.” Based on the foregoing, the Committee determined that the differences—or the delta—between the Proposal’s specific request and the actions the Company has already taken are minor and, accordingly, consistent with the framework in SLB 14K, that the Company’s existing policies and practices have “diminished the significance of the [Proposal’s] policy issue to such an extent that the [P]roposal does not present a policy issue that is significant to the [C]ompany.” Therefore, the Company believes the Proposal

is properly excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations and, particularly, the Company's management of its workforce.

### **Conclusion**

Based upon the foregoing, the Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials pursuant to Rule 14a-8. We would be happy to provide any additional information and answer any questions regarding this matter.

Should you have any questions, please contact me at kristina.v.fink@aexp.com or 212-640-8080.

Thank you for your consideration.

Regards,



Kristina Fink  
Vice President, Deputy Corporate  
Secretary

cc: Justin Danhof, Esq.  
General Counsel  
National Center for Public Policy Research  
20 F Street, NW, Suite 700  
Washington, D.C. 20001  
Email: JDanhof@nationalcenter.org

**EXHIBIT A**





November 18, 2020

**Via FedEx to**

Tangela S. Richter  
Corporate Secretary & Chief Governance Officer  
American Express Company  
200 Vesey Street  
New York, New York 10285

Dear Ms. Richter,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the American Express Company (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Deputy Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for a year prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2021 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Copies of correspondence or a request for a "no-action" letter should be forwarded to Justin Danhof, Esq, General Counsel, National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to [JDanhof@nationalcenter.org](mailto:JDanhof@nationalcenter.org).

Sincerely,

Scott Shepard

Enclosure: Shareholder Proposal

## **EEO Policy Risk Report**

### **RESOLVED**

Shareholders request that the American Express Company ("the Company") issue a public report detailing the potential risks associated with omitting "viewpoint" and "ideology" from its written equal employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information.

### **SUPPORTING STATEMENT**

American Express does not explicitly prohibit discrimination based on viewpoint or ideology in its written EEO policy.

American Express' lack of a company-wide best practice EEO policy sends mixed signals to company employees and prospective employees and calls into question the extent to which individuals are protected due to inconsistent state policies and the absence of federal protection for partisan activities. Approximately half of Americans live and work in a jurisdiction with no legal protections if their employer takes action against them for their political activities.

Companies with inclusive policies are better able to recruit the most talented employees from a broad labor pool, resolve complaints internally to avoid costly litigation or reputational damage, and minimize employee turnover. Moreover, inclusive policies contribute to more efficient human capital management by eliminating the need to maintain different policies in different locations.

There is ample evidence that individuals with conservative viewpoints may face discrimination in corporate America.

Many companies are hostile to right-of-center thought. Companies such as Facebook and Google routinely fire conservative employees when they speak their values. At the 2019 annual meeting of Apple shareholders, an audience member told company CEO Tim Cook about her close friend who works at Apple and lives in fear of retribution every single day because she happens to be a conservative. Companies such as Amazon and Alphabet work with the Southern Poverty Law Center ("SPLC"). The SPLC regularly smears Christian and conservative organizations by labelling them as "hate" groups on par with the KKK.

One former Google employee, who was fired for his conservative views, even noted that right-of-center employees at that company regularly face harassment and abuse simply for their political beliefs.

Presently shareholders are unable to evaluate how American Express prevents discrimination towards employees based on their ideology or viewpoint, mitigates employee concerns of potential discrimination, and ensures a respectful and supportive work atmosphere that bolsters employee performance.

Without an inclusive EEO policy, American Express may be sacrificing competitive advantages relative to peers while simultaneously increasing company and shareholder exposure to reputational and financial risks.

We recommend that the report evaluate risks including, but not limited to, negative effects on employee hiring and retention, as well as litigation risks from conflicting state and company anti-discrimination policies.