



DIVISION OF
CORPORATION FINANCE

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

May 10, 2021

Steven Krol

Re: Rite Aid Corporation
Incoming letter dated May 1, 2021

Dear Mr. Krol:

This letter is in response to your correspondence dated May 1, 2021 concerning the shareholder proposal (the "Proposal") submitted to Rite Aid Corporation (the "Company") by Steven Krol (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. On April 23, 2021, we issued a no-action response expressing our informal view that the Company could exclude the Proposal from its proxy materials for its upcoming annual meeting in reliance on rule 14a-8(i)(7). You have asked us to reconsider our position, and specifically noted our decision in *New York Community Bancorp, Inc.* (Apr. 11, 2019), where relief was denied. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

As explained by the Commission, a proposal seeking to impose specific methods for implementing complex policies may be excludable because it seeks to micromanage a company. Here, the Proposal, if implemented, would prohibit equity compensation grants to senior executives under specified circumstances without providing any discretion to the Company.

Furthermore, as stated in rule 14a-8(g), the company has the burden of demonstrating that it is entitled to exclude a proposal. The staff will not consider any basis for exclusion that is not advanced by the company. In *New York Community Bancorp, Inc.*, the company did not argue that the proposal micromanaged, and therefore, the staff did not consider whether the proposal micromanaged.

Sincerely,

Michele Anderson
Acting Deputy Director
Division of Corporation Finance

cc: Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP
Marc.Gerber@skadden.com

From: ***
To: [ShareholderProposals](#); [Paul D. Gilbert](#)
Subject: Rite Aid Corporation- Request for Shareholder Proposal Reconsideration
Date: Tuesday, May 4, 2021 2:56:19 PM

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BY EMAIL- (shareholderproposals@sec.gov)

May 4, 2021

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

Rite Aid Corp.

Reconsideration of No-Action Decision

Proposal of Steven Krol

Re: Rite Aid Corporation
Proponent Response to

Response for

Relating to Shareholder

Ladies and Gentlemen:

A copy of this email is simultaneously being sent to Rite Aid Corporation.

This letter is in response to the letter to the Staff, dated May 3, 2021, submitted by Rite Aid in response to Proponent's letter, dated May 1, 2021.

I. The Reconsideration Request Provides the Full Basis to Support Reconsideration and Further Questions Why Proponent Received

Rite Aid's Statement in Opposition Many Days Before the SEC Opinion was Rendered Subsequently

The New York Community Bancorp, Inc. SEC opinion (April 11, 2019) does indeed dictate the outcome in this instance if Staff rulings are to remain consistent with each other; currently they appear to be in conflict. Verbatim resolution language of both proposals should receive the same outcome, but in this case they did not. Proponent's May 1, 2021 request for reconsideration provided Rite Aid the Sec Staff quote in allowing New York Community Bancorp shareholders to consider the matter in the proxy for vote, namely "in our view, the proposal which focuses on policies for granting equity compensation awards to senior management transcends ordinary business matters". Case closed. On the matter of stock options for senior executives this ends all further discussion or attempts by Rite Aid to circumvent or attempt exclusion since the subject matter of executive stock options has already been decided in 2019.

Rite Aid, unable to defend against this overriding and controlling principle then falsely attempts "to throw up against the wall" the issue of "micromanagement" to see if that will stick, even though the matter was already decided in 2019 and even though this second issue is a false one on its own merit. They attempt to convince the Staff that a proponent in this case should not be able to probe too deeply into matters of a complex nature, such that shareholders would be incapable to make an informed judgment. That argument too falls on its face since Rite Aid routinely probes into this matter of executive pay in its annual "Say on Pay" Proposal voted on by its shareholders. Does counsel continue to suggest that shareholders are quite capable of voting on the full complex matter of **all** executive pay, but not the smaller subset of stock options?

The reason that New York Community Bancorp did not argue that the proposal sought to micromanage the company (**but did indeed raise the "Say on Pay" matter as part of their argument**) is because it did not make sense for them to raise a false argument and lose credibility with the SEC Staff. Rite Aid wants credit for raising a false argument; they should be given no credit for this.

In summary, the reconsideration request should be based on valid facts already presented and decided upon by the SEC Staff in 2019, not by Rite Aid throwing false "hail Mary's". Proponent provided the Staff with the controlling matter in April 2019; this newer Proposal mimics the same words in its proposal and should have the same Staff opinion to avoid confusion on a matter important and significant to all public company shareholders, as well as to those whose business it is to review these SEC opinions.

Further, Rite Aid has side-stepped why they "jumped the gun" and issued the Proponent its Statement in Opposition for proxy publication many days before the Staff even rendered its opinion. This just does not happen normally and suggests Rite Aid owes the SEC Staff with a reason for this highly curious and troubling action.

II. Other Matters

Once again, what Rite Aid side-stepped is more revealing than what they chose to say. They indicate that Rite Aid shareholders were provided with an ability to vote on last year's Rule 14a-4(c) matter. How? Where? What was the result? Counsel did not say, when a full explanation was conspicuously absent and missing. The two (2) minute rule to introduce the proposal for the first time at an Annual Meeting, did not even have the benefit to have shareholders see the full proposal (with the Supporting Statement missing in its entirety) so that shareholders would even know what or why they were voting on it. And counsel suggests now they had a mechanism to vote on it?

Again, Rite Aid strategically took advantage of its shareholders in its conduct of its first virtual Annual Meeting. They also took advantage of The SEC that attempts to ensure democratic elections are conducted, whether physically or virtually. Rite Aid shareholders did not get that last year; perhaps under the watchful eye of the SEC they might this year.

Should the Staff have any questions, please feel free to contact the undersigned at your convenience.

Sincerely,
Steven Krol
Rite Aid Shareholder

email- ***
Tel. ***

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BY EMAIL (shareholderproposals@sec.gov)

May 3, 2021

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

RE: Rite Aid Corporation – Response to Request
for Reconsideration of No-Action Decision
Relating to Shareholder Proposal of Steven Krol

Ladies and Gentlemen:

On April 23, 2021, the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) indicated via an updated chart posted on the SEC website that it would not recommend enforcement action to the Commission if Rite Aid Corporation, a Delaware corporation (“Rite Aid”), were to omit the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by Steven Krol (the “Proponent”) from its 2021 annual meeting proxy materials in reliance on Rule 14a-8(i)(7) (the “No-Action Response”). The Proposal requests that Rite Aid’s board adopt a policy prohibiting equity compensation grants to senior executives in certain instances.

This letter is in response to the letter to the Staff, dated May 1, 2021, submitted by the Proponent (the “Proponent’s Request”), requesting that the Staff reconsider the No-Action Response. A copy of this letter is also being sent to the Proponent.

I. The Reconsideration Request Offers No Basis to Support Reconsideration of the No-Action Response.

Rite Aid understands that the Staff will not grant a reconsideration request absent some change in the facts and circumstances providing a basis for the Staff's reconsideration of its no-action decision. *See, e.g., CVS Health Corporation* (Mar. 22, 2021, *recon. denied* Mar. 30, 2021). The Proponent's Request comes down to an argument that a different company tried to exclude a similar proposal by making different arguments than Rite Aid, and those other arguments were not successful so Rite Aid's argument should not be successful. The Proponent's argument does not provide any basis for granting the reconsideration request.

As the Staff well knows, in Exchange Act Release No. 34-40018 (May 21, 1998), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As described in Staff Legal Bulletin No. 14J (Oct. 23, 2018), "a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company."

The Proponent's Response argues that the outcome in *New York Community Bancorp, Inc.* (April 11, 2019) dictates the outcome in this instance. However, in *New York Community Bancorp, Inc.*, the company argued that the proposal was excludable under the first consideration of the ordinary business exclusion and did not argue that the proposal sought to micromanage the company. In contrast, Rite Aid argued that the Proposal may be excluded because it attempts to micromanage Rite Aid, and the Staff concurred with Rite Aid on the basis of micromanagement. Thus, *New York Community Bancorp, Inc.* is inapposite and provides no basis for reconsideration.¹

¹ To the extent that the Staff views the Proponent's Request as a request for Commission review, the Proponent's Request does not meet the standard of Part 202.1(d) of the Code of Federal Regulations (involving "matters of substantial importance and where the issues are novel or highly complex").

II. Other Matters

The bulk of the Proponent's Request is unrelated to the Proposal and Rule 14a-8 and not relevant to the question of reconsideration. In short, the Proponent references proposals submitted to Rite Aid pursuant to the advance notice provisions of Rite Aid's bylaws and to the conduct of Rite Aid's annual meeting, matters governed by state law.

To the extent that the Proponent references Exchange Act Rule 14a-4(c), Rite Aid complied with the requirements of Rule 14a-4(c) regarding discretionary authority by including in last year's proxy statement disclosure on the nature of the matter and how Rite Aid intended to exercise its discretion to vote on the matter. In addition, stockholders attending the 2020 annual meeting were provided with the ability to vote on the matter. Similarly, Rite Aid will comply with Rule 14a-4(c) with respect to its 2021 annual meeting and stockholders will be provided with the ability to vote on the matter.

For the reasons stated above, Rite Aid respectfully requests that the Staff deny the Proponent's request for reconsideration of the No-Action Response.

Should any additional information be desired in support of Rite Aid'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 (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Paul Gilbert
Rite Aid Corporation

Steven Krol

From: ***
To: [ShareholderProposals](#); [Paul D. Gilbert](#)
Subject: Rite Aid Corporation- Proponent Request for Reconsideration
Date: Saturday, May 1, 2021 12:05:36 PM

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BY EMAIL

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street

Washington, D.C.

REQUEST FOR RECONSIDERATION

May 1, 2021

Rite Aid Corporation
DATED MATERIALS

Ladies and Gentlemen:

A copy of this letter is being simultaneously being sent to Rite Aid Corporation.

Reference is made to Rite Aid's shareholder proposal exclusion request letter ,dated 2/12/21, and its Supplement , dated, 2/23/21. Proponent responded to The SEC Staff in letters to The SEC Staff dated 2/16/21 and 2/26/21.

Further, Rite Aid submitted to the undersigned their Statement in Opposition, dated 4/19/21. This despite the above matter remaining pending on The SEC website until four (4) days later on 4/23/21, suggesting that even Rite Aid assumed their exclusion request would ultimately be denied.

The undersigned requests reconsideration on its opinion that Rite Aid may exclude the proposal from its proxy, since this opinion directly conflicts with a prior proposal submitted by shareholder Jeffrey Doppel vs. New York Community Bancorp. In that SEC opinion, dated 4/11/19, The SEC rejected the company's argument in favor of Proponent that on the subject matter of stock options and shareholder dilution, stockholders should be able to vote on a matter of significance to them. The SEC stated in its opinion that "in our view, the Proposal, which focuses on policies for granting equity compensation awards to senior executives transcends ordinary business matters". The undersigned's proposal and resolution is an exact mirror image of the New York Community Bancorp one in which The SEC has now ruled the opposite causing unnecessary confusion to those reviewing such matters.

On a second matter related to the proper conduct of an Annual Meeting, the undersigned wishes to bring to the attention of The SEC Staff the inappropriate conduct of Rite Aid pertaining to a matter scheduled for vote last year as well as a different one at this year's Annual Meeting, yet to be announced. In both cases, under SEC Rule 14a-4(c) under The Exchange Act, a vote normally takes place by attending shareholders only at a physical meeting. Additionally, until last year's virtual meeting. Rite Aid proponents have never been advised in writing prior to the event that they will have only two (2) minutes to introduce the proposal.

Given the severity of last year's Covid epidemic it was proper to hold the Annual Meeting virtually. However, other than a summary of the Proposal in the 2020 proxy on page 82 under "Other Matters" shareholders were deprived of reviewing the full Proposal and Supporting Statement and even more importantly and strategically on the part of Rite Aid, shareholders had no mechanism to register their vote. Simply, Rite Aid used their "loophole" due to conducting a virtual meeting to not allow shareholders a voice in how the company spends their monies or is accountable to its shareholders.

The SEC and the undersigned believe there should be no difference in the conduct of a virtual meeting

vs. a physical one. For that to be the case, **all** full proposals and supporting statements together with a line item on the proxy card to vote on it must be considered.

Rite Aid normally schedules their Annual Meeting in mid July. According to The CDC, scientists generally and government officials believe our country will start going back to normal. Rite Aid is welcome to postpone by several months its Annual Meeting for any extra degree of caution they may wish to take in order to hold a physical meeting. Indeed, shareholders could benefit by being able to meet its new senior management in person for the first time. However, if they choose once again to take advantage of a virtual meeting, since it worked so well for them last year by using only a screener to ask questions on behalf of shareholders deemed by the screener to be "appropriate", then all proposals must be included in the proxy with proper voting instructions, not afforded shareholders last year and presumably this year as well. Last year's virtual Annual Meeting only served the interests of the board and its senior management, not the proper interests of its shareholders, the correct reason to hold such a meeting in the first place.

Proponent appreciates the time that The SEC Staff made to review the above. Should you have any questions, please feel free to contact the undersigned as indicated below.

Sincerely,
Steven Krol
Rite Aid Proponent/Shareholder

email- ***
Tel. ***