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**BY EMAIL** (shareholderproposals@sec.gov)

December 9, 2020

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

RE: Johnson & Johnson – 2021 Annual Meeting  
Omission of Shareholder Proposal of  
The Sisters of St. Francis of Philadelphia

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Johnson & Johnson, a New Jersey corporation, to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Johnson & Johnson’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by The Sisters of St. Francis of Philadelphia (the “Proponent”) from the proxy materials to be distributed by Johnson & Johnson in connection with its 2021 annual meeting of shareholders (the “2021 proxy materials”).

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 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 Proponent as

notice of Johnson & Johnson's intent to omit the Proposal from the 2021 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 shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if they submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to Johnson & Johnson.

## **I. The Proposal**

The text of the resolution contained in the Proposal is set forth below:

RESOLVED that shareholders of Johnson & Johnson ("JNJ") urge the Compensation & Benefits Committee (the "Committee") of the board to take the steps necessary to provide that the Committee may decline to pay in full an award (a "Bonus") to a senior executive that is based on one or more financial measurements (a "Financial Metric") whose performance measurement period ("PMP") is one year or shorter for a period (the "Deferral Period") following the award, including developing a methodology for determining the length of the Deferral Period and adjusting the remainder of the Bonus over the Deferral Period.

The methodology referenced above should allow accurate assessment of risks taken during the PMP that could have affected performance on the Financial Metric(s) and facilitate JNJ's recoupment of Bonus compensation pursuant to its recoupment policy.

The changes should be implemented in a way that does not violate any existing contractual obligation or the terms of any compensation or benefit plan currently in effect.

## **II. Basis for Exclusion**

We hereby respectfully request that the Staff concur with Johnson & Johnson's view that the Proposal may be excluded from the 2021 proxy materials pursuant to Rule 14a-8(i)(10) because Johnson & Johnson has substantially implemented the Proposal.

### **III. Background**

On November 11, 2020, Johnson & Johnson received the Proposal, accompanied by a cover letter from the Proponent dated November 10, 2020, and a letter from Northern Trust, dated November 10, 2020, verifying the Proponent's stock ownership (the "Broker Letter"). Copies of the Proposal, cover letter, Broker Letter and related correspondence are attached hereto as Exhibit A.

### **IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(10) Because Johnson & Johnson Has Substantially Implemented the Proposal.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release") and Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company. See 1983 Release.

Applying this standard, the Staff has consistently permitted exclusion of a proposal under Rule 14a-8(i)(10) when the company's policies, practices and procedures compare favorably with the guidelines of the proposal. See, e.g., *Visa Inc.* (Oct. 11, 2019) (permitting exclusion of a proposal recommending that the compensation committee reform the company's executive compensation philosophy to include social factors to enhance the company's social responsibility where the company's "policies, practices and procedures compare[d] favorably with the guidelines of the [p]roposal and the [c]ompany ... therefore, substantially implemented the [p]roposal"); *Exxon Mobil Corp.* (Mar. 17, 2015) (permitting exclusion of a proposal requesting that the company commit to increasing the dollar amount authorized for capital distributions to shareholders through dividends or share buybacks where the company's long-standing capital allocation strategy and related "policies, practices and procedures compare[d] favorably with the guidelines of the proposal and ... therefore, substantially implemented the proposal"); *The Goldman Sachs Group, Inc.* (Mar. 12, 2018); *Wells Fargo & Co.* (Mar. 6, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder Sys., Inc.* (Feb. 11, 2015); *Wal-Mart Stores, Inc.* (Mar. 27, 2014); *Peabody Energy Corp.* (Feb. 25, 2014); *The Goldman Sachs Group, Inc.* (Feb. 12, 2014); *Hewlett-Packard Co.* (Dec. 18, 2013); *Deere &*

*Co.* (Nov. 13, 2012); *Duke Energy Corp.* (Feb. 21, 2012); *Exelon Corp.* (Feb. 26, 2010); *ConAgra Foods, Inc.* (July 3, 2006); *The Gap, Inc.* (Mar. 16, 2001).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. *See, e.g., The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion on substantial implementation grounds of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance and recommending the use of the Governance Reporting Initiative Sustainability Guidelines, where the company published an annual sustainability report but did not follow the Governance Reporting Initiative Sustainability Guidelines or cover all of the suggested topics); *Alcoa Inc.* (Feb. 3, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report that describes how the company's actions to reduce its impact on global climate change may have altered the current and future global climate, where the company published general reports on climate change, sustainability and emissions data on its website); *Allegheny Energy, Inc.* (Feb. 20, 2008) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a policy that a significant portion of future stock option grants to senior executives be performance-based where the company had adopted a policy making stock option vesting contingent upon performance).

Johnson & Johnson has substantially implemented the Proposal, the essential objective of which is to provide Johnson & Johnson's Compensation & Benefits Committee with the ability to adjust or defer short-term incentive awards to senior executives. In particular, the Proposal requests that the Compensation & Benefits Committee "take the steps necessary to provide that the [Compensation & Benefits] Committee may decline to pay in full an award (a 'Bonus') to a senior executive that is based on one or more financial measurements (a 'Financial Metric') whose performance measurement period ('PMP') is one year or shorter" (emphasis added) for a period following the award. The supporting statement also explains that the Proposal asks the Compensation & Benefits Committee to "take the steps necessary to authorize withholding some portion of Bonuses to allow adjustment of the unpaid portion during the Deferral Period" (emphasis added), for which the Compensation & Benefits Committee would have discretion to set the terms and mechanics.

Johnson & Johnson's Compensation & Benefits Committee already has the authority and discretion to adjust or defer short-term incentive awards to senior executives. As described in Johnson & Johnson's definitive proxy statement for its 2020 annual meeting of shareholders (the "2020 Proxy Statement"), annual incentive awards are based on a performance period of one year. These awards are granted in accordance with Johnson & Johnson's Executive Incentive Plan, as amended on November 28, 2018 (the "Plan"), a copy of which is attached hereto as Exhibit B.<sup>1</sup> Under the terms of the Plan, the Compensation & Benefits Committee has the authority both to adjust and to defer awards. In particular, Section VI of the Plan provides the Compensation & Benefits Committee with the ability to adjust the amount of any award under the Plan:

The amounts of Awards to Eligible Employees<sup>2</sup> shall be determined by the Committee acting in its discretion subject to the maximum amounts set forth above. Such determinations, except in the case of the Award for the Chairman, shall be made after considering the recommendations of the Chairman and such other matters as the Committee shall deem relevant. *The Committee, acting in its discretion, may determine to pay a lesser award than the maximum specified herein* [Emphasis added].

In addition, Section VIII of the Plan provides the Compensation & Benefits Committee with authority to defer payment of awards under the Plan:

Awards under the Plan shall be paid currently, *unless the Committee shall determine that any Award in cash or Common Stock or any portion thereof shall be deferred*. Deferred Awards may be made in one lump sum or in installments and may bear interest in the case of any deferred cash Award or dividend equivalents in the case of any deferred Common Stock Award, all as the Committee shall determine [Emphasis added].

Pursuant to the terms of the Plan, which is the plan through which awards based on performance metrics of one year or shorter are made, the Compensation & Benefits Committee already has the discretion and authority to adjust and defer payment of annual performance bonuses. Accordingly, the Proposal already has been substantially implemented.

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<sup>1</sup> See Johnson & Johnson's Executive Incentive Plan, available at <https://www.sec.gov/Archives/edgar/data/200406/000020040619000033/a201910-q1qexhibit10ajjexe.htm>.

<sup>2</sup> The Plan defines "Eligible Employees" as Johnson & Johnson's executive officers.

The Proposal also requests that any methodology developed by the Compensation & Benefits Committee for adjusting a bonus during the deferral period facilitates Johnson & Johnson's "recoupment of [b]onus compensation pursuant to its recoupment policy." Johnson & Johnson has two recoupment policies under which it may recoup annual bonus compensation, and those policies consider risks taken during the period covered by Johnson & Johnson's annual performance bonuses. In this regard, Johnson & Johnson's Compensation Recoupment Policy for Material Violations of Company Policy Relating to Manufacturing, Sales or Marketing of Company Products already references the potential for deferred bonuses to be subject to recoupment, a copy of which is attached hereto as Exhibit C.<sup>3</sup> Specifically, it provides the Compensation & Benefits Committee with "sole discretion" to recoup incentive-based compensation, defined in the policy to include "annual performance bonuses (including any amounts deferred)," when "there has been significant misconduct resulting in a violation of a significant Company policy, law, or regulation relating to manufacturing, sales or marketing of products that causes material harm." The policy also provides the Compensation & Benefits Committee with sole discretion in determining the method of recoupment. Further, Johnson & Johnson's second recoupment policy, the Compensation Recoupment Policy, permits Johnson & Johnson's Board of Directors (the "Board") to recoup "all or part of any bonus or other compensation paid to [an] executive officer that was based upon the achievement of financial results that were subsequently restated," a copy of which is attached hereto as Exhibit D.<sup>4</sup> Accordingly, Johnson & Johnson's recoupment policies already provide the Compensation & Benefits Committee and the Board with the discretion and authority to recoup incentive awards paid or deferred under the Plan.

Moreover, to the extent the Proposal's supporting statement reflects a concern with the relationship between executive compensation and risk-taking, Johnson & Johnson already has implemented policies to discourage senior executives from taking on excessive risk and to promote a longer-term perspective. In particular, as disclosed in the 2020 Proxy Statement, the Board "believes that a key element of its risk oversight responsibilities is considering whether our executive compensation programs incentivize our leaders to take excessive risks." With this in

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<sup>3</sup> See Johnson & Johnson's Compensation Recoupment Policy for Material Violations of Company Policy Relating to Manufacturing, Sales or Marketing of Company Products, available at [http://www.investor.jnj.com/\\_document/compensation-recoupment-policy-for-material-violations-of-company-policy-feb-2019?id=00000168-e285-d29c-a77f-efd76e540000](http://www.investor.jnj.com/_document/compensation-recoupment-policy-for-material-violations-of-company-policy-feb-2019?id=00000168-e285-d29c-a77f-efd76e540000).

<sup>4</sup> See Johnson & Johnson's Compensation Recoupment Policy, available at [http://www.investor.jnj.com/\\_document/compensation-recoupment-policy-feb-2019?id=00000168-e284-d540-a37d-e694d4ee0000](http://www.investor.jnj.com/_document/compensation-recoupment-policy-feb-2019?id=00000168-e284-d540-a37d-e694d4ee0000).

mind, the 2020 Proxy Statement indicates that Johnson & Johnson's Board "reviews our Company's financial performance, as well as other strategic factors including product quality metrics and talent development and diversity metrics to ensure our leaders are driving long-term growth in a manner aligned with Our Credo values." In line with this, the Compensation & Benefits Committee "oversees the design of our executive compensation programs to ensure that the programs do not incentivize our executive officers, either individually or as a group, to make excessively risky business decisions that could maximize short-term results at the expense of long-term value." Further, the 2020 Proxy Statement describes "several key elements of our executive compensation programs designed to mitigate risk," including capped incentive awards, multi-year performance periods and vesting, a balanced mix of pay components and Johnson & Johnson's Compensation Recoupment Policy. As reflected in the 2020 Proxy Statement, Johnson & Johnson has designed its executive compensation program to discourage excessive risk taking by senior executives and has done so by, among other measures, limiting the type of short-term incentive compensation with which the Proposal is concerned.

Accordingly, given that the Plan already provides the Compensation & Benefits Committee with authority and discretion to adjust and defer annual incentive awards, as well as the current design of Johnson & Johnson's executive compensation program, Johnson & Johnson has substantially implemented the Proposal. Thus, the Proposal may be excluded under Rule 14a-8(i)(10).

## **V. Conclusion**

Based upon the foregoing analysis, Johnson & Johnson respectfully requests that the Staff concur that it will take no action if Johnson & Johnson excludes the Proposal from its 2021 proxy materials.

Office of Chief Counsel  
December 9, 2020  
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Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Johnson & Johnson'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: Matthew Orlando  
Worldwide Vice President, Corporate Governance and Corporate Secretary  
Johnson & Johnson

Tom McCaney  
Associate Director  
Corporate Social Responsibility  
The Sisters of St. Francis of Philadelphia



EXHIBIT A

(see attached)



THE SISTERS OF ST. FRANCIS OF PHILADELPHIA

November 10, 2020

Thomas J. Spellman III  
Assistant General Counsel and Corporate Secretary  
Johnson and Johnson  
One Johnson and Johnson Plaza  
New Brunswick, NJ 08933

Dear Mr. Spellman:

Peace and all good! The Sisters of St. Francis of Philadelphia have been shareholders in Johnson and Johnson for many years. As long-term shareholders, we support compensation policies that align senior executives' incentives with the company's long-term success. We are concerned that short-term incentive plans can encourage senior executives to take on excessive risk.

The Sisters of St. Francis of Philadelphia are therefore submitting the enclosed shareholder proposal regarding the deferral of incentive awards to senior executives. I submit it for inclusion in the proxy statement for consideration and action by the stockholders at the 2021 annual meeting in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. A representative of the shareholders will attend the annual meeting to move the resolution as required by SEC rules. Please note that the contact person for this resolution/proposal will be: Tom McCaney, Associate Director, Corporate Social Responsibility. Contact information: 610-716-2766 or [tmccaney@osfphila.org](mailto:tmccaney@osfphila.org).

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

Respectfully Yours,

Tom McCaney  
Associate Director, Corporate Social Responsibility

Enclosures

RESOLVED that shareholders of Johnson & Johnson (“JNJ”) urge the Compensation & Benefits Committee (the “Committee”) of the board to take the steps necessary to provide that the Committee may decline to pay in full an award (a “Bonus”) to a senior executive that is based on one or more financial measurements (a “Financial Metric”) whose performance measurement period (“PMP”) is one year or shorter for a period (the “Deferral Period”) following the award, including developing a methodology for determining the length of the Deferral Period and adjusting the remainder of the Bonus over the Deferral Period.

The methodology referenced above should allow accurate assessment of risks taken during the PMP that could have affected performance on the Financial Metric(s) and facilitate JNJ’s recoupment of Bonus compensation pursuant to its recoupment policy.

The changes should be implemented in a way that does not violate any existing contractual obligation or the terms of any compensation or benefit plan currently in effect.

### SUPPORTING STATEMENT

As long-term shareholders, we support compensation policies that align senior executives’ incentives with the company’s long-term success. We are concerned that short-term incentive plans can encourage senior executives to take on excessive risk.

In our view, the opioid crisis reflects overly risky behavior by companies in the supply chain, including manufacturers such as JNJ. In August 2019, an Oklahoma judge ruled that JNJ subsidiary Janssen engaged in “false, deceptive and misleading” marketing regarding opioids that led to opioid deaths in Oklahoma, which constituted a “public nuisance.”<sup>1</sup> JNJ has offered \$5 billion to settle more than 2,000 cases filed by states and cities seeking damages for JNJ’s role in the opioid crisis.<sup>2</sup> JNJ has also been dogged by compliance failures related to off-label promotion, kickbacks and foreign bribery.<sup>3</sup>

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<sup>1</sup> See <https://fm.cnbc.com/applications/cnbc.com/resources/editorialfiles/2019/8/26/1044673351-20190826-151346-.pdf>.

<sup>2</sup> <https://www.fiercepharma.com/pharma/johnson-johnson-adds-1b-to-opioid-lawsuits-settlement-pool-bringing-total-to-5b>

<sup>3</sup> E.g., <https://www.justice.gov/opa/pr/johnson-johnson-pay-more-22-billion-resolve-criminal-and-civil-investigations>; <https://www.sec.gov/litigation/litreleases/2011/lr21922.htm>



To foster a longer-term orientation, this proposal asks that the Committee take the steps necessary to authorize withholding some portion of Bonuses to allow adjustment of the unpaid portion during the Deferral Period. The Committee would have discretion to set the terms and mechanics of this process.

Bonus deferral is widely used in the banking industry, where overly risky behavior was widely viewed as contributing to the financial crisis. In 2009, the Financial Stability Board (“FSB”), which coordinates national financial authorities in developing strong financial sector policies, adopted *Principles for Sound Compensation Practices* and implementation standards for those principles, including bonus deferral. Deferral is “particularly important” because it allows “late-arriving information about risk-taking and outcomes” to alter payouts and reduces the need to claw back compensation already paid out, which may “fac[e] legal barriers,” in the event of misconduct. Banking supervisors in 16 jurisdictions, including the US, have requirements or expectations regarding bonus deferral. (<https://www.fsb.org/wp-content/uploads/P170619-1.pdf>)

We urge shareholders to vote FOR this proposal.



50 S. LaSalle Street  
Chicago IL 60603

November 10, 2020

To Whom It May Concern:

This letter will confirm that the Sisters of St. Francis of Philadelphia hold **25** shares of **Johnson & Johnson Common Stock (CUSIP : 478160104)**. These shares have been held continuously, for at least a one-year period preceding and including **November 10, 2020** and will continue to be at the time of your next shareholders meeting.

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

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

Sincerely,

Lisa M. Martinez- Shaffer  
Second Vice President

EXHIBIT B

(see attached)

**Johnson & Johnson Executive Incentive Plan**

~ Plan Document ~

(Amended as of November 28, 2018)

**I. Purpose**

The purpose of the Johnson & Johnson Executive Incentive Plan (the "Plan") is to attract and retain highly qualified individuals as executive officers; to obtain from each the best possible performance; to underscore the importance to them of achieving particular business objectives established for Johnson & Johnson; and to include in their compensation package an annual incentive component which is tied to the achievement of these objectives.

**II. Definitions**

For the purposes of the Plan, the following terms shall have the following meanings:

- a) **Awards**. The cash and/or stock bonus awards made pursuant to the Plan.
- b) **Board of Directors**. The Board of Directors of Johnson & Johnson.
- c) **Committee**. The Compensation & Benefits Committee of the Board of Directors or any successor thereto.
- d) **Common Stock**. The common stock of the Corporation, par value \$1.00 per share.
- e) **Consolidated Earnings**. Consolidated net income for the year for which an Award is made, adjusted to omit the effects of extraordinary items, discontinued operations and the cumulative effects of changes in accounting principles, all as shown on the audited consolidated statement of income of the Corporation and its subsidiaries and as determined in accordance with generally accepted accounting principles.
- f) **Corporation**. Johnson & Johnson.
- g) **Eligible Employee**. An Employee who is an Executive Officer of the Corporation.
- h) **Employee**. An individual who is on the active payroll of the Corporation or a subsidiary of the Corporation at any time during the period for which an Award is made.
- i) **Executive Officer**. The Chairman and any Vice Chairman of the Board of Directors and any other officer of the Corporation who has been designated a part of the Office of the Chairman or elected a Member of the Executive Committee of the Corporation.
- j) **Fair Market Value**. The average between the highest and lowest quoted selling price per share of Common Stock on the New York Stock Exchange Composite Transactions Tape on the grant date, provided that if there shall be no sales of shares of Common Stock on such date, the Fair Market Value shall be deemed equal to the average between the highest and lowest sales price of a share of Common Stock on such Composite Tape for the last preceding date on which sales of shares of Common Stock were reported.

**III. Effective Date; Term**

The Plan is effective as of January 1, 1996, was approved by the Corporation's stockholders at the Corporation's 1996 Annual Meeting of Stockholders, and shall remain in effect until such time as it shall be terminated by the Board of Directors.

**IV. Amounts Available for Awards; Shares Subject to the Plan**

- a) Awards with respect to any taxable year of the Corporation shall not exceed the limitations specified in Section VI of the Plan.
- b) Awards that are granted under the Plan in the form of stock, in whole or in part, may be made from the aggregate number of shares of Common Stock authorized to be issued under and otherwise in accordance with the terms of the 2012 Long-Term Incentive Plan of the Corporation (or any successor stock compensation plan approved by the stockholders of the Corporation), subject in each case, to adjustment as hereinafter provided. These shares may, in the discretion of the Committee, consist either in whole or in part of authorized but unissued shares of Common Stock or shares of Common Stock held in the treasury of the Corporation.

- c) In the event of a reorganization, recapitalization, stock split, stock dividend, combination of shares, merger, consolidation, any separation (including a spinoff or other distribution of stock or property), any partial or complete liquidation or any other change in the corporate structure or shares of the Corporation, the Committee shall make such adjustment as is equitably required in the number and kind of shares authorized by and for the Plan or in the number of shares of Common Stock covered by any outstanding deferred Award.

#### **V. Eligibility for Awards**

- a) Awards for any period may be granted to those Eligible Employees who are selected by the Committee. Such selections, except in the case of the Corporation's Chairman, shall be made after considering the recommendations of the Chairman. The Committee shall also give consideration to the contribution made by the Eligible Employee to achievement of the Corporation's established objectives and such other matters as it shall deem relevant.
- b) In the discretion of the Committee, Awards may be made to Eligible Employees who have retired or whose employment has terminated after the beginning of the year for which an Award is made, or to the designee or estate of an Eligible Employee who died during such period.

#### **VI. Determination of Amounts of Awards**

- a) The maximum Award payable with respect to any taxable year of the Corporation to any Eligible Employee who is the Chairman or a Vice Chairman of the Board of Directors or any other officer who has been designated a part of the Corporation's Office of the Chairman during all or any portion of such taxable year shall not exceed .08% of Consolidated Earnings for such year. The maximum Award payable with respect to any taxable year of the Corporation to any other Eligible Employee shall not exceed .04% of Consolidated Earnings for such year. The amounts of Awards to Eligible Employees shall be determined by the Committee acting in its discretion subject to the maximum amounts set forth above. Such determinations, except in the case of the Award for the Chairman, shall be made after considering the recommendations of the Chairman and such other matters as the Committee shall deem relevant. The Committee, acting in its discretion, may determine to pay a lesser award than the maximum specified herein.
- b) Awards may be made at any time following the end of the taxable year; provided, however, that no Awards shall be made until the Committee receives assurance from the Corporation's Chief Human Resources Officer that the amount of such Award does not exceed the applicable limitation under this Section VI and the Committee concurs that such limitation has not been exceeded. For purposes of making these determinations, the value of the Common Stock component of any Award shall be its Fair Market Value.

#### **VII. Form of Awards**

Awards under the Plan shall be made in cash or Common Stock, as the Committee shall determine, subject to the limitations set forth in Section IV.

#### **VIII. Payment of Awards**

- a) Awards under the Plan shall be paid currently, unless the Committee shall determine that any Award in cash or Common Stock or any portion thereof shall be deferred. Deferred Awards may be made in one lump sum or in installments and may bear interest in the case of any deferred cash Award or dividend equivalents in the case of any deferred Common Stock Award, all as the Committee shall determine. Any deferred award shall be structured in a way so as to comply with or be exempt from Section 409A (as defined below).
- b) When an Award is made, the Corporation shall cause the cash or Common Stock to be paid or issued to the Eligible Employee at the time or times specified by the Committee or, if no time or times is specified, as soon as practicable after the Award is made.

#### **IX. Special Awards and Other Plans**

- a) Nothing contained in the Plan shall prohibit the Corporation or any of its subsidiaries from establishing other special awards or incentive compensation plans providing for the payment of incentive compensation to Employees (including Eligible Employees).
- b) Payments or benefits provided to an Eligible Employee under any stock, deferred compensation, savings, retirement or other employee benefit plan are governed solely by the terms of such plan.

#### **X. Administration, Amendment and Interpretation of the Plan**

- a) Except as otherwise provided in the Plan, the Committee shall administer the Plan. The Committee shall consist of not less than three members of the Board of Directors. No director shall be eligible to serve as a member of such Committee unless



such person is “independent” as defined within the meaning of the New York Stock Exchange and the Company’s Standards of Independence, and as determined in the business judgment of the Board of Directors. Committee members shall not be eligible to participate in the Plan while members of the Committee. The Committee shall have full power to construe and interpret the Plan, establish and amend rules and regulations for its administration, and perform all other acts relating to the Plan, including the delegation of administrative responsibilities, that it believes reasonable and proper and in conformity with the purposes of the Plan.

- b) The Committee shall have the right to amend the Plan from time to time or to repeal it entirely or to direct the discontinuance of Awards either temporarily or permanently; provided, however, that (i) no amendment of the Plan shall operate to annul, without the consent of the Eligible Employee, an Award already made hereunder, and (ii) no amendment of the Plan that (x) changes the maximum Award payable to any Eligible Employee, as set forth in Section VI, (y) materially amends the definition of Consolidated Earnings or (z) increases the amount of shares available for awards under the Plan (except as contemplated by Section IV.C.) shall be effective before approval by the affirmative vote of a majority of shares voting at a meeting of the stockholders of the Corporation.
- c) Any decision made, or action taken, by the Committee arising out of or in connection with the interpretation and/or administration of the Plan shall be final, conclusive and binding on all persons affected thereby.

#### **XI. Rights of Eligible Employees**

- a) Neither the Plan, nor the adoption or operation of the Plan, nor any documents describing or referring to the Plan (or any part hereof) shall confer upon any Employee any right to continue in the employ of the Corporation or a subsidiary of the Corporation.
- b) No individual to whom an Award has been made or any other party shall have any interest in the cash or Common Stock, or any other asset of the Corporation until such amount has been paid or issued. To the extent that any party acquires a right to receive payments of cash and/or share certificates under the Plan, such party shall have the status of unsecured creditor of the Corporation with respect to such right.
- c) No right or interest of any Eligible Employee in the Plan shall be assignable or transferable, or subject to any claims of any creditor or subject to any lien.

#### **XII. Miscellaneous**

- a) All expenses and costs incurred in connection with the operation of the Plan shall be borne by the Corporation, and no part therefor (other than the amounts of Awards under the Plan) shall be charged against the maximum limitation of Section VI.
- b) All Awards under the Plan are subject to withholding, where applicable, for federal, state and local taxes.
- c) Any provision of the Plan that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Plan.
- d) The Plan and the rights and obligations of the parties to the Plan shall be governed by, and construed and interpreted in accordance with, the law of the State of New Jersey (without regard to principles of conflicts of law). Notwithstanding anything herein to the contrary, the intent of the Committee is that Awards comply with Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance issued thereunder (“Section 409A”), to the extent subject thereto, and accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. The Corporation reserves the right to revise the Plan or any Award to comply with Section 409A or to otherwise avoid imposition of any additional tax under Section 409A.

EXHIBIT C

(see attached)

**Compensation Recoupment Policy for Material Violations of Company Policy  
Relating to Manufacturing, Sales or Marketing of Company Products**

If, in the sole discretion of the Compensation and Benefits Committee (“Committee”) of the Board of Directors, there has been significant misconduct resulting in a violation of a significant Company policy, law, or regulation relating to manufacturing, sales or marketing of products that causes material harm to the Company (“Significant Misconduct”), then the Committee shall determine the extent, if any, to which the Incentive-Based Compensation of any Covered Executive involved in such misconduct should be recouped consistent with the provisions below:

- a. For purposes of this policy, the following definitions shall be used:
  - i. “Covered Executive” means any Company employee at a pay grade of 51 and above (Vice President 2 level or higher).
  - ii. “Executive Officer” means any member of the Executive Committee of the Company, the Corporate Controller and such other executives of the Company subject to the reporting requirements of Section 16 of the Securities Exchange Act of 1934, as amended, as may be determined by the Company’s Board of Directors.
  - iii. “Incentive-Based Compensation” means incentive compensation granted or paid during the last three years including, but not limited to, annual performance bonuses (including any amounts deferred) and long-term incentive grants.
  - iv. “Recoupment” means the recapture, recovery, cancellation or forfeiture of compensation to, or similar actions regarding, a Covered Executive, whether or not such compensation already has been paid or has vested.
- b. This policy applies to (i) any Covered Executive who was directly engaged in the Significant Misconduct and (ii) any Covered Executive who supervised a subordinate employee that engaged in the Significant Misconduct at issue, whose misconduct does not constitute an isolated occurrence and which the Covered Executive knew or should have known was occurring. The Incentive-Based Compensation of any Covered Executive will not be impacted if such

employee was not involved in the misconduct at issue or was not responsible for the supervision of an employee involved in the misconduct at issue.

- c. The determination by the Committee of whether to recoup Incentive-Based Compensation may be influenced by a variety of factors, including, but not limited to, (i) the compensation structure for the Covered Executive, (ii) pay equity factors, (iii) retention, promotion, or succession planning factors, (iv) whether the underlying conduct was an isolated occurrence, (v) feasibility and cost of implementation, (vi) legal and compliance factors, and (vii) whether other disciplinary actions against the Covered Executive have been taken.
- d. If the Committee determines that it is appropriate to recoup Incentive-Based Compensation from a Covered Executive under this policy, the Committee shall decide on (i) the amount of Incentive-Based Compensation provided to the Covered Executive that is subject to recoupment and (ii) the method of recoupment, including whether to seek the return of Incentive-Based Compensation already paid or to withhold or otherwise recoup (totally or partially) compensation that has not vested or has not been paid.
- e. The Committee may delegate to a management committee the administration of this policy with respect to Covered Executives who are not Executive Officers of the Company. In the event of such delegation, the management committee shall report to the Committee on any occurrences where it would be appropriate for the Committee to determine whether the policy has been triggered. Management shall also provide a report to the Committee, at least annually, describing any recoupment determinations made under this policy.
- f. The Committee shall retain oversight responsibility for this policy.
- g. The Committee shall report to the full Board on any recoupment determination made with respect to an Executive Officer of the Company.
- h. Nothing in this policy is designed or intended to limit or restrict the Company or the Board of Directors from taking any disciplinary or legal action they deem appropriate.
- i. Decisions made pursuant to this policy may be made in conjunction with, or separate and apart from, other Company recoupment programs.

EXHIBIT D

(see attached)

## **COMPENSATION RECOUPMENT POLICY**

In the event of a material restatement of the Company's financial results, the Board will review the facts and circumstance that led to the requirement for the restatement and will take such actions as it deems necessary or appropriate. The Board will consider whether any executive officer received compensation based on the original financial statements because it appeared he or she achieved financial performance targets which in fact were not achieved based on the restatement. The Board will also consider the accountability of any executive officer whose acts or omissions were responsible in whole or in part for the events that led to the restatement and whether such acts or omissions constituted misconduct.

The actions the Board may elect to take against a particular executive officer, depending on all the facts and circumstances as determined during their review, could include (i) the recoupment of all or part of any bonus or other compensation paid to the executive officer that was based upon the achievement of financial results that were subsequently restated, (ii) disciplinary actions, up to and including termination, and/or (iii) the pursuit of other available remedies.

For purposes of this Policy, the term "executive officers" means all members of the Executive Committee, the Corporate Controller, and such other executives of Johnson & Johnson as may be determined by the Board.