



DIVISION OF  
CORPORATION FINANCE

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

January 17, 2023

Iain Mickle  
Boutin Jones Inc.

Re: Molina Healthcare, Inc. (the "Company")  
Incoming letter dated December 6, 2022

Dear Iain Mickle:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Beyond Investing LLC (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rule 14a-8(b)(1)(iii). As required by Rule 14a-8(f), the Company notified the Proponent of the problem, and the Proponent failed to adequately correct it. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rules 14a-8(b)(1)(iii) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Debra Bouton  
Beyond Investing LLC

**Iain Mickle**  
Attorney  
Direct Line / 916.231.4039  
imickle@boutinjones.com

December 6, 2022

***VIA E-MAIL TO SHAREHOLDERPROPOSALS@SEC.GOV***

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

Re: Stockholder Proposal by Beyond Investing LLC Submitted to Molina Healthcare, Inc.

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, we are writing on behalf of our client, Molina Healthcare, Inc., a Delaware corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, the Company may exclude the stockholder proposal and supporting statement (together with the associated cover letter, the “Proposal”) submitted by Beyond Investing LLC (the “Proponent”) from the proxy materials (the “2023 Proxy Materials”) to be distributed by the Company in connection with its 2023 Annual Meeting of Stockholders (the “2023 Annual Meeting”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (CF) (“SLB 14D”), the Company is emailing this letter to the Staff. Simultaneously, pursuant to Rule 14a-8(j), the Company is sending a copy of this letter to the Proponent’s representative, Debra Bouton, as notice of the Company’s intention to exclude the Proposal from the 2023 Proxy Materials. The Company will promptly forward to Ms. Bouton any response from the Staff to this no-action request that the Staff transmits by email or fax to the Company. Also pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than 80 calendar days before the Company files its 2023 Proxy Materials with the Commission.

Rule 14a-8(k) and Section E of SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that they elect to submit to the Staff or the Commission. Accordingly, the Company is taking this opportunity to remind Ms. Bouton that if she submits correspondence to the Staff or the Commission with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company via email to [imickle@boutinjones.com](mailto:imickle@boutinjones.com), with a copy to Jeff Barlow at [jeff.barlow@molinahealthcare.com](mailto:jeff.barlow@molinahealthcare.com) and Codruta Boggs at [codruta.boggs@molinahealthcare.com](mailto:codruta.boggs@molinahealthcare.com).

## **1. The Proposal and Background**

On September 23, 2022, the Company received the Proposal, a copy of which is attached hereto as Exhibit A. The text of the resolution contained in the Proposal is set forth below:

RESOLVED, that shareholders of Molina Healthcare Inc. (the Company) request the Board of Directors of the Company (the Board) require their hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors.

The Proposal did not include any verification of the Proponent's ownership of the required number of shares of the Company's common stock as required by Rule 14a-8(b). Following receipt of the Proposal, the Company reviewed its stock records and determined that the Proponent is not a registered holder of the Company's common stock. The Company also identified a number of other procedural and substantive deficiencies in the Proposal, which are discussed more fully below.

As required by Rule 14a-8(f), on October 3, 2022, within 14 calendar days of the date that the Company received the Proposal, the Company notified the Proponent of the Proposal's procedural and substantive deficiencies by sending the deficiency notice attached hereto as Exhibit B (the "Deficiency Notice") to Ms. Bouton via Federal Express and email.

In the Deficiency Notice, the Company informed the Proponent of the requirements of Rule 14a-8 and how the Proponent could cure the Proposal's procedural and substantive deficiencies. The Deficiency Notice stated that the Proponent should submit a revised proposal to the Company no later than 14 days from the date of the Deficiency Notice. The Proponent received the Deficiency Notice on October 3, 2022, as confirmed by the Proponent in a phone call on November 14, 2022 with Codruta Boggs, Deputy General Counsel of the Company.

Pursuant to Rule 14a-8(f)(1), the Proponent's response to the Deficiency Notice was required to be postmarked or transmitted electronically to the Company by October 17, 2022, which is 14 calendar days from the date the Proponent received the Deficiency Notice. On November 14, 2022, Codruta Boggs, Deputy General Counsel of the Company, spoke with Ms. Bouton over the phone and notified her that the Company had not received a revised proposal

from the Proponent. Ms. Bouton acknowledged Ms. Boggs' notification and indicated that a revised proposal from the Proponent dated November 7, 2022 had been sent to the Company. As of the date of this letter, the Company has not received a revised proposal from the Proponent.

## 2. Basis for Exclusion

As discussed more fully below, the Company requests that the Staff concur in its view that it may exclude the Proposal from the 2023 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent, within 14 days of receipt of the Deficiency Notice, failed to:
  - establish that it has continuously held the requisite amount of Company securities entitled to be voted on the Proposal at the 2023 Annual Meeting for the required minimum period of time by the date on which it submitted the Proposal pursuant to Rule 14a-8(b)(1)(i);
  - demonstrate its eligibility to submit a proposal pursuant to Rule 14a-8(b)(2);
  - provide the Company with a written statement of its intent to continue to hold the required amount of securities through the date of the 2023 Annual Meeting pursuant to Rule 14a-8(b)(1)(ii);
  - provide the Company with a written statement with regard to its ability to meet with the Company regarding the Proposal pursuant to Rule 14a-8(b)(1)(iii); and
- Rule 14a-8(i)(5) and Rule 14-8(i)(6) because the Proposal is not relevant to the Company's business and the Company lacks the power and authority to implement the Proposal.

## 3. Analysis

### a. The Proposal may be excluded for procedural deficiencies under Rule 14a-8(b) and Rule 14a-8(f).

Rule 14a-8(b)(1)(i) indicates that, in order to submit a stockholder proposal, a stockholder proponent must have continuously held:

- (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
- (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
- (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires.

The Proposal states that the Proponent has “beneficially owned more than \$2,000 worth of MOH common stock for longer than a year.” This statement does not meet any of the eligibility criteria set forth in Rule 14a-8(b)(i)(A)-(C). Additionally, the Proponent cannot rely on Rule 14a-8(b)(i)(D) because such provision only applies to stockholder meetings held prior to January 1, 2023. The 2023 Annual Meeting will be held *after* January 1, 2023. The Proponent failed to satisfy one or more of the required stockholder ownership thresholds because it does not meet the eligibility criteria set forth in Rule 14a-8(b)(i)(A)-(D), and therefore the Proposal is procedurally deficient under Rule 14a-8(b)(1)(i).

Moreover, the Company has no record of the Proponent’s ownership of any of the Company’s common stock. Rule 14a-8(b)(2) and Section C.1.c. of Staff Legal Bulletin No. 14 (July 13, 2001) specify that when the stockholder is not the registered holder, the stockholder is responsible for proving its eligibility to submit a stockholder proposal to the company, which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2)(ii). The Proposal did not include a written statement or other documentation acceptable under Rule 14a-8(b)(2)(ii) demonstrating the Proponent’s eligibility to submit the Proposal, and therefore the Proposal is procedurally deficient under Rule 14a-8(b)(2).

Rule 14a-8(b)(1)(ii) states that a proponent must provide the company with a written statement that the proponent intends to continue to hold the requisite amount of securities, determined in accordance with Rule 14a-8(b)(1)(i)(A) through (C), through the date of the stockholders’ meeting for which the proposal is submitted. Although the Proposal states that the Proponent “intends to continue ownership of at least \$2,000 worth of MOH common stock through the date of the 2023 annual meeting”, this statement is only sufficient if the Proponent demonstrated that it has met the \$2,000 and three year requirement in Rule 14a-8(b)(1)(i)(A). As explained above, the Proponent did not establish compliance with the three year requirement in Rule 14a-8(b)(1)(i)(A). If, on the other hand, the Proponent was relying on Rule 14a-8(b)(1)(i)(B) or (C), then the Proponent’s statement must reference the applicable dollar amount of the Company’s common stock instead of the stated \$2,000. However, the Proponent also did not establish eligibility under Rule 14a-8(b)(1)(i)(B) or (C). Therefore, the Proposal is procedurally deficient under Rule 14a-8(b)(1)(ii).

Rule 14a-8(b)(1)(iii) states a proponent must provide the company with a written statement that the proponent is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the stockholder proposal. This written statement must include the proponent’s contact information as well as business days and specific times that the proponent is available to discuss the proposal with the company. The Proponent failed to provide such a written statement that included the business

days and specific times that the Proponent was available to discuss the Proposal with the Company. Therefore, the Proposal is procedurally deficient under Rule 14a-8(b)(1)(iii).

Under Rule 14a-8(f)(1), a company may exclude a stockholder proposal if the proponent fails to correct procedural deficiencies under Rule 14a-8(b) within 14 calendar days from the date on which the proponent received timely notice of such deficiency from the company. The Company satisfied its obligation under Rule 14a-8(f)(1) by timely transmitting the Deficiency Notice to the Proponent, which outlined the Proposal's procedural deficiencies under Rule 14a-8(b)(1) and Rule 14a-8(b)(2). The Staff has consistently concurred in the exclusion of proposals when, following a timely and proper request by a company to correct procedural deficiencies in a proposal, the proponent failed to respond within 14 calendar days from the date on which the proponent received the deficiency notice. *See Huntsman Corp.* (Jan. 16, 2020); *AT&T Inc.* (Dec. 9, 2019); *Anthem, Inc.* (Feb. 21, 2019); *General Electric Company* (Mar. 1, 2019).

The Proponent failed to respond to the Deficiency Notice within 14 days from the date on which the Proponent received the Deficiency Notice. Thus, the Proposal is procedurally deficient under Rules 14a-8(b)(1) and (2) as explained above, and the Company may exclude the Proposal from the 2023 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1).

**b. The Proposal may be excluded for substantive deficiencies under Rule 14a-8(i)(5) and Rule 14a-8(i)(6).**

Rule 14a-8(i)(5) provides that a company may exclude a stockholder proposal “[i]f the proposal relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” Here, the Proposal concerns food options provided to patients at hospitals. The Company provides managed health care services under the Medicaid and Medicare programs and through the state insurance marketplaces. The Company does not own or operate any hospitals. Hospital operations and management account for zero percent of the Company’s total assets, net earnings and gross sales for its most recent fiscal year and are not otherwise significantly related to the Company’s business. Therefore, the Proposal is not relevant to the Company’s business and is substantively deficient under Rule 14a-8(i)(5).

Furthermore, Rule 14a-8(i)(6) states that a company may exclude a shareholder proposal “if the company would lack the power or authority to implement the proposal.” As indicated above, the Company does not own or operate any hospitals. While the Company’s members may receive care from hospitals in connection with the managed care services provided by the Company, the Company does not have the power or authority to compel such hospitals to provide patients with plant-based, or any other, food options. Therefore, the Proposal is substantively deficient under Rule 14a-8(i)(6).

As indicated above, the Company notified the Proponent of the Proposal's substantive deficiencies in the Deficiency Notice and the Proponent failed to timely cure the substantive deficiencies. Thus, the Proposal is substantively deficient as explained above, and the Company may exclude the Proposal from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(5) and Rule 14a-8(i)(6).

#### **4. Conclusion**

The Company requests that the Staff concur with its view that, for the reasons stated above, it may exclude the Proposal from the 2023 Proxy Materials.

Very truly yours,



Iain Mickle

Enclosures

cc: Molina Healthcare, Inc.  
Jeff Barlow, Chief Legal Officer and Secretary (via email)  
Codruta Boggs, Deputy General Counsel (via email)

Beyond Investing LLC  
Debra Bouton, Representative (via email and Federal Express)

EXHIBIT A

PROPOSAL

[*See attached*]





September 2, 2022

Corporate Secretary  
Molina Healthcare Inc.  
200 Oceangate , STE 100  
Long Beach, CA 90802  
Re: Shareholder proposal for 2023 annual meeting

Dear Secretary,

I, Debra Bouton, on behalf of Beyond Investing, LLC, submit the enclosed shareowner proposal for inclusion in the proxy statement that Molina Healthcare plans to circulate to shareowners in anticipation of the 2023 annual meeting. The proposal is being submitted under SEC Rule 14a-8 and relates to governance policies.

Beyond Investing LLC is located at 11600 New Haven Drive, Spring Hill, Florida 34609. Beyond Investing LLC has beneficially owned more than \$2,000 worth of MOH common stock for longer than a year. Beyond Investing LLC intends to continue ownership of at least \$2,000 worth of MOH common stock through the date of the 2023 annual meeting.

We would be pleased to discuss the issues presented by this proposal with you. If you require any additional information, please contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Debra Bouton", is written over the closing text.

Debra Bouton  
Beyond Investing LLC  
11600 New Haven Drive  
Spring Hill, Florida 34609  
Phone: 727-277-1789  
[debra.bouton@beyondinvesting.com](mailto:debra.bouton@beyondinvesting.com)

Received  
Office of the  
CEO

SEP 23 2022

Joe Z.

## Stockholder Proposal Regarding Serving Plant-Based Meals in Hospitals

The following proposal is submitted by Beyond Investing LLC, the beneficial owner of 280 shares of MOH common stock.

**RESOLVED**, that shareholders of Molina Healthcare Inc. (the Company) request the Board of Directors of the Company (the Board) require their hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors.

### **SUPPORTING STATEMENT:**

Optimal hospital care includes serving plant-based foods to assist patients on their road to recovery while in the hospital and informing patients of the benefits of a plant-based diet beyond their hospital stay. In a hospital, the food provided to patients is a key part of their treatment. Providing meals that are plant-based and which meet the individuals' nutritional needs is essential to the patient's recovery and improvement of their overall long-term health.

According to The American College of Cardiology, hospitalization can be a "teachable moment." "By adopting plant-based options and eliminating cancer-causing food products, hospitals not only provide a vital service to patients, staff, and visitors. They also serve a key educational function, modeling healthful habits."<sup>1</sup>

Healthful diets may also play a role in the economics of medical care, particularly for heart patients. Acute heart failure is the most common cause of readmission to a hospital within 30 days of discharge.<sup>2</sup> Under the Affordable Care Act, the Hospital Readmissions Reduction Program reduces payments to hospitals for readmissions within 30 days of discharge from the prior hospital stay.<sup>3</sup> Individual hospital 30-day readmission rates are also compared to national averages, increasing pressure on both physicians and hospital administrators to improve outcomes. To the extent that hospitals help patients adopt healthful habits, their health benefits may be accompanied by financial benefits. The World Health Organization has determined that processed meat is a major contributor to colorectal cancer, classifying it as a "carcinogenic to humans." Processed meat is also linked to death from heart disease, stroke, and type 2 diabetes. According to the Physicians Committee for Responsible Medicine, "Plant-based diets help reduce the risk of cardiovascular disease, diabetes, and many cancers."<sup>4</sup>

Given the impact of nutrition on a patient's recovery process and overall health, the proposers of this resolution believe the Molina Healthcare board and management have a responsibility to its investors and stakeholders to require their hospitals to provide plant-based food options to hospital patients, staff and visitors.

### **References:**

1 "Planting a Seed: Heart-Healthy Food Recommendations for Hospitals." American College of Cardiology, 2017.  
<https://www.acc.org/membership/sections-and-councils/prevention-of-cardiovascular-disease-section/about-us/section-sub-groups/features/hospital-food-program>

2 Jencks S, Williams M, Coleman E. *Rehospitalizations among Patients in the Medicare Fee-for-Service Program. Journal of Vascular Surgery.* 2009;50(1):234.

3 *Cms.gov. Readmissions Reduction Program - Centers for Medicare & Medicaid Services 2015.*  
<https://www.cms.gov/medicare/medicare-fee-for-service-payment/acuteinpatientpps/readmissions-reduction-program.html>

4 <https://www.pcrm.org/healthy-hospital-program#:~:text=In%202017%2C%20the%20American%20Medical,processed%20meat%20from%20hospital%20menus.>

EXHIBIT B

DEFICIENCY NOTICE

*[See attached]*



October 3, 2022

**VIA FEDERAL EXPRESS AND EMAIL** ([debra.bouton@beyondinvesting.com](mailto:debra.bouton@beyondinvesting.com))

Ms. Debra Bouton  
Beyond Investing LLC  
11600 New Haven Drive  
Spring Hill, Florida 34609

Re: Shareholder Proposal for the 2023 Annual Meeting  
of the Stockholders of Molina Healthcare, Inc.

Dear Ms. Bouton:

I am the Chief Legal Officer and Secretary of Molina Healthcare, Inc. (the “Company”). I am writing in response to your letter dated September 2, 2022 and received by me on September 23, 2022.

Your letter requests that the Company’s stockholders approve the following resolution (the “Proposal”):

RESOLVED, that the shareholders of Molina Healthcare Inc. (the Company) request the Board of Directors of the Company (the Board) require their hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors.

I wanted to make you aware that the Company does not own or operate any hospitals, nor is any hospital or hospital company an affiliate of the Company. We solely enter into contracts with hospitals, all of which hospitals are operated by independent third parties over whom we exercise no influence or control. Moreover, the Company does not prepare or serve any meals or food products to anyone, nor does the Company operate any vending machines or cafeterias (please also note that the Company’s work force is now entirely remote). Thus, it would be impossible as a practical matter for the Company to actually implement the Proposal.

For these reasons, the Company would very much appreciate it if you were willing to withdraw the Proposal. Otherwise, the appearance of a proposal in our proxy statement that is wholly inapplicable to our actual business would look exceedingly strange. If you are willing to withdraw the Proposal, please sign and date the enclosed Notice of Withdrawal and return a copy via email to me at [Jeff.Barlow@Molinahealthcare.com](mailto:Jeff.Barlow@Molinahealthcare.com).

In addition to the factual impossibility of implementing the Proposal, we are also technically required as a legal matter to identify the procedural defects of the Proposal under Rule 14a-8 of the Securities Exchange Act of 1934. Those procedural defects include the following:

1. The letter does not state that Beyond Investing satisfies one or more of the required shareholder ownership thresholds. Your letter states that Beyond Investing LLC has “beneficially owned more than \$2,000 worth of MOH common stock for longer than a year.” However, under Rule 14a-8(b)(i), in order to submit a shareholder proposal, a shareholder must have continuously held:

- (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
- (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
- (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.

2. The letter does not demonstrate under the Rule Beyond Investing’s eligibility to submit a shareholder proposal. Please see the particulars of Rule 14a-8(b)(2) for an explanation of the manner in which a shareholder may demonstrate that it satisfies one or more of the ownership requirements set forth above.

3. The letter may have failed to comply with Rule 14a-8(b)(ii), which requires you to state that you intend to continue to hold the requisite amount of securities, as determined as outlined in Item 1 above, through the date of the shareholders’ meeting for which the Proposal was submitted. Although your letter states that Beyond Investing, LLC “intends to continue ownership of at least \$2,000 worth of MOH common stock through the date of the 2023 annual meeting,” this statement is only sufficient if you demonstrate that you have met the \$2,000/three years requirement in clause A of Item 1 above. If, on the other hand, you are relying on clause B or C of Item 1 above, your statement must reference the applicable dollar amount of the Company’s common stock.

4. The letter does not include the information required by the Rule to encourage shareholder discussions. Rule 14a-8(b)(iii) requires you to (i) provide the Company with a written statement that you are able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal, and (ii) include your contact information *as well as business days and specific times* that you are available to discuss the Proposal with the Company. While we would be happy to discuss with you the Proposal in the abstract (please be aware that the Company supports both

Ms. Debra Bouton  
Beyond Investing LLC  
October 3, 2022  
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good nutrition and environmentally sound policies), as stated above it is not within our power to adopt the contents of the Proposal.

If, after considering the matters set forth above, and despite the Proposal's impossibility as a factual matter, you still wish to pursue your request to include the Proposal in the Company's proxy statement for its 2023 annual stockholders' meeting, please revise your written request to correct the procedural defects identified above and resubmit your request to the undersigned no later than 14 days from the date of this letter.

If you have any questions regarding the matters discussed above, you may contact me at [Jeff.Barlow@Molinahealthcare.com](mailto:Jeff.Barlow@Molinahealthcare.com), or my Deputy General Counsel, Codruta Boggs, at [Codruta.Boggs@Molinahealthcare.com](mailto:Codruta.Boggs@Molinahealthcare.com).

Very truly yours,

MOLINA HEALTHCARE, INC.

By:   
\_\_\_\_\_  
Jeff Barlow  
Chief Legal Officer and Secretary