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

DIVISION OF
CORPORATION FINANCE

April 24, 2023

Timothy Ring
MetLife, Inc.

Re: MetLife, Inc. (the "Company")
Incoming letter dated February 7, 2023

Dear Timothy Ring:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by The Bahnsen Family Trust Dated July 15th 2003 for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board conduct an evaluation and issue a report within the next year on the risks created by Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

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: David Bahnsen
The Bahnsen Family Trust Dated July 15th 2003

MetLife, Inc
200 Park Avenue
New York, NY 10166-0005

Timothy Ring
Senior Vice President and Corporate Secretary
Tel (212) 578-2640

February 7, 2023

Via Electronic Mail to **shareholderproposals@sec.gov**

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

Re: MetLife, Inc.–Stockholder Proposal submitted by David Bahnsen, Trustee of The Bahnsen Family Trust Dated July 15th 2003

Ladies and Gentlemen:

I am writing on behalf of MetLife, Inc., a Delaware corporation ("MetLife" or the "Company"), regarding a stockholder proposal and statement in support thereof dated December 27, 2022 (collectively, the "Proposal") from David Bahnsen, Trustee of The Bahnsen Family Trust Dated July 15th 2003 (the "Proponent") for inclusion in the proxy statement to be distributed to the Company's stockholders in connection with the 2023 annual meeting of stockholders (the "Proxy Materials").

The Company respectfully requests that the Securities and Exchange Commission (the "Commission") Division of Corporation Finance staff (the "Staff") advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons set forth below.

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the "Exchange Act") and Staff Legal Bulletin No. 14D (Nov. 7, 2008), the Company is submitting this letter, together with the Proposal and related attachment to the Commission via email to *shareholderproposals@sec.gov* (in lieu of mailing paper copies), with copies of this letter and the attachments provided concurrently to the Proponent. We respectfully remind the Proponent that pursuant to Rule 14a-8(k), a copy of any additional correspondence to the Commission or the Staff with respect to the Proposal should be furnished to the Company concurrently.

THE PROPOSAL

The Proposal provides as follows:

> *Resolved: Shareholders ask that the Board of Directors of MetLife, Inc. (the "Company") conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, on the risks created by Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships.*

A copy of the submission from the Proponent, including the Proposal and the supporting statement, is set forth in Exhibit A.

BASIS FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company respectfully requests that the Staff concur in the Company's view that the Proposal may be excluded from the Proxy Materials in reliance on Rule 14a-8(i)(7). The Proposal deals with the most fundamental of ordinary business operations: whether to conduct business with a particular individual or entity or not. The Proposal is not limited in scope by any particular category of business practice or relationship and, as proposed, encompasses business practices involving customers, suppliers, employees and shareholders, all of whom may be deemed to be within the scope of a corporation's business relationships. Indeed, a non-exhaustive list of business practices that would require a risk analysis under the Proposal include: (i) employee hiring or termination decisions; (ii) vendor selection for reasons such as quality, customer service, reliability or on-time delivery; (iii) advisor selection for reasons such as reputation and experience; (iv) whether and how frequently to engage with investors and external stakeholders; (v) policies regarding remote work; (vi) means and methods of marketing the Company's products; (vii) whether a customer program should be continued in a particular geographic region; (viii) charitable donations; (ix) the assessment of opportunities and risks related to a capital investment; (x) which products the Company may offer; (xi) identification and management of risks and implementation of enterprise risk management processes; (xii) the geographic markets in which the Company does business; and (xiii) the distribution partners through whom the Company reaches its customers. And almost every business decision made by a company involving these business practices, and the risks inherent in them, arguably involves a mix of both pecuniary and non-pecuniary factors. These fundamental decisions are within the purview of management and should not be subject to direct shareholder oversight.

There is no public policy issue, much less a significant one, included on the face of the Proposal. Even if the Proposal were read to encompass the examples set forth in the supporting statement regarding the use of social/political criteria when forming a business relationship, these examples are dwarfed by the numerous everyday business practices used to run the Company's business on a day-to-day basis. Accordingly, because the Proposal deals with matters relating to

the Company's ordinary business operations, it is excludable from the Proxy Materials in reliance on Rule 14a-8(i)(7).

ANALYSIS

Rule 14a-8(i)(7) Allows Exclusion of Proposals Dealing with Matters Relating to The Company's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), 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.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."); *see also Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

The Proposal asks for a report analyzing the risk created by the Company's business practices that prioritize "non-pecuniary" factors when it comes to establishing, rejecting, or failing to continue business relationships. "Business practices" and "business relationships" are broad concepts that encompass the Company's day-to-day activities, including in relation to its customers, suppliers, employees, and shareholders, as well as the products and services the Company offers. No public policy considerations are expressed in the Proposal. As discussed more fully below, these are matters that the Staff has recognized to be excludable in reliance on Rule 14a-8(i)(7).

A. Relationship with customers.

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has permitted exclusion of proposals that relate to a company's relationships

with its customers. *See, e.g., JPMorgan Chase & Co.* (Feb. 21, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the board complete a report on the impact to customers of the company's overdraft policies); *AT&T Inc.*(Dec. 28, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company provide free tools to customers to block robocalls); *Ford Motor Co.* (Feb. 13. 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested removal of dealers that provided poor customer service, noting that "[p]roposals concerning customer relations are generally excludable under rule 14a-8(i)(7)"); *The Coca-Cola Co.* (Jan. 21, 2009, *recon. denied* Apr. 21, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on how the company could provide information to customers regarding the company's products, noting that the proposal "relat[ed] to Coca-Cola's ordinary business operations (*i.e.*, marketing and consumer relations)"); *Anchor BanCorp Wisconsin Inc.* (May 13, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board adopt a new policy for the lending of funds to borrowers and the investment of assets after taking preliminary actions specified in the proposal, noting that the proposal related to the company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)"); *JPMorgan Chase & Co.* (Feb. 21, 2006) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company not issue first mortgage home loans, except as required by law, no greater than four times the borrower's gross income, noting that the proposal related to the Company's "ordinary business operations (i.e., credit policies, loan underwriting and customer relations)").

In particular, the Staff has permitted exclusion under Rule 14a-8(i)(7) of proposals relating to a company's decisions with regard to the handling of customer accounts, including termination of accounts. In *Comcast Corp.* (Apr. 13, 2022) ("Comcast 2022"), for example, the proposal requested that the company notify a customer in advance of any termination, suspension or cancellation of service to the customer. The company argued, in part, that the proposal related to ordinary business matters because how the company "handles its customer accounts and customer relations implicates routine management decisions encompassing legal, regulatory, operational, and financial considerations, among others." In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to, and does not transcend, ordinary business matters." *See also, e.g., PayPal Holdings, Inc.* (Apr. 2, 2021)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company not freeze or terminate customer accounts without first providing the company's rationale to customers); *TD Ameritrade Holding Corp.* (Nov. 20, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's shareholders have the right to be clients of the company, noting that "the [p]roposal relates to the [c]ompany's policies and procedures for opening and maintaining customer accounts"); *AT&T Inc.* (Feb. 5, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested, among other matters, that the company issue a report clarifying the company's policies regarding providing information to law enforcement and intelligence agencies, noting that "the proposal relates to procedures for protecting customer information and does not focus on a significant policy issue").

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

B. Relationship with suppliers.

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to a company's relationships with its suppliers. *See, e.g., Walmart Inc.* (Mar. 8, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report outlining the requirements suppliers must follow regarding engineering ownership and liability); *Foot Locker, Inc.* (Mar. 3, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report outlining the steps the company was taking, or could take, to monitor the use of subcontractors by the company's overseas apparel suppliers, noting that "the proposal relates broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors."); *Kraft Foods Inc.* (Feb. 23, 2012) ("Kraft") (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report detailing the ways the company would assess risk to its supply chain and mitigate the impact of such risk, noting that the proposal concerned "decisions relating to supplier relationships [which] are generally excludable under rule 14a-8(i)(7)"); *Dean Foods Co.* (Mar. 9, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested an independent committee review the company's standards for organic dairy product suppliers, noting that the proposal related to the company's "decisions relating to supplier relationships").

C. Relationship with employees.

The Staff also consistently allows the exclusion of proposals that relate to a company's relationship with employees and to management of a company's workforce. *See* 1998 Release (excludable matters "include the management of the workforce, such as the hiring, promotion, and termination of employees"); *see also, e.g., Apple Inc.* (Jan. 3, 2023) ("Apple 2023") (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the effects of the company's return-to-office policy on employee retention and the company's competitiveness); *Walmart, Inc.* (Apr. 8, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board prepare a report evaluating discrimination risk from the company's policies and practices for hourly workers taking medical leave, noting that the proposal "relates generally to the [c]ompany's management of its workforce"); *Yum! Brands, Inc.* (Mar. 6, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought to prohibit the company from engaging in certain employment practices, noting that "the [p]roposal relates generally to the [c]ompany's policies concerning its employees"). Similarly, the Staff has permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) that relate to general employee compensation. *See, e.g., CVS Health Corp.* (Mar. 1, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that urged the company's board to adopt principles for minimum wage reform, noting that "the proposal relates to general compensation matters"); *Best Buy Co., Inc.*(Mar. 8, 2016) (same); *The Goldman Sachs Group, Inc.* (Mar. 12, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought to introduce a policy limiting the amount available for payment of employee compensation and benefits each year, noting that "[p]roposals that concern general employee compensation matters are generally excludable under rule 14a-8(i)(7)").

D. Relationship with shareholders.

Finally, the Staff has permitted companies to exclude proposals that relate generally to the company's relations with its stockholders. *See, e.g., Con-way Inc.* (Jan. 22, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board take steps to ensure future annual stockholder meetings be distributed via webcast, as "relating to [the company's] ordinary business operations (i.e., shareholder relations and the conduct of annual meetings)"). The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* 1983 Release ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."). Similarly, the Staff has permitted the exclusion of proposals relating to the determination and implementation of a company's strategies for enhancing shareholder value. *See, e.g., JPMorgan Chase & Co.* (Mar. 26, 2021) ("JPM 2021") (permitting the exclusion under Rule 14a-8(i)(7) of a proposal that requested a study on the external costs created by the company's underwriting multi-class equity offerings and the matter in which such costs affect the majority of its shareholders who rely on overall stock market return); *The Goldman Sachs Group, Inc.* (Mar. 9, 2021, *recon. denied* Mar. 19, 2021)* (same); *Bimini Capital Management* (Mar. 28, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board take measures to close the gap between the book value of the company's common shares and their market price); *Ford Motor Co.* (Feb. 24, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's chairman "honor his commitments to shareholders to increase stock performance," noting that the proposal appeared to relate to the company's "ordinary business operations (i.e., strategies for enhancing shareholder value)").

E. Products and services offered by a company.

The Staff has held that shareholder proposals that could undermine a company's core business model and/or relate to the products and services offered by the company are appropriately excludable under Rule 14a-8(i)(7), even if the proposal touches upon a social issue. In *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied*, Mar. 4, 2013) ("Wells Fargo"), for example, the Staff granted no-action relief under Rule 14a-8(i)(7) where the proposal requested that the company prepare a report discussing the adequacy of the registrant's policies in addressing the social and financial impacts of the registrant's direct deposit advance lending service, noting in particular that "the proposal relates to the products and services offered for sale by the [registrant]"and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." Similarly, in *JPMorgan Chase & Co.* (Mar. 16, 2010), the Staff concurred in the exclusion of a proposal under Rule 14a-8(i)(7) where such proposal sought to have the company's board of directors implement a policy mandating that the

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

company cease issuing refund anticipation loans, which the proponent claimed were predatory loans. There, the company acknowledged that the proposal addressed an issue that the Staff itself recognized as a "significant policy issue." The company noted, however, that its "decisions as to whether to offer a particular product to its clients and the manner in which the [c]ompany offers those products and services, including pricing, are *precisely* the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7)" (emphasis added).

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

The Proposal's resolved clause requests that the Company issue a report evaluating the risks created by "Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships." The Proposal's supporting statement indicates a particular concern with the Company's purported "history of excluding certain stakeholders based on social/political criteria." The supporting statement also states that "excluding customers and investments based on political, religious, *or any opinion or characteristic other than pecuniary advantage* places the company at great reputational, financial, legislative, and related risk" (emphasis added). When read together, the Proposal's resolved clause and the broad nature of the supporting statement demonstrate that the Proposal's requested report relates to risks arising from the vast universe of the Company's business practices and relationships, including with regard to customers, suppliers, employees, and shareholders, as well as the products and service offered by the Company. Thus, the no-action letters cited in the above discussion are applicable, making the Proposal excludable in reliance on Rule 14a-8(i)(7).

The Company is one of the world's leading financial services companies, as well as one of the largest institutional investors in the United States. In serving millions of clients around the world, the Company begins and ends numerous business relationships on a daily basis, including those relating to our clients, investors, suppliers, and employees, as well as making decisions regarding the products and services that it offers. As a large financial services and insurance company, the Company is highly regulated and subject to extensive and comprehensive regulation under federal and state laws, as well as the applicable laws of the jurisdictions outside the United States where the Company does business. These relationships and decisions are a core component of managing a financial services and insurance company. The Company's business practices and business decisions, including establishing, rejecting or failing to continue business relationships, involve legal, regulatory and operational considerations are so fundamental to the Company's day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. As a result, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the

question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. As discussed above, in *Apple 2023*, the proposal requested, among other things, that the board issue a report assessing the effects of the company's return-to-office policy on employee retention and the company's competitiveness. In permitting the exclusion under Rule 14a-8(i)(7), the Staff noted that the proposals "relate to, or do not transcend, ordinary business matters." Also, in *Comcast 2022*, the proposal requested, among other things, that the company adopt a policy of notifying a customer in advance of any termination, suspension or cancellation of service to the customer. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to, and does not transcend, ordinary business matters." In JPM 2021, the Staff noted that the proposal did not "demonstrate how underwriting equity offerings with different class structures is a significant policy issue for the [c]ompany, such that it transcends the [c]ompany's ordinary business operations and would be appropriate for a shareholder vote." Finally, in *Kraft*, the Staff permitted exclusion of a proposal requesting a risk analysis relating to the company's supply chain despite the proponent's argument that the risk of water scarcity in the supply chain was a significant policy issue, finding that decisions relating to supplier relations are generally excludable under [R]ule 14a-8(i)(7)." *See also, PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of the humane treatment of animals, the proposal covered a broad scope of laws ranging "from serious violations such as animal abuse to violations of administrative matters such as record keeping"); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, the Proposal does not appear to raise a significant policy issue. Consideration of non-specific "non-pecuniary" factors in relation to business relationships does not, per se, implicate significant policy issues. For example, the Company may commence or end business relationships based on considerations of time and location, which are both non-pecuniary factors but do not raise any policy issues. As worded, the Proposal would cover such factors, being "non-pecuniary." The Proposal's resolved clause is bereft of any reference to any policy issues, much less significant policy issues.

Even if the Proposal were viewed to touch on a potential significant policy issue, the Proposal's overwhelming focus relates to the Company's business relationships and products and services, which demonstrates that the Proposal pertains to ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters and the everyday risks inherent in them. Accordingly, consistent with

the precedent described above, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

For the foregoing reasons, the Company respectfully requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from the Company's Proxy Materials and that the Staff will grant the Company a waiver of the filing requirement.

If you have any questions concerning the above, please do not hesitate call me at (212) 578-2640, or email me at tring@metlife.com.

Sincerely,

Timothy Ring
Senior Vice President and Corporate
Secretary, MetLife, Inc.

Attachments

cc: David Bahnsen
Jerry Bowyer

Exhibit A

The Proposal

12/27/2022

Via FedEx

Attention: Corporate Secretary
MetLife, Inc.
200 Park Avenue, New York, NY 10166,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the MetLife, Inc. (the "Company") proxy statement to be cirsculated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations. I submit the Proposal as DAVID BAHNSEN, TRUSTEE of THE BAHNSEN FAMILY TRUST DATED JULY 15th 2003, which has continuously owned Company stock with a value exceeding $25,000 for at least one year prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2023 annual meeting of shareholders. Pursuant to interpretations of Rule 14(a)-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following dates and times for a telephone conference to discuss this proposal:

Monday, January 9th, 2023, 3:00-3:30 PM Eastern, or
Tuesday, January 17th, 2023, 3:00-3:30 PM Eastern.

If that proves inconvenient, please suggest some other times to speak. Feel free to contact me at [redacted] so that we can determine the mode and method of that discussion.

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 sent [redacted] and emailed to [redacted].

Sincerely,

DocuSigned by:
12/27/2022
BC7A33692E24D8

DAVID BAHNSEN

Enclosure: Shareholder Proposal

Report on Non-Pecuniary Based Exclusion Risk

Resolved: Shareholders ask that the Board of Directors of MetLife, Inc. (the "Company") conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, on the risks created by Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships.

Supporting Statement: MetLife has a history of excluding certain stakeholders based on social/political criteria. For example, the company excluded the NRA from its bulk discount buying relationship (https://twitter.com/MetLife/status/967092823345516545?ref_src=twsrc%5Etfw). Furthermore, the company excludes from its investment portfolio certain asset classes, including manufacturers of broad classes of firearms sold to the public; manufacturers of certain arms sold to the military; and various businesses involved with the extraction of coal, and extraction from oil sands (https://sustainabilityreport.metlife.com/report/investor/exclusionary-investment-screens/). When asked, MetLife provided no financial analysis to demonstrate that these exclusions were likely to benefit the investment returns of the portfolio (Personal conversation with company representatives 2/2/2022).

We ask that the board commission and disclose a report on the risks created by Company business practices that prioritize factors other than pecuniary advantage when it comes to establishing, rejecting, or failing to continue business relationships such as portfolio construction and discount programs with membership organizations. Excluding customers and investments based on political, religious, or any opinion or characteristic other than pecuniary advantage places the company at great reputational, financial, legislative, and related risk.

BOYDEN GRAY & ASSOCIATES PLLC
801 17TH STREET, NW, SUITE 350
WASHINGTON, DC 20006
(202) 955-0620

March 7, 2023

Via electronic mail
shareholderproposals@sec.gov

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

RE: MetLife, Inc.—Stockholder Proposal of David Bahnsen, Trustee of The Bahnsen Family Trust Dated July 15th 2003

Ladies and Gentlemen:

This letter is submitted in response to the letter of Mr. Timothy Ring on behalf of MetLife, Inc., (the "Company") dated February 7, 2023 (the "Company Letter"), requesting that the staff of the Division of Corporation Finance (the "Staff") of the United States Securities and Exchange Commission (the "Commission") concur with its view and issue relief to the Company on the basis that Mr. Bahnsen (the "Proponent")'s shareholder proposal and supporting statement (the "Proposal") is excludable from the Company's proxy materials for its 2023 annual Meeting of stockholders under Rule 14a-8 promulgated under the Securities Exchange Act of 1934 (the "Exchange Act"). 17 C.F.R. § 240a-8 ("Rule 14a-8"). Mr. Bahnsen has asked that we respond to the Company Letter on his behalf.

The Proposal

The Proposal provides as follows:

> **Resolved:** Shareholders ask that the Board of Directors of MetLife, Inc. (the "Company") conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, on the risks created by Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships.
>
> **Supporting Statement**: MetLife has a history of excluding certain stakeholders based on social/political criteria. For example, the company excluded the NRA from its bulk discount buying relationship.[1] Furthermore, the company excludes from its investment portfolio certain asset classes, including manufacturers of broad classes of firearms sold to the public; manufacturers of certain arms sold to the military; and various businesses

[1] https://twitter.com/MetLife/status/967092823345516545?ref_src=twsrc%5Etfw.

involved with the extraction of coal, and extraction from oil sands.[2] When asked, MetLife provided no financial analysis to demonstrate these exclusions were likely to benefit the investment returns of the portfolio.[3]

We ask that the board commission and disclose a report on the risks created by Company business practices that prioritize factors other than pecuniary advantage when it comes to establishing, rejecting, or failing to continue business relationships such as portfolio construction and discount programs with membership organizations. Excluding customers and investments based on political, religious, or any other opinion or characteristic other than pecuniary advantage places the company at great reputational, financial, legislative, and related risk.

The Company seeks permission from the Staff to exclude the Proposal under Rule 14a-8(i)(7) as a proposal relating to ordinary business operations. The Company bears the burden of demonstrating it is entitled to exclude the Proposal. *See* Rule 14a-8(g).

Argument

The issue of large, for-profit public companies terminating business with politically disfavored groups on facially non-pecuniary grounds is one of the hottest debates raging in American society today. That is the Proposal's clear and obvious focus. Under the Staff's interpretation of the significant social policy exception to Rule 14a-8(i)(7), the Proposal is clearly on a subject on which there is widespread public debate that transcends the ordinary business operations of the Company. The Staff should reject the Company's unsupported conclusion that is not.

I. The Proposal Focuses on a Matter of Immense Social Policy Significance by Focusing on the Company's Use of Non-Pecuniary Factors to Terminate Business with Politically Disfavored Parties.

Under the Commission's current interpretation of Rule 14a-8(i)(7), a company may not exclude a proposal that "focus[es] on sufficiently significant social policy issues." Exchange Act Release No. 40018, 63 Fed. Reg. 29106, 29108 (May 21, 1998) (the "1998 Release"). This guidance plainly allows for the consideration of proposals that focus on objectively significant matters of social policy. As the Staff recently stated in Staff Legal Bulletin No. 14L, its focus in determining whether an issue is sufficiently significant is on the "broad societal impact" of the issue raised by the proposal. Division of Corporation Finance, Staff Legal Bulletin No. 14L (Nov. 3, 2021). In evaluating the societal impact of the issue, the Staff considers "the presence of widespread public debate" over it. Division of Corporation Finance, Staff Legal Bulletin No.

[2] https://sustainabilityreport.metlife.com/report/investor/exclusionary-investment-screens/.
[3] Personal conversation with Company representatives Feb. 2, 2022.

14A (July 12, 2002). Together, these interpretations form an objective test for whether an issue is significant social policy concern under Rule 14a-8(i)(7).

A. The Use by Companies of Non-Pecuniary Factors to Terminate Business with Politically Disfavored Parties is an Issue of Immense Social-Policy Significance.

The Proposal clearly passes the Commission's significant social policy test. The issue of large, for-profit public companies terminating business with politically disfavored groups on facially non-pecuniary grounds is one of the hottest debates raging in American society today.

The idea that companies should "take into account not only their profit margin but also the impact they have on society and the world"[4] has taken the business world by a storm. As BlackRock, Inc. CEO Larry Fink put it, "[s]ociety is demanding that companies, both public and private, serve a social purpose."[5] Under this new paradigm, companies may act to advance "social purpose[s]" even if they are, on their face, unrelated to the company's pecuniary interests. As a piece published by the World Economic Forum describes, in 2019, the Business Roundtable, an association of large-company CEOs, "swapped its purpose of profit for a new statement that emphasizes things like investing in employees, fostering diversity and inclusion, protecting the environment, and dealing fairly and ethically with suppliers."[6] By 2025, according to one estimate, the amount of assets under management by "Environmental, Social, and Governance" ("ESG")-focused managers will be over $53 trillion globally and will have more than doubled in less than a decade.[7]

Ideas have consequences. As these "social purpose" ideas about corporate governance have spread, major companies have cut business ties with politically disfavored groups for reasons that, when provided, are facially non-pecuniary. Prominent examples abound. Financial institutions have canceled the banking accounts of prominent Republican political officials and conservative activists.[8] When pressed for the pecuniary basis for these decisions, banks often either provide none, or offer tenuous and pretextual assertions of "reputational risk."[9] Companies

[4] ESG-The Report, *What Is ESG and Why Is It Important*, Nov. 25, 2021 https://www.esgthereport.com/what-is-esg-and-why-is-it-important/.
[5] Andrew Ross Sorkin, *BlackRock's Message: Contribute to Society, or Risk Losing Our Support*, N.Y. Times (Jan. 15, 2018) https://www.nytimes.com/2018/01/15/business/dealbook/blackrock-laurence-fink-letter.html.
[6] Keith Barr, *4 Ways To Make Business More Purposeful*, World Econ. Forum (Jan. 14, 2020) tinyurl.com/bdf32jrf.
[7] Gina Martin Adams, ESG assets may hit $53 trillion by 2025, a third of global AUM, Bloomberg, (Feb. 23, 2021) https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/
[8] *See, e.g.*, Ewan Palmer, PNC Bank Dumping Donald Trump Jr. Leaves Conservatives Furious—'Outrageous,' Newsweek (Mar. 3, 2023), https://www.newsweek.com/pnc-bank-trump-mxm-news-account-1785290; Jon Brown, Chase Bank allegedly shutters bank account of religious freedom nonprofit, demands donor list, Fox Business (Oct. 13, 2022), https://www.foxbusiness.com/politics/chase-bank-allegedly-shutters-bank-account-religious-freedom-nonprofit-demands-donor-list; John Aidan Byrne, JPMorgan Chase accused of purging accounts of conservative activists, N.Y. Post, May 25, 2019 https://nypost.com/2019/05/25/jpmorgan-chase-accused-of-purging-accounts-of-conservative-activists/.
[9] Kerry Picket, Rubio calls out Chase CEO Jamie Dimon over concerns the financial giant is targeting conservatives, Wash. Times (Oct. 25, 2022), https://www.washingtontimes.com/news/2022/oct/25/marco-rubio-questions-chase-ceo-jamie-dimon-over-c/.

have threatened to boycott states because of state laws on abortion, voting, transgender policies, and other public policy issues.[10] Companies have cut off lobbying and political expenditures to political parties and officials because of their political views that facially are unrelated to the companies' lines of business.[11]

As the Proposal alleges, the Company is apparently no exception to this trend. According to the Proposal, the Company has terminated certain business with groups that are currently politically disfavored by some political actors, including "the NRA," "manufacturers of broad classes of firearms" and "arms sold to the military," and "businesses involved with the extraction of coal" and "from oil sands." When the Company asked to justify these actions, the Proposal states the Company "provided no financial analysis to demonstrate" pecuniary benefit. By implication, the Company's decisions rested on "non-pecuniary factors."

This is not just an intra-corporate issue. It is a public policy issue. Governments are pressuring companies to use corporate assets to advance non-pecuniary purposes that relate to political or social ends. One of the Proposal's examples of the Company's conduct, its "exclud[ing] the NRA from its bulk discount buying relationship," is related to the recent example of the New York Department of Financial Services (DFS) warning companies that doing business with the NRA posed "reputational risk."[12] As the DFS Superintendent stated, "[C]orporations are demonstrating that business can lead the way and bring about the kind of *social change* needed" to advance the state's political interests in gun control.[13] Additionally, government pension funds in a wide range of states are also pressuring companies to adopt social purposes on climate change and racial justice.[14] And governments are boycotting businesses that adopt business practices that are not aligned with governments' political views.[15] Just this week, California Governor Gavin Newsom announced that California would not do business with Walgreens after Walgreens announced its business decision to not carry abortion pills in certain states because of legal risks.[16]

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[10] *See, e.g.*, David Gelles & Andrew Ross Sorkin, *Hundreds of Companies Unite to Oppose Voting Limits, but Other Abstain*, N.Y. Times (Apr. 14, 2021), https://tinyurl.com/mr2r9rkt.
[11] *See, e.g.*, Kate Gibson, *Most, but not all, corporations kept their post-January 6 PAC pledges*, CBS News (Jan. 5, 2022), https://tinyurl.com/4xazxe6r.
[12] Neil Haggerty, N.Y. bank regulator warns of reputational risk from working with NRA, Am. Banker (Apr. 19, 2018), https://www.americanbanker.com/news/ny-bank-regulator-warns-of-reputational-risk-from-working-with-nra.
[13] New York Dep't of Financial Services, Press Release, *Governor Cuomo Directs Department of Financial Services to Urge Companies to Weigh Reputational Risk of Business Ties to the NRA and Similar Organizations*, Apr. 19, 2018, https://dfs.ny.gov/reports_and_publications/press_releases/pr1804181 (emphasis added).
[14] Jordan Campbell, *The public pension systems signing on to politicized ESG investment efforts*, Reason (Sept. 6, 2022), https://reason.org/commentary/mapping-public-pension-esg-investment-efforts/.
[15] *See, e.g.*, City of New York, Press Release, *Mayor de Blasio, Comptroller Stringer, and Trustees Announce Estimated $4 Billion Divestment from Fossil Fuels*, Jan. 25, 2021, https://tinyurl.com/5678sn3d.
[16] Karen Breslau, *Gavin Newsom Says California Is 'Done' With Walgreens Over Abortion Pill*, Bloomberg (Mar. 6, 2023), https://tinyurl.com/3tcaxb9x.

While the movement of companies acting for non-pecuniary purposes has gained significant traction, the debate is far from one-sided. Historically, for-profit business corporations are required to act primarily for pecuniary purposes, and many state laws reflect that understanding. "A business corporation is organized and carried on primarily for the profit of the stockholders." *Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919). "The corporate form . . . is not an appropriate vehicle for purely philanthropic ends," and "[h]aving chosen a for-profit corporate form, the [Company] directors are bound by the fiduciary duties and standards that accompany that form." *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 34 (Del. Ch. 2010). Accordingly, many states have responded to the rise of non-pecuniary considerations in corporate governance by enacting measures limiting or prohibiting the consideration of non-pecuniary factors. States have taken actions to prohibit "mixed motives" between pecuniary and non-pecuniary factors in the management of state funds.[17] The states of Texas, Kentucky, Oklahoma, and West Virginia have enacted laws that prohibits state entities from contracting with financial companies—including insurance companies—that boycott energy companies without an ordinary business purpose.[18] Especially relevant to the Proposal's allegations about the Company and the NRA, Texas has also enacted similar legislation for companies that boycott gun manufacturers.[19] The Florida State Board of Investments has banned investment fund managers and advisers working with its state funds from considering the non-pecuniary factors of "social, political, or ideological interests."[20] These state initiatives have impacted non-pecuniary corporate behavior to an extent that, for many companies engaged in it, "backlash against sustainable investing is now a material risk."[21]

The issue of non-pecuniary factors raises federal policy issues as well. In 2020, the Trump Administration Department of Labor promulgated a rule that required investment managers of Employee Retirement Income Security Act (ERISA) plans to evaluate investments "based only on pecuniary factors."[22] In 2022, the Biden Administration Department of Labor finalized a new rule governing ERISA plans that deleted the term "pecuniary factor" from the Trump Administration rule and broadened the role that nonpecuniary factors may play in a fiduciary's analysis.[23] Legislation introduced in Congress would subject companies to

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[17] *See e.g.*, Commonwealth of Kentucky, Off. of Att'y Gen., OAG 22-05; Letter of 19 state attorneys general to BlackRock (Aug. 4, 2022) https://www.azag.gov/sites/default/files/2022-08/BlackRock%20Letter.pdf.
[18] *See* Tex. Gov. Code § 2274.002(b); Ky. Rev. Stat. §§ 41.472, 41.480; Okla. Stat. §§ 74.12002, 74.12005; W. Va. Code §§ 12-1C-1, 12-IC-5.
[19] *See, e.g.*, Lydia Beyoud & Nushin Huq, *Texas Puts Banks in Tight Spot with New Law Backing Gunmakers*, Bloomberg Law (Sept. 1, 2021) https://news.bloomberglaw.com/banking-law/texas-puts-banks-in-tight-spot-with-new-law-backing-gunmakers.
[20] State Board of Administration of Florida, A Resolution Directing An Update to The Investment Policy Statement and Proxy Voting Policies For the Florida Retirement System Defined Benefit Pension Plan, and Directing the Organization and Execution of an Internal Review (Aug. 23, 2022) https://www.flgov.com/wp-content/uploads/2022/08/ESG-Resolution-Final.pdf.
[21] Patrick Temple-West & Brooke Masters, *Wall Street titans confront ESG backlash as new financial risk*, Fin. Times (Mar. 1, 2023), https://www.ft.com/content/f5fe15f8-3703-4df9-b203-b5d1dd01e3bc.
[22] *Financial Factors in Selecting Plan Investments*, 85 Fed. Reg. 72846 (2020).
[23] *See Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 87 Fed. Reg. 73885 (2022).

heightened standards of review in shareholder litigation for corporate actions "facially unrelated to the pecuniary interest" or that have directors affiliated with a "nonpecuniary investment entity."[24] As then-SEC Commissioner Elad Roisman put it, one of the main "risk[s]" in ESG investing is whether a fund discloses to its investors that it "intend[s] to subordinate the goal of achieving economic returns to non-pecuniary goals."[25]

As these contested political actions and policy debates reveal, the use of non-pecuniary considerations in corporate governance is a hotly debated issue of social policy. The Proposal takes no position on the proper balance of these risks. It asks only for a reporting of them. But it is undeniable that they are significant—and are growing in their significance—in our society today. A straightforward and objective approach would recognize the Proposal addresses a matter of immense social significance.

B. The Proposal Focuses on the Issue of Companies' Use of Non-Pecuniary Factors to Terminate Business with Politically Disfavored Parties

With this social policy background in mind, the Company apparently concedes the Proposal's social significance. The Company states only that the Proposal does not "appear" to raise a significant policy issue because the "[c]onsideration of non-specific 'non-pecuniary' factors in relation to business relationships does not, per se, implicate significant policy issues" and "[t]he Proposal's resolved clause is bereft of any reference to any policy issues." Company Letter at 8. The Staff should reject these unsupported and conclusory statements. As discussed above, in light of the ongoing public debate over corporate purpose, the Company's use of non-pecuniary factors is a part of a widespread social policy debate. The Company provides no reason for the Staff to conclude it is not.

But the Company also flatly mischaracterizes the Proposal. Unlike the Company's unsupported claim, the Proposal's subject is not just non-pecuniary factors "per se." The Proposal's subject is the Company's use of non-pecuniary factors in light of its "history of excluding . . . based on social/political criteria" "customers and investments based on political, religious," or other viewpoints. As described above, the Proposal lists examples of the Company's exclusionary conduct for non-pecuniary purposes, including "the NRA," "manufacturers of broad classes of firearms" and "arms sold to the military," and "businesses involved with the extraction of coal" and "from oil sands." Common sense and the textual canon of *ejusdem generis* counsel that the Proposal's focus on "non-pecuniary factors in relation to business relationships" must be understood by reference to the examples it provides. *See Yates v. United States*, 574 U.S. 528, 545 ("[The canon] *ejusdem generis* counsels [that] where general words follow specific words in a statutory enumeration, the general words are usually construed to embrace only objects similar in nature to those objects enumerated by the preceding specific

[24] S. 189, 118th Cong. (2023).
[25] Elad Roisman, SEC Commissioner, Keynote Speech at the Society for Corporate Governance National Conference, July 7, 2020, https://www.sec.gov/news/speech/roisman-keynote-society-corporate-governance-national-conference-2020.

words.") (cleaned up). In light of the Proposal's provided examples, the Proposal's subject clearly concerns the Company's use of non-pecuniary factors to engage in a kind of discrimination against business partners on the basis of politics.

The Proposal's focus is on the Company's actions that, like those of so many other companies in recent years, reflect alignment with facially non-pecuniary purposes. First, the Proposal alleges company excluded the National Rifle Association from its bulk discount buying relationship. Second, the Company, as revealed by its "Sustainability Report" has institutionalized discrimination against a wide-ranging list of politically disfavored groups, including manufacturers of broad classes of firearms sold to the public, manufacturers of certain arms sold to the military, and various businesses involved with the extraction of coal, and extraction from oil sands. According to the Proposal, these examples establish a pattern of "excluding customers and investments based on political, religious, or any opinion or characteristic" not related to the Company' pecuniary interests. The Company "provided no financial analysis to demonstrate" a pecuniary benefit to these actions. The Proposal's evident concern is that "non-pecuniary factors" are pretextual bases that the Company uses to justify this discrimination.

The Company could only support its claim that the Proposal's subject is on non-pecuniary factors "per se" by excluding the supporting statement part of the Proposal. But the Company never says the Staff should do that. To the contrary, the Company elsewhere considers the Proposal's resolved clause and the supporting clause "[w]hen read together." Company Letter at 7. The Company cannot have it both ways. When the supporting statement and the resolved clause are "read together," it is evident that the Proposal's subject is on non-pecuniary factors as they relate to terminating business with politically disfavored groups.

If the Company's had argued that the Proposal's subject must defined exclusively by its resolved clause, that would also be wrong. For the purposes of reviewing the content of a shareholder proposal, the proposal consists of the resolved clause, the supporting statement, and any other materials that will be printed on the Company's proxy statement when it includes the Proposal. As the Staff said in Staff Legal Bulletin No. 14B, the Staff reviews the Proposal "as a whole"—not its component parts in isolation. Division of Corporation Finance, Staff Legal Bulletin No. 14B (Sept. 15, 2004).

The Proposal focuses on the immensely significant social policy debate over corporate purpose and the use of non-pecuniary factors to terminate business with politically disfavored groups. The Company makes no argument against that. The Staff should recognize the issue's significance and deny the Company relief for the Proposal on this basis.

II. The Proposal Focuses on the Use of Non-Pecuniary Factors to Terminate Business with Politically Disfavored Parties, Which Transcends the Ordinary Business Matters of the Company.

The Proposal's focus on the use of non-pecuniary factors to terminate business with politically disfavored parties is objectively socially significant. Under the Commission's and Staff's interpretations of Rule 14a-8(i)(7), an objectively socially significant issue necessarily transcends the ordinary operations of the business. Like other matters of social significance, the issue of non-pecuniary factors being used by companies to exclude politically disfavored parties transcends ordinary business. The Staff has also recognized this in its precedent for proposals that focus on non-pecuniary corporate purposes. The Company's efforts to tie the Proposal back to ordinary business matters falls flat.

A. The Use of Non-Pecuniary Factors to Justify Boycotts of Politically Disfavored Parties Transcends the Company's Ordinary Business Matters.

Under Rule 14a-8(i)(7), a proposal may be excluded from a company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." According to the Staff, even proposals that deal with ordinary business operations are not excludable under Rule 14a-8(i)(7) if they "focus on sufficiently significant social policy issues" because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release.

As addressed *supra* Part I, the Proposal focuses on a matter of objectively significant social policy. Accordingly, the Proposal may not be excluded under Rule 14a-8(i)(7), and it transcends and does not relate to ordinary business matters. But this objective social significance is also reflected in Staff precedent.

The Staff's recent precedent denying exclusion requests under Rule 14a-8(i)(7) for proposals that relate to the consideration of non-pecuniary factors confirms their status outside of the ordinary business operations of the Company. In *Alphabet Inc.* (Apr. 16, 2021), the proposal requested action to "balance [the] interests of shareholders [and] stakeholders . . . allowing the corporation to protect communities, even when it reduces financial return to shareholders in the long run." *See also Broadridge Financial Solutions, Inc*. (Sept. 22, 2021) (focusing on non-pecuniary "public benefit" company policy); *Tractor Supply Company* (Mar. 9, 2021) (same); *3M Company* (Mar. 9, 2021) (same). In each case, the Staff denied the company's ability to exclude the proposal under Rule 14a-8(i)(7). It would be highly inconsistent for the Staff to determine that the Proposal does not focus on a matter of significant social policy when it focuses on the societal *risks* of considering non-pecuniary factors, since the Staff has already concluded that proposals considering its *benefits* are socially significant.

As a result, the Staff's clear precedent—issued under the currently operative Staff Legal Bulletin 14L—is that proposals focusing on a company's consideration of non-pecuniary factors in general are of sufficient social significance to preclude their exclusion.

B. The Company Fails to Identify Any Matter of Ordinary Business that the Proposal Focuses On.

The Proposal's social policy significance should be the start and end of the matter. If a proposal focuses on an issue of sufficient social significance or "broad societal impact," then it "transcend[s] the ordinary business operations" of the company and is not excludable under Rule 14a-8(i)(7). 1998 Release, *supra*; Staff Legal Bulletin No. 14L, *supra*. The Proposal does not relate to matters of ordinary business because it focuses on an issue of social policy significance that transcends them—full stop.

But even setting aside the Proposal's social policy significance, the Proposal still does not relate back to any matters of ordinary business. In fact, the Company makes little effort to argue that it does. The Company discusses previous Staff no-action letters addressing other proposals that relate to a company's "customers, suppliers, employees, and shareholder, as well as [its] products and services," Company Letter at 3, but it never applies any of those precedents to the Proposal. Instead, the Company baldly asserts that the Proposal's "broad nature" means it relates to the "vast universe" of the Company's business practices and relationships The Company then summarily concludes "[t]hus, the no-action letters cited in the discussion above are applicable." Company Letter at 7. The Company never explains how.[26]

Nor could it. Indeed, the Proposal has a "broad nature" precisely because it "transcend[s] the day-to-day business matters" of the Company. The Company's conclusory statement that the Proposal relates to some possible category of ordinary business has no basis.

1. The Proposal does not focus on the Company's relationship with its customers.

The Company states that "the Staff has permitted exclusion of proposals that relate to a company's relationships with its customers." Company Letter at 3–4. "In particular," the Company states, "the Staff has permitted exclusion . . . of proposals relating to a company's decisions with regard to the handling of customer accounts, including the termination of accounts." Company Letter at 4. The Company then concludes the Proposal's "broad nature" means it "relates to . . . customers." Company Letter at 7.

Even assuming the Company's statement of the "customer relations" sub-rule is correct, the Proposal focuses on neither the company's relationships with its customers nor the handling of customer accounts—it transcends them. The Proposal requests a report on the risks of the

[26] In the paragraph following its conclusory statement that the Staff's precedents simply "are applicable," the Company provides a summary of its business evidently pulled from its marketing materials that also does not apply any of the rules it earlier expounded. "The Company is one of the world's leading financial services companies," (text substantially identical to its "About MetLife" press-release insert, *see* MetLife, Press Release, *MetLife Among the World's Most Admired Companies, According to Fortune Magazine*, Feb. 1, 2023, tinyurl.com/yc7uuk8r), and "[i]n serving millions of clients around the world, the Company begins and ends numerous relationships on a daily basis." "As a large financial services and insurance company, the Company is highly regulated." *Compare with* MetLife, Form 10-K (2022) ("Numerous aspects of our business are heavily regulated"). From these highly general premises, the Company concludes with the unedifying finding that "[t]he Company's business practices" are "fundamental to the Company's day-to-day operations." Company Letter at 7. The Staff should not allow these restatements and generalities to pass for argument under the developed rules and precedents of Rule 14a-8.

Company's "business practices that prioritize non-pecuniary factors" governing its "business relationships." An inquiry into "[b]usiness practices that prioritize no-pecuniary factors" would transcend any specific matter of customer or customer account management. And the term "business relationships" necessarily transcends customers because it includes non-customer business relationships.

The Proposal focuses on an issue that extends across *all* of the Company's business relationships. That makes it unlike any of the other precedents the Company cites. *See, e.g.*, *JPMorgan Chase & Co.* (Feb. 21, 2019) (report on impact *to customers* of the company's overdraft policies); *AT&T Inc.* (Dec. 28, 2016) (policy to provide free tools *to customers*); *Ford Motor Co.* (Feb. 13, 2013) (removal of dealers that provide poor *customer service*). The Proposal is also unlike the Staff letter the Company cites in *Comcast Corp*. (Apr. 13, 2022) and *PayPal Holdings, Inc.* (Apr. 2, 2021) because those proposals directed the company's procedures over customer accounts, while the Proposal requests only a report on risks of business practices for the Company's business relationships. For example, the Proposal itself includes non-customer account matters of concern, including the barring of energy companies from the Company's investment management practices. The Company's decision to categorically not invest in certain energy companies decidedly deals with the Company's "relationship" to those companies in a manner that transcends any "accounts" those companies would have with the Company.

2. The Proposal does not focus on the Company's relationship with its suppliers.

The Company states that "the Staff has permitted exclusion . . . of shareholder proposals that relate to a company's relationships with its suppliers." Company Letter at 5. The Company then includes "suppliers" in the summary list of ordinary business matters it concludes the Proposal focuses on. Company Letter at 7.

But here too, the Company gives no reason why this rule should bar the Proposal. The Proposal does not relate to supplier relationships but transcends them. The proposals in the Staff precedent the Company cites each specifically addressed suppliers. *See Walmart, Inc.* (Mar. 8, 2018) ("outlining the requirements suppliers must follow"); *Foot Locker, Inc.* (Mar. 3, 2017) ("monitor the use of subcontractors by the company's overseas suppliers"); *Kraft Foods Inc.* (Feb. 23, 2012) ("assess risk to its supply chain"); *Dean Foods Co.* (Mar. 9, 2007) ("standards for organic dairy product suppliers"). Unlike each of the proposals in each of these precedents, the Proposal's requested report does not address suppliers. It addresses "business relationships." Business relationships necessarily transcend suppliers because it includes non-supplier business relationships. The Proposal therefore does not relate to suppliers within the meaning of Rule 14a-8.

3. The Proposal does not focus on the Company's relationship with its employees.

The Company next states that "the Staff also consistently allows the exclusion of proposals that relate to a company's relationship with employees and to management of a company's workforce." Company Letter at 5. The Company then includes "employees" in the summary list of ordinary business matters it concludes the Proposal focuses on. Company Letter at 7.

Once again, the Company fails to apply the rule to the Proposal. The Proposal does not focus on the Company's employee relationships because it transcends them. The Proposal's requested report address "business relationships," which necessarily transcends employee relationships. And again, in each of the Staff exclusion precedent the Company cites the proposals dealt specifically with employees. *See, e.g., Apple Inc.* (Jan. 3, 2023) ("effects of the company's return-to-office policy on employee retention"), *Walmart, Inc.* (Apr. 8, 2019) ("company's policies and practices for hourly workers"). The Proposal is not so confined.

4. The Proposal does not focus on the Company's relationship with its shareholders.

The Company continues by stating that "the Staff has permitted companies to exclude proposals that relate generally to the company's relations with its stockholders." Company Letter at 6. This category too is included in the Company's summary list of business matters the Proposal's "broad nature" supposedly applies to. Company Letter at 7.

The Proposal does not focus on the Company's shareholder relations because it transcends them. Its requested report addresses "business relationships" in general. By contrast, the Staff precedent the Company cites in *Con-way Inc.* allowed for the exclusion of proposals that focused specifically on shareholder conduct. *Con-way Inc.* (Jan. 22, 2009) ("ensure future annual stockholder meetings be distributed via webcast").

Unlike the proposals the Company cites for the proposition that "proposals relating to the determination and implementation of a company's strategies for enhancing shareholder value" are excludable, Company Letter at 6, the Proposal focuses on generally "pecuniary" considerations. The Proposal makes no provision for how the Company's pecuniary interests relate to shareholder value for any specific class of stockholders or for stockholders in general. The proposal in *JPMorgan Chase & Co.* (Mar. 26, 2021) addressed how "costs affect the majority of its shareholders who rely on overall stock market return," and in *Ford Motor Co.* (Feb. 24, 2007) demanded "increase stock performance," but the Proposal addresses only "pecuniary" considerations. As the corporate finance literature has long recognized, corporate profits—the pecuniary interests *of the corporation*—do not necessarily translate into "stock performance" for shareholders. *See, e.g.*, Nicolas Rabner, *Myth-Busting: Earnings Don't Matter Much for Stock Returns*, CFA Institute (Mar. 22, 2021), tinyurl.com/2bzy7d9n. As a result, the Proposal's focus on the Company's consideration of non-pecuniary factors does not focus on shareholders' interests as shareholders, but on the Company generally as it relates to a matter of societal importance.

5. The Proposal does not focus on the products and services offered by the Company.

Finally, the Company states that "[t]he Staff has held that shareholder proposals that could undermine a company's core business model and/or relate to the products and services offered by the company are appropriately excludable." Company Letter at 6. And the Company includes "products and services offered by the Company" in its summary list of business matters it concludes the Proposal relates to.

The Proposal does not focus on the products and services offered by the Company because it transcends them. Each of the precedents the Company cites were limited to specific products and services. *See Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied*, Mar. 4, 2013) ("impacts of the registrant's direct deposit advance lending service"); *JPMorgan Chase & Co.* (Mar. 16, 2010) ("policy mandating the company cease issuing refund anticipation loans"). The Proposal focuses on "business practices" for the Company's "business relationships," not any specific line of products or services sold by the Company in the context of those relationships. The Proposal is not excludable on this basis.

III. Issuing Relief to the Company would Raise Serious Constitutional and Administrative Law Concerns.

For the reasons discussed above, the Proposal's merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company's request for relief. If the Staff elects to issue relief to the Company despite the Proposal's clear merits, the Staff's decision would raise a host of constitutional and administrative law issues.

A. The Company is Asking the Staff to Discriminate on the Basis of Viewpoint in Violation of the First Amendment.

The Proposal relates to the significant social policy concern of the use of non-pecuniary factors by corporations to engage in viewpoint discrimination and other politically sensitive actions. By urging the Staff issue relief for the Proposal regardless, the Company invites the Staff to itself discriminate based on viewpoint.

It is well-established that the government cannot engage in viewpoint discrimination. *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019). This principle prevents governments from regulating speech "because of the speaker's specific motivating ideology, opinion, or perspective." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 820 (1995). And the Supreme Court defines "the term 'viewpoint' discrimination in a broad sense." *Matal*, 137 S. Ct. at 1763. This is because "[v]iewpoint discrimination is a poison to a free society." *Iancu*, 139 S. Ct. at 2302 (Alito, J., concurring).

The rule against viewpoint discrimination prevents allowing speech based on one "political, economic, or social viewpoint" while disallowing other views on those same topics.

Id. at 831. It also prohibits excluding views that the government deems "unpopular," *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995), or because of a perceived hostile reaction to the views expressed, *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

Here, the Company invites the Staff to engage in viewpoint discrimination by issuing relief on the Proposal. The Proposal requests that the Company's Board "commission and disclose a report on the risks created by Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue client relationships." The Staff has routinely denied no-action relief to similar requests in *Alphabet Inc.* (Apr. 16, 2021) (focusing on non-pecuniary "public benefit" company policy); *Broadridge Financial Solutions, Inc.* (Sept. 22, 2021) (same); *Tractor Supply Company* (Mar. 9, 2021) (same); *3M Company* (Mar. 9, 2021), (same). If the Staff opts to exclude the Proposal, one might reasonably conclude that it could only do so because of its opinion of the political implications of the Proposal. Here, that would be the Proposal's highlighting of recent and prominent viewpoint discrimination against conservatives and Republicans on presumptively non-pecuniary bases. But that is no less valid a perspective in the marketplace of ideas than those expressed in the proposals from the precedents cited above, which asked companies to affirmatively consider non-pecuniary factors. In effect, the Company is asking the Staff to determine a proposal to be significant if it relates to the purported *benefits* of considering non-pecuniary factors in business, but to determine a proposal *in*significant if it relates to *concerns* over the very same issues.

The Staff—and the Commission—needs a principled basis for such a distinction. The Company proposes none. As the Supreme Court has explained, to avoid viewpoint discrimination the government must have "narrow, objective, and definite" standards to prevent officials from covertly discriminating based on viewpoint through subjective and unclear terms. *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 131 (1992). And here, the Staff has complete discretion to determine what "issues" are significant and even to censor on the same issue when they are presented by speakers with certain political views.

The easiest course would be for the Staff to deny relief to the Company, and avoid making such a weighty decision. But if the Staff chooses to discriminate against the viewpoint expressed by the Proposal, that would highlight a new and significant issue with SLB 14L, and indeed, the 1998 Release. It would provide a clear demonstration of how the Staff's open-ended discretion in determining which views count as "socially significant" may be facially invalid under the First Amendment.

B. The Company is Asking the Staff to Take Arbitrary and Capricious Action Under the Administrative Procedure Act.

The Company identifies no reasonable basis for distinguishing between the Proposal and other proposals addressing the significant issue of non-pecuniary acts by companies. As a result, the Company's request for relief invites the Staff to take arbitrary and capricious action.

Under the Administrative Procedure Act (APA), agency action that is "arbitrary and capricious" may be set aside. 5 U.S.C. § 706(2)(A). The Supreme Court has succinctly explained that "[t]he APA's arbitrary and capricious standard requires that agency action be reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021); *see also Motor Vehicle Mfs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision. *See FCC,* 141 S. Ct. at 1160.

Additionally, where an agency seeks to change its position from a prior regime, it must "display awareness that it is changing position," "show that there are good reasons for the new policy" and provide an even "more detailed justification" when the "new policy rests upon factual findings that contradict those which underlay its prior policy," and "take[ ] into account" "reliance interests" on the prior policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

Given the Staff's recent precedent permitting the consideration of shareholder proposals relating to non-pecuniary factors, *see supra* Part II.A, issuing relief to the Company would undoubtedly be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

For the above reasons and others, the Staff's decision on the Proposal is an important action. Most often, the Staff's decision to issue relief is the final action by the Commission in dealing with a particular shareholder proposal. While the Commission may also affirm the Staff's decision to issue relief, the vast majority of relief decisions are made by the Staff without formal review. Significant legal consequences also flow from these decisions because they help determine whether or not the Company will be able to exclude the proposal. It is undeniable that companies treat the no-action process as a safe harbor. And the reality is that by issuing relief, the Staff provides companies with a legal defense in any potential court action. What's more, issuing relief is at the core the Commission's complex regulatory scheme, and the authority of the Commission and Staff to issue relief is expressly indicated by Rule 14a-8. *See* Rule 14a-8(j).

In sum, the Company is asking the Staff to tread in precarious waters by issuing relief to a well-supported Proposal given the APA's requirements for reasoned decision-making. The safer and more prudent course would be for the Staff to deny the Company's request.

C. The Company is Requesting Relief the Staff Lacks Statutory Authority to Issue.

If the Staff elects to issue relief for the Proposal, it would raise significant concerns that the Staff is acting beyond its statutory authority. The Proposal is a permissible subject for stockholder concern under state law. If the Staff acted to block the Proposal, the Staff would be reaching beyond what they are authorized to do.

Section 14(a) of the Exchange Act prohibits anyone from "solicit[ing] any proxy" "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 78n(a)(1). While this authority might be read "broadly," "it is not seriously disputed that Congress's central concern [in enacting § 14(a)] was with disclosure." *Business Roundtable v. SEC*, 905 F.2d 406, 410 (D.C. Cir. 1990). The purpose of Section 14(a) was to ensure that investors had "adequate knowledge" about the "financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders' meetings." S. Rep. No. 792, at 12 (1934).

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the "firmly established" state-law jurisdiction over corporate governance. *Business Roundtable*, 905 F.2d at 413 (internal citation omitted). Recognizing that state law provides the "confining principle" to Section 14(a)'s otherwise "vague 'public interest' standard," the United States Court of Appeals for the District of Columbia Circuit has held that "the Exchange Act cannot be understood to include regulation of" "the substantive allocation" of corporate governance that is "traditionally left to the states." *Business Roundtable v. SEC*, 905 F.2d at 407, 413 (internal citation omitted). Issuing relief under Rule 14a-8 would exceed this limit by regulating the substantive considerations and outcomes of corporate stockholder meetings, which are properly matters for state law.

1. Substantive regulation of corporations' proxy statements.

Issuing relief under Rule 14a-8 would regulate the substance of corporate governance because it would regulate the substantive matters that a corporation is required to include in its proxy statement. Under state law, corporate directors tasked with soliciting proxies have "a fiduciary duty to disclose all facts germane" to items presented for stockholders' consideration. *Smith v. VanGorkom*, 488 A.2d 858, 890 (Del. 1986). For an annual meeting, this duty requires that a corporation include a shareholder proposal in its proxy statement if the shareholder proposal will be presented for consideration at the corporation's annual meeting. In turn, a shareholder proposal may be presented for consideration at the corporation's annual meeting if the proposal is a proper subject for action by the corporation's stockholders. *See CA, Inc. v. AFSCME Emps. Pension Plan*, 953 A.2d 277 (Del. 2008). A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders' power to adopt, *id.* at 232, but stockholders do not have the power to adopt proposals that would cause the board of directors to breach its fiduciary duties, *see Paramount Commc'ns Inc. v. Time Inc.,* 1989 WL 79880, at *30 (Del. Ch. July 14, 1989), *aff'd*, 571 A.2d 1140, (Del. 1990) ("The corporation law does not operate on the theory that directors, in exercising their powers to manage the firm, are obligated to follow the wishes of a majority of shares.").

Issuing relief under Rule 14a-8 would displace this system of state law by subjecting the Proposal to additional requirements to be included in the corporation's proxy statement.[27] The current Rule 14a-8 goes far further. Specifically, Rule 14a-8 provides that a corporation may exclude proposals that relate to a company's "ordinary business operations." And the SEC has further interpreted Rule 14a-8, via sub-regulatory guidance, to permit the exclusion of proposals that do not "transcend the day-to-day business matters" of the corporation, 1998 Release, *supra*, or which insufficiently "raise[] issues with a broad societal impact," Division of Corporation Finance, Staff Legal Bulletin No. 14L, *supra*.

These additional limits go beyond the limits of the state law proper-subject requirement. A proposal that fails to sufficiently raise an issue "with a broad societal impact" may nonetheless be within stockholders' power to adopt and consistent with the board of directors' fiduciary duties. But issuing relief under Rule 14a-8 would authorize the Company to exclude such a proposal, even though state law would allow it to be considered. That is not what Congress gave the Commission power to do under Section 14(a).

2. Substantive regulation of stockholder meetings.

Issuing relief under Rule 14a-8 would also regulate the substance of corporate governance because it would regulate the substantive issues that a corporation considers at its stockholder meetings. The matters that may be validly brought before stockholders at a corporation's meetings of stockholders are exclusively governed by state law. "Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law *expressly* requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation." *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 479 (1977) (emphasis in original). Section 14(a) makes no such express requirement. Section 14(a) provides general language that Congress understood to merely authorize disclosure requirements that ensures investors have "adequate knowledge" of the "major questions of policy . . . decided at stockholders' meetings." S. Rep. No. 792, *supra*. It does not provide the authority for the SEC to regulate *which* questions must be decided at a corporation's stockholder meetings. Yet issuing relief under Rule 14a-8 would regulate the substantive aspects of stockholder meetings in at least two ways.

First, even though Rule 14a-8 applies primarily to the content of a corporation's proxy statement, its regulation of the proxy statement has the eminently predictable *effect* of regulating the stockholder meeting for which proxies are solicited. Today, substantially all stockholder voting is conducted by proxy. "Because most shareholders do not attend public company shareholder meetings in person, voting occurs almost entirely by the use of proxies that are solicited before the shareholder meeting, thereby resulting in the corporate proxy becoming 'the forum for shareholder suffrage.'" *Concept Release on the Proxy System*, SEC Release No. 34-62495 (July 24, 2010) (quoting *Roosevelt v. E.I duPont de Nemours & Co.*, 958 F.2d 416, 422

[27] To be sure, one provision of the current Rule 14a-8, (i)(1), mirrors the state law requirement that a shareholder proposal must be a proper subject for action by stockholders. But that is not what the Company has raised here.

(D.C. Cir. 1992)). As a practical matter, if a stockholder proposal is excluded from the corporation's proxy statement, it is functionally unavailable for consideration at a stockholder meeting. Not many stockholders would be aware of the proposal, nor would many be able to vote on it. To be sure, a stockholder proponent could pay for his own proxy forms to be distributed. But that is hardly a remedy given the complex realities of the modern proxy system. With Rule 14a-8, the Commission has clearly put its thumb on the scale, allowing some stockholders to access the corporate proxy statement, but not others, on bases untethered to state law. By permitting the exclusion from corporate proxy statements of proposals otherwise valid for consideration under state law, Rule 14a-8 not only regulates the content of the proxy statement—it regulates which proposals are considered by the vast majority of stockholders, and therefore the content and outcomes of corporations' stockholder meetings.

Second, Rule 14a-8 goes beyond the regulation of proxy statements to directly regulate what stockholders may consider at stockholder meetings. Specifically, Rule 14a-8 compels the consideration of its permissible proposals by compelling their inclusion in the corporation's form of proxy. If a proposal meets the Rule's requirements, Rule 14a–8(a) provides that "a company *must* include a shareholder's proposal in its proxy statement and . . . its form of proxy" for a stockholder meeting. Rule 14a-8 (emphasis added). In turn, if a proposal is on the form of proxy, it must be considered at the relevant stockholder meeting. Under federal law, a corporation's "form of proxy" must include the matters to be voted on at the meeting. *See, e.g.*, 17 C.F.R. § 240a-4(a) ("[T]he form of proxy . . . shall identify clearly and impartially each separate matter intended to be acted upon"). By requiring the inclusion of a proposal on the form of proxy, Rule 14a-8 compels consideration of the proposal at a stockholder meeting. If a corporation did not consider the proposal at the meeting, its form of proxy may be unlawfully misleading. Rule 14a-8 therefore requires a corporation to consider a shareholder proposal at its annual meeting even if it could lawfully exclude the shareholder proposal under state law. *See SEC v. Transamerica Corp.*, 163 F.2d 511, 518 (3d. Cir. 1947) (stating that, assuming a corporate bylaw excluding shareholder proposals was valid under state law, Rule 14a-8 would invalidate the bylaw).

By intruding upon the substantive affairs of corporate governance "traditionally left to the states," issuing relief under Rule 14a-8 would exceed the Commission's—and the Staff's—lawful authority under Section 14(a). As a result, issuing relief to the Company would raise serious concerns about the validity of the Staff's action.

Conclusion

The Proposal seeks only report on the potential risks to the Company associated with the prioritization of non-pecuniary factors, not in any way interference in the Company's ordinary business operations, and it does so about issues that is indisputably of significant social policy interest.

The Company has clearly failed to meet its burden that it may exclude the Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning the Proposal.

If the Staff nonetheless decides to issue relief to the Company, that action would raise significant constitutional and administrative law concerns that "involve matters of substantial importance and where the issues are novel or highly complex" and should invoke Commission review under 17 C.F.R. § 202.1(d).

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,

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