



DIVISION OF
CORPORATION FINANCE

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

March 6, 2023

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: Elevance Health, Inc. (the "Company")
Incoming letter dated December 21, 2022

Dear Elizabeth A. Ising:

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

The Proposal requests that the board require the Company's 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.

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). In reaching this position, we have not found it necessary to address the alternative basis 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

December 21, 2022

VIA E-MAIL

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

Re: *Elevance Health, Inc.*
Shareholder Proposal of Beyond Investing LLC
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Elevance Health, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from Beyond Investing LLC (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal (including correspondence regarding the status of any negotiations with the Company), a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

RESOLVED, that shareholders of Elevance Health Incorporated (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.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, are attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to:

- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal in the manner that the Proposal requests; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because The Company Lacks The Power Or Authority To Implement The Proposal In The Manner That The Proposal Requests.

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal “[i]f the company would lack the power or authority to implement the proposal.” Notably, the Commission has stated that exclusion under Rule 14a-8(i)(6) “may be justified where *implementing the proposal would require intervening actions by independent third parties.*” Exchange Act Release No. 40018 at n.20 (May 21, 1998) (emphasis added) (the “1998 Release”).

The Company is a health benefits company that offers a broad spectrum of network-based managed care risk-based plans. In addition, the Company provides a broad array of managed care services to fee-based customers, including claims processing, stop loss insurance, provider network access, medical management, care management and wellness programs, actuarial services and other administrative services. The Company also provides services to the federal

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government, and provides an array of specialty services both to the Company's subsidiary health plans and also unaffiliated health plans, including pharmacy benefit management services and dental, vision, life, disability and supplemental health insurance benefits, as well as integrated health services.

In its role as a health benefits company, the Company does not own or operate any hospitals. And while the Company contracts with hospitals to pay for services provided by hospitals to individuals who participate in the Company's plans, the Company does not play any role in the ownership, operation or decision-making with respect to hospitals, including decisions regarding the food and meal options provided by the hospitals with which it contracts or where clients use the Company's insurance coverage.

The Proposal requests that the Company "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." (emphasis added) In framing the Proposal by reference to the Company and "their hospitals," the Proposal fundamentally misunderstands the Company's business and its operations. As explained above, the Company does not own or operate any hospitals and even if the Proposal were read to apply to those hospitals where the Company contracts for payment, decision-making regarding the meal and food options provided at such hospitals is not part of the contractual relationship. It is clear, based on its express terms, that the Proposal requires and depends upon action by independent third parties (*i.e.*, the hospitals with which the Company contracts or where the Company's clients use the Company's insurance coverage), and it is not within the Company's power or authority to guarantee that such third parties would comply with such a requirement imposed by the Company. The Company cannot compel third parties, over which the Company exercises no control, to provide *all* patients, including those who do not participate in the Company's plans, with specific meals or food options "at every meal." Moreover, the broadly-worded Proposal is not limited to hospital patients. Instead, the Proposal also requires that "vending machines" and "cafeterias used by outpatients, staff and visitors" provide specific food options. The Company has no power or authority to require that vending machines or cafeterias in hospitals over which the Company has no control offer specific products—those decisions are the purview of the individual hospitals and the owners/operators of vending machines and cafeterias operated in such hospitals. The Proposal, therefore, involves the very kind of situation envisioned by the Commission when it stated that exclusion would be appropriate, since implementing the Proposal Policy would require intervening actions by independent third parties. *See* 1998 Release at n.20.

The Staff has consistently concurred with the exclusion of proposals where it was not within the power of a company to guarantee compliance with the terms requested by the proposal. For example, in *The Goldman Sachs Group, Inc.* (avail Jan. 28, 2015) ("*Goldman 2015*"), a shareholder proposal requested that the company adopt a policy that its chairman be an

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independent director. The company argued that the proposal did not provide an opportunity or mechanism to cure a situation where the chairman failed to maintain his or her independence, and that it could not guarantee that an independent director would “(1) be elected to the [b]oard by the [c]ompany’s shareholders, (2) be elected as Chairman by the members of the board, (3) be willing to serve as Chairman, and (4) remain independent at all times while serving as Chairman.” The Staff concurred with exclusion pursuant to Rule 14a-8(i)(6), noting that “it appears that the proposal is beyond the power of the board to implement” because “it does not appear to be within the power of the board of directors to ensure that its chairman retains his or her independence at all times.” See also *The Goldman Sachs Group, Inc.* (avail. Mar. 25, 2010) (concurring with the exclusion of a proposal under Rule 14a-8(i)(6) because it did not “appear to be within the power of the board of directors to ensure that each member of the compensation committee meets the requested criteria at all times”); *Allegheny Technologies Incorporated* (avail. Mar. 1, 2010) (same); *Time Warner, Inc.* (avail. Feb. 22, 2010) (same); *Honeywell International Inc.* (avail. Feb. 18, 2010) (same). As in *Goldman 2015*, where the Staff concurred with the exclusion of a proposal because the company could not ensure compliance with the terms of the requested policy (*i.e.*, that the chairman would always be independent), the Company likewise lacks the power to implement the Proposal because the Company cannot guarantee compliance with the Proposal. Because it does not own or operate any hospitals, and does not play any role in the operation of or decision making with respect to the food and meal options provided by the hospitals with which it contracts or where clients use the Company’s insurance coverage, it cannot ensure that such hospitals provide the specific meal and food options required under the Proposal. The Proposal, therefore, is excludable pursuant to Rule 14a-8(i)(6).

The Staff has also concurred with the exclusion of proposals requiring action by an entity over which the company to whom the proposal was submitted has no control. For example, in *eBay Inc.* (avail. Mar. 26, 2008), the Staff concurred that a proposal requesting that the company enact a policy prohibiting the sale of dogs and cats on the website of a joint venture owned by a wholly owned subsidiary of the company and TOM Online Inc. (an independent online portal and wireless internet company headquartered in China), in which the company had no role in day-to-day operations and over which it had no operating control, was excludable pursuant to Rule 14a-8(i)(6). The company argued that because of the nature of its joint venture-relationship, it lacked the power or authority to take the action that would be required by the proposal, and the Staff concurred that relief was merited. Similarly, the Staff concurred with exclusion of a proposal in *Beckman Coulter, Inc.* (avail. Dec. 23, 2008) requesting that the company implement a set of executive compensation reforms at The Bank of New York Mellon, an unaffiliated bank which served as a trustee for the company under an indenture agreement. The company argued that it was impossible for it to implement the reforms requested by the proposal because it did “not directly or indirectly control” the bank nor did it “have any direct or indirect interest” in the bank. The company further argued that while the bank served as a trustee

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for the company under an indenture, “this contractual relationship [did] not give the [c]ompany the power or the authority to implement or influence the executive compensation reforms raised in the [p]roposal,” and the Staff concurred that relief was merited pursuant to Rule 14a-8(i)(6). *See also Catellus Development Corp.* (avail. Mar. 3, 2005) (concurring with the exclusion under Rule 14a-8(i)(6) of a proposal requesting that the company take certain actions related to property it managed but no longer owned); *Ford Motor Co.* (avail. Mar. 9, 1990) (concurring with the exclusion of a proposal under the predecessor to Rule 14a-8(i)(6) because the proposal “relate[d] to the activities of companies other than the [c]ompany [to whom the proposal was submitted] and over whom the [c]ompany ha[d] no control”); *Harsco Corp.* (avail. Feb. 16, 1988) (concurring with the exclusion under the predecessor to Rule 14a-8(i)(6) of a proposal requesting that the board of directors sign and implement a statement of principles relating to employment in South Africa where the company’s only involvement with employees in South Africa was its ownership of 50% of the stock of a South African entity, and the owner of the remaining 50% interest had the right to appoint the entity’s chairman, who was empowered to cast the deciding vote in the event of a tie).

Similar to *eBay* and *Beckman Coulter*, the Company does not have the power or authority to unilaterally compel the hospitals with which it contracts or where clients use the Company’s insurance coverage to provide plant-based meal and food options as required by the Proposal. The Company has no control over these independent third-party organizations and is not involved in their day-to-day operations. Additionally, the decision to provide patients with plant-based food options, including in vending machines and in the cafeterias used by outpatients, staff and visitors, is a matter under the sole purview of those organizations, not the Company. The Company has no power to direct or mandate hospitals over which it has no control to provide plant-based food options to patients at every meal, let alone within vending machines and in the cafeterias, which may themselves be owned and/operated by organizations that contract with such independent third-party hospitals.

Accordingly, for the reasons set forth above and consistent with the aforementioned precedents, the Proposal is excludable under Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

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II. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company’s Ordinary Business Operations.

A. Background.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company’s business and operations.” 1998 Release.

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Examples of the tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees, *decisions on production quality and quantity*, and the retention of suppliers” (emphasis added). 1998 Release.

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

We note that, although the Staff recently issued new guidance specifically relating to its approach to evaluating certain aspects of the ordinary business exclusion, such guidance does not impact the arguments made herein. *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”). Although SLB 14L, among other things, reverses prior Staff guidance regarding the company-specific approach to evaluating the significance of a policy issue that is the subject of a shareholder proposal for purposes of the ordinary business exclusion, this no-action request

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does not rely on a company-specific approach to evaluating significance and relies on precedent preceding, or not involving, the reversed prior Staff guidance. Therefore, SLB 14L is not applicable to this Proposal.

B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers To Its Customers.

The Proposal requests the Company “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.” As previously discussed, the Company is a health benefits company that neither owns nor operates any hospitals. While the Company contracts with hospitals to pay for services provided by hospitals to individuals who participate in the Company’s plans, the Company does not have any role in decision-making with respect to the food and meal options provided by the hospitals with which it contracts or where clients use the Company’s insurance coverage.

However, even if the Company did own and/or operate hospitals, or if the Staff views the Company as having decision-making authority with respect to the food and meal options provided by the hospitals with which it contracts or where clients use the Company’s insurance coverage, the Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company’s ordinary business operations, in that it directly relates to products developed and offered for sale by the Company. Decisions regarding the products that a company develops and sells, including the ingredients contained in the company’s products, implicate myriad factors that must be considered by the company’s management, including the tastes and preferences of customers, the products offered by the company’s competitors, the laws where the company’s products are sold, the availability of sufficient quantity and quality of products to meet demand, and the prices charged by the company’s suppliers. Balancing such interests is a complex issue and is “so fundamental to management’s ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight.” 1998 Release.

The Staff has consistently recognized that decisions relating to the products and services offered by a company, including decisions regarding the development of certain products, are part of a company’s ordinary business operations and has concurred with their exclusion. In *Papa John’s International Inc.* (avail. Feb. 13, 2015), the Staff concurred with the exclusion of a proposal requesting the company’s board “have Papa John’s expand its menu offerings to include vegan cheeses and vegan meats in order to advance animal welfare, reduce its ecological footprint, expand its healthier options and meet growing demand for plant-based foods.” The supporting statement argued that offering plant-based options would “promote operations that are less detrimental to the environment, public health, and animal welfare.” In support of its argument, the supporting statement cited studies purporting to show that vegetarians and vegans “enjoy a lower risk of death from ischemic heart disease, lower blood cholesterol levels, lower blood

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pressure, lower rates of hypertension and type 2 diabetes, and a lower body mass index as well as lower overall cancer rates” and that “[a]nimal agriculture is a leading contributor to climate change.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), despite these assertions, noting in particular that “the proposal relates to the products offered for sale by the company and does not focus on a significant policy issue.” In *Amazon.com, Inc.* (avail. Mar. 11, 2016) (“*Amazon 2016*”), the Staff concurred with the exclusion of a proposal requesting that the company “issue a report addressing animal cruelty in the supply chain,” where the supporting statement requested that the report “articulate whether the company has guidelines, above and beyond legal compliance, for identifying animal cruelty associated with products sold on its website; explain inconsistencies with respect to cruel production methods in the current selection of items offered for sale; propose policy options for strengthening any existing guidelines.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting in particular that “the proposal relates to the products and services offered for sale by the company.” As the Staff further explained, “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7).” See also *Mondelēz Int’l, Inc.* (avail. Feb. 23, 2016), (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal seeking a report on the company’s use of nanomaterials, including a description of products or packaging that contained nanoparticles, an explanation as to why nanoparticles were being used, and a description of what actions management was taking to reduce or eliminate nanoparticles’ risks to human health and the environment, as the proposal related to the company’s product development); *Amazon.com, Inc.* (avail. Mar. 27, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company disclose the “reputational and financial risks that it may face . . . pertaining to the treatment of animals used to produce products it sells” as relating to “the products and services offered for sale by the company”); *Wal-Mart Stores, Inc.* (avail. Mar. 20, 2014) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting board oversight of determinations as to whether selling certain products that endanger public safety and well-being could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to “the products and services offered for sale by the company”), *aff’d and cited in Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 327 (3d Cir. 2015); *Dominion Resources, Inc.* (avail. Feb. 3, 2011) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal that would require the company to “provide financing to home and small business owners for installation of rooftop solar or wind power renewable generation,” noting that “the proposal relates to the products and services offered for sale by the company”); *General Electric Co.* (avail. Feb. 4, 1999) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board review “the suitability of [its long-term care insurance business] and determine what measures should be taken to prevent [such business from bringing] disrepute to [the company]” as “relating to its ordinary business operations (i.e., offering of a particular product”).

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Here, as in the precedents discussed above, the Proposal specifically relates to a company's decisions concerning the products and services that it develops and offers to its customers. The Company does not own or operate any hospitals. However, if the Company did own and/or operate hospitals, or if the Staff views the Company as having a role in decision-making with respect to the food and meal options provided by the hospitals with which it contracts or where its clients use the Company's insurance coverage, the Proposal relates directly to the products and services that the Company would develop and/or offer to customers. Similar to the proposals in *Papa John's*, *Amazon 2016* and *Mondelēz*, and where the proposals expressed the individual proponents' concerns as to the possible impacts of the products and services developed and offered by each company, including possible health impacts, the Proposal requests the Company "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 Supporting Statement underscores the Proposal's focus on the Company's decisions concerning the products and services it offers, noting that the Company has "a responsibility to its investors and stakeholders to require their hospitals to provide plant-based food options to hospital patients, staff and visitors." Consistent with the precedents cited above, the Proposal is therefore excludable under Rule 14a-8(i)(7) because, if the Company did own and/or operate hospitals, or if the Staff views the Company as having a role in decision-making with respect to the food and meal options provided by the hospitals with which it contracts or where its clients use the Company's insurance coverage, it focuses on the products the Company offers to its customers, and thus relates to the Company's day-to-day operations.

Thus, consistent with Staff precedent, the Proposal, by focusing on the food products and options that the Company could offer, addresses issues that are ordinary business matters for the Company and is properly excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations.

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2

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(June 28, 2005). Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

Here, the Proposal requests the Company “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,” and does not focus on any significant policy issues that transcend the Company’s ordinary business operations. Instead, as discussed above, the Proposal’s principal focus is the development and offering of specific Company products and services. Notwithstanding the Supporting Statement’s references to health considerations for hospital patients, the Proposal is fundamentally concerned with economic considerations related to the meal and food options that the Company could theoretically offer if it owned and/or operated hospitals, not matters of improving public health. Specifically, the Supporting Statement argues that the Proposal is necessary because of the Company’s “responsibility to its *investors* and stakeholders.” (emphasis added) Because of its focus on the options of food-related services and products that could be offered (meal service, vending machines and cafeterias) by the Company if it owned and/or operated hospitals or if it is viewed as having a role in decision-making regarding such services and products, the Proposal is readily distinguishable from proposals that focused solely on negative impacts to animal welfare, the environment and public health related to a company’s ordinary business operations. *See, e.g., The TJX Companies, Inc.* (avail. Apr. 9, 2020) (unable to concur with the exclusion of a proposal requesting a report on the “material risks of continuing operations without a company-wide animal welfare policy or restrictions on animal-sourced products associated with animal cruelty”); *Arch Coal, Inc.* (avail. Feb. 10, 2012) (unable to concur with the exclusion of a proposal requesting a report on the company’s “efforts to reduce environmental and health hazards associated with” the company’s mining operations); *Newmont Mining Corp.* (avail. Feb. 5, 2007) (unable to concur with the exclusion of a proposal requesting a report “on the potential environmental and public health damage resulting from the company’s mining and waste disposal operations”). Here, the Proposal is focused solely on the food-related services and products that the Company could theoretically provide. Thus, unlike the proposals at issue in *Arch Coal* and *Newmont Mining*, the Proposal is not actually focused on the possible negative consequences to public health, but is more broadly focused on economic considerations related to the Company’s theoretical offering of food-related products and services. And unlike *The TJX Companies*, the Proposal makes no reference to any purported impacts on animal welfare associated with the request to offer the specific food-related products and services that are the focus on the Proposal. (We also note that even if the Proposal focused on such issues, it would still be excludable under Rule 14a-8(i)(7). *See, e.g., United Continental Holdings, Inc.* (avail. Mar. 23, 2018) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board report on “regulatory risk and

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discriminatory effects of smaller cabin seat sizes on overweight, obese, and tall passengers” as “relating to its ordinary business operations”); *Viacom Inc.* (avail. Dec. 18, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board issue a report assessing the company’s policy responses to public concerns as to linkages of food and beverage advertising to impacts on children’s health as “relat[ing] to the nature, presentation and content of advertising”); *Papa John’s International Inc.* (avail. Feb. 13, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company include more vegan offering in its restaurants, despite assertion the proposal would promote animal welfare, as related to “the products offered for sale by the company”).)

Even if the Proposal were to raise a significant policy issue, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *Wells Fargo (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) (“*Wells Fargo 2019*”), the proposal requested that the board commission an independent study and then report to shareholders on “options for the board[] to amend [the] [c]ompany’s governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction.” In spite of language relating to various compliance and governance issues at the company, the Staff concurred with exclusion of the proposal based on ordinary business. While it is possible that one or more of those issues related to policy issues that transcend ordinary business and may have been significant to the company, the “Resolved” clause focused on the products and services offered by the company, rendering the proposal excludable under Rule 14a-8(i)(7). Similarly, in *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019) (“*Amazon 2019*”), where the proposal arguably touched on sustainability concerns, the proposal was broadly worded, encompassed a wide range of issues relating to the company’s business and did not focus on any single issue. As a result, the Staff granted no-action relief under Rule 14a-8(i)(7), noting that “the [p]roposal relates generally to ‘the community impacts’ of the [c]ompany’s operations and does not appear to focus on an issue that transcends ordinary business matters.” Here, the Proposal presents an even stronger case for exclusion than *Wells Fargo 2019* and *Amazon 2019*, as the Proposal does not focus on any significant policy issues. Instead, the Proposal’s focus is on the Company’s choice to offer particular products to customers and the tangential impact that business might have on investors and stakeholders. Thus, as in *Wells Fargo 2019* and *Amazon 2019*, the Proposal fails to focus on any issue that might rise to the level of significance that would preclude exclusion.

As discussed above, the Company does not in fact own or operate any hospitals and therefore has no role in decision-making regarding the food-related products and services. However, even if the Company did have a role in such decision-making, the Proposal would relate to ordinary business matters: decisions regarding the products and services that a company offers. More specifically, the Proposal focuses on these ordinary business matters as they would relate to a

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discrete aspect of the Company's theoretical operations: its development and offering of food-related products and services to customers in a hospital setting. Accordingly, because the Proposal's request is directly related to what would constitute the Company's ordinary business operations and does not transcend those ordinary business operations, similar to the proposals in the precedents discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2023 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Kathy Kiefer, Elevance Health, Inc.
Debra Bouton, Beyond Investing LLC

EXHIBIT A



September 2, 2022

Secretary
Elevance Health
220 Virginia Ave
Mail No. IN0204-A381
Indianapolis, Indiana 46204
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 Elevance Health Inc. 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 [REDACTED] Beyond Investing LLC has beneficially owned more than \$2,000 worth of ELV common stock for longer than a year. Beyond Investing LLC intends to continue ownership of at least \$2,000 worth of ELV 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 a white background.

Debra Bouton
Beyond Investing LLC

[REDACTED]
Phone: [REDACTED]
[REDACTED]@beyondinvesting.com

Stockholder Proposal Regarding Serving Plant-Based Meals in Hospitals

The following proposal is submitted by Beyond Investing LLC, the beneficial owner of 1159 shares of ELV common stock.

RESOLVED, that shareholders of Elevance Health Incorporated (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."¹

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.² 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.³ 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."⁴

Given the impact of nutrition on a patient's recovery process and overall health, the proposers of this resolution believe the Elevance Health Inc. 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>.