



DIVISION OF  
CORPORATION FINANCE

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

March 2, 2023

Marc S. Gerber  
Skadden, Arps, Slate, Meagher & Flom LLP

Re: Johnson & Johnson (the "Company")  
Incoming letter dated December 8, 2022

Dear Marc S. Gerber:

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

The Proposal requests that the Company publish a report, at reasonable expense, explaining the business rationale for its participation in corporate and executive membership organizations and how such involvement by the Company and its corporate leaders fulfills its fiduciary duty to shareholders, and requests that this report disclose and itemize all costs paid for by the Company related to participation in such organizations.

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: Paul Chesser  
National Legal and Policy Center

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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

December 8, 2022

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

RE: Johnson & Johnson – 2023 Annual Meeting  
Omission of Shareholder Proposal of  
National Legal and Policy Center

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Johnson & Johnson, a New Jersey corporation, to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Johnson & Johnson’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Legal and Policy Center (the “Proponent”) from the proxy materials to be distributed by Johnson & Johnson in connection with its 2023 annual meeting of shareholders (the “2023 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as

notice of Johnson & Johnson's intent to omit the Proposal from the 2023 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to Johnson & Johnson.

### **I. The Proposal**

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

**Resolved:** We request that Johnson & Johnson (“Company”) publish a report, at reasonable expense, explaining the business rationale for its participation in corporate and executive membership organizations, and how such involvement by the Company and its corporate leaders fulfills its fiduciary duty to shareholders. The report shall disclose and itemize *all* costs paid for by the Company related to participation in such organizations, including dues, memberships, communications, solicitations, meetings, travel expenses, etc.

### **II. Basis for Exclusion**

We hereby respectfully request that the Staff concur in Johnson & Johnson's view that it may exclude the Proposal from the 2023 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to Johnson & Johnson's ordinary business operations.

### **III. Background**

On October 21, 2022, Johnson & Johnson received the Proposal, accompanied by a cover letter dated October 19, 2022. On October 26, 2022, Johnson & Johnson sent a letter to the Proponent requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent had beneficially owned the requisite number of shares of Johnson & Johnson common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal, which the Proponent satisfactorily responded to on October 28, 2022. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.<sup>1</sup>

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<sup>1</sup> Exhibit A omits correspondence between Johnson & Johnson and the Proponent that is irrelevant to this request, such as the aforementioned deficiency letter and subsequent response. See the Staff's “Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8

**IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to Johnson & Johnson'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 involves a matter of 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").

Consistent with this guidance, the Staff has permitted companies to exclude shareholder proposals under Rule 14a-8(i)(7) when, viewed in their entirety, those proposals focused primarily on relationships with or contributions made to specific organizations or types of organizations. For example, in *Pfizer Inc.* (Feb. 12, 2018), the Staff permitted the exclusion of a proposal requesting that the company review its policies related to human rights to assess and report on areas where the company needed to adopt and implement additional policies. The company noted that the proposal, "viewed in its entirety with the preamble and the supporting statement, focuses primarily on Pfizer's relationships with specific organizations, namely Pfizer's relationships with the Human Rights Campaign and the Southern Poverty Law Center."

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Submissions and Related Materials" (Dec. 17, 2021), available at <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217>.

The Staff concurred that the proposal therefore related to the company's ordinary business operations and was excludable under Rule 14a-8(i)(7). *See also Netflix, Inc.* (Apr. 9, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal calling for the company to prepare and annually update a report to shareholders listing and analyzing charitable contributions made or committed during the prior year, in which the company argued that the proposal and the supporting statement, when read together, focused primarily on the company's contributions to organizations that support social justice movements); *PG&E Corp.* (Feb. 4, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal calling for formation of a committee to solicit feedback on the effect of anti-traditional family political and charitable contributions, noting that "the proposal relates to contributions to specific types of organizations"); *The Walt Disney Co.* (Nov. 20, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions under a company program, noting that "the proposal relates to charitable contributions to a specific organization"); *Home Depot, Inc.* (Mar. 18, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a list of recipients of charitable contributions or merchandise vouchers of \$5,000 or more, noting that "the proposal relates to contributions to specific types of organizations," *i.e.*, groups supporting the gay, lesbian, bisexual and transgender community and same-sex marriage); *Johnson & Johnson* (Feb. 12, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company list all of its charitable contributions on the company's website, where the supporting statement referenced Planned Parenthood and other similar organizations, because the proposal was directed at "contributions to specific types of organizations"); *Bank of America Corp.* (Jan. 24, 2003) (permitting exclusion under Rule 14a-8(i)(7) of a proposal to cease making charitable contributions where a majority of the proposal referenced abortion and religious beliefs, noting that the proposal relates to "charitable contributions directed to specific types of organizations"); *Schering-Plough Corp.* (Mar. 4, 2002) (permitting exclusion under Rule 14a-8(i)(7) of a proposal to form a committee to study charitable contributions where the proposal sought to involve the company in the issue of abortion, noting that the proposal relates to "charitable contributions directed to specific types of organizations"). As demonstrated in these letters, a proposal focused primarily on relationships with or contributions made to specific organizations or types of organizations is excludable under Rule 14a-8(i)(7) both in instances where that focus is clear from the resolution and in instances where, despite a facially neutral resolution, that focus is clear from the proposal viewed in its entirety.

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to a company's general adherence to ethical business practices and policies. For example, in *The Goldman Sachs Group, Inc.* (Feb. 13, 2015), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal that requested that the board adopt a particular set of public policy advocacy guidelines regarding corporate governance and accountability as relating to the ordinary business matter of

the company's "general adherence to ethical business practices." Notably, the proposal's guidelines included that a "corporation should maximize shareholder value," should have the "sole purpose" of enriching its managers and shareholders and the "sole moral obligation of directors should be to maximize shareholder value." In arguing that the proposal related to ordinary business matters, the company noted that while the scope of the guidelines in the proposal were unclear, they appeared to seek to direct the application of ethical principles, and to limit ethical and other considerations, with respect to the business and other activities of the company and its directors and employees. *See also PayPal Holdings, Inc.* (Apr. 7, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's board of directors compare the company's code of business conduct and ethics with the actual operations of the company, noting that "the [p]roposal relates to, and does not transcend, ordinary business matters"); *Mattel, Inc.* (Feb. 10, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's board of directors require that the company's suppliers annually publish a report about compliance with the International Council of Toy Industries' Code of Business Practices, noting the company's assertion that the code "has a broad scope that covers several topics that relate to the [c]ompany's ordinary business operations and are not significant policy issues"); *Verizon Communications Inc.* (Jan. 10, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's board of directors form a committee to monitor the company's integrity, trustworthiness and reliability, noting that "[p]roposals that concern general adherence to ethical business practices are generally excludable under rule 14a-8(i)(7)").

The Staff also has permitted the exclusion of proposals relating to the determination and implementation of a company's strategies for enhancing shareholder value. *See, e.g., 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)").

In this instance, the Proposal, viewed in its entirety with the supporting statement, focuses on Johnson & Johnson's participation in specific organizations and types of organizations, namely the World Economic Forum, the Council on Foreign Relations and the Business Roundtable. In this regard, the supporting statement claims that the agendas of these organizations are "radical" and "inconsistent" with the values of most Johnson & Johnson shareholders. The supporting statement continues by arguing that the agendas of these organizations "do not align" with the interests of Johnson & Johnson shareholders, presumably because of the shared focus of these

organizations on the role of corporations in society, thereby somehow diminishing the interests of Johnson & Johnson shareholders. Moreover, almost every paragraph of the supporting statement relates to these three organizations. Johnson & Johnson's membership in these three organizations, the Proposal argues, results in shareholder capital being used to pursue an "anti-human, anti-freedom agenda" that does not align with the Proposal's articulation of Johnson & Johnson's purpose. While the Proposal contains a number of allegations, it is clear that it focuses on Johnson & Johnson's participation in specific types of organizations — those that promote consideration of the roles that businesses might play within broader society. Accordingly, the Proposal may be excluded from Johnson & Johnson's 2023 proxy materials pursuant to Rule 14a-8(i)(7) as relating to the ordinary business operations of Johnson & Johnson.

In addition, the Proposal and supporting statement, when read together, focus on Johnson & Johnson's general adherence to ethical business practices and policies along with Johnson & Johnson's approach to enhancing shareholder value. The Proposal does so by requesting a report on the "business rationale" for Johnson & Johnson's participation in certain external organizations, which the Proposal claims "have dubious value to shareholders." In this respect, the Proposal argues that membership in such organizations must comport with Johnson & Johnson's "basic purpose of providing value to shareholders." Moreover, the Proposal argues that certain organizations maintain agendas that "do not align with the interests of [Johnson & Johnson] shareholders and the traditional – and legally binding – definition of a corporation," and that shareholder capital is being used to pursue an "anti-human, anti-freedom agenda." This clearly demonstrates a concern with the ordinary business matters of Johnson & Johnson's general adherence to ethical business practices and policies, including the determination under such practices and policies to join or abstain from joining certain organizations, and Johnson & Johnson's approach to enhancing shareholder value.

In particular, the Proposal attempts to direct Johnson & Johnson's application of ethical principles and strategy for enhancing shareholder value in a narrow manner. This clearly relates to Johnson & Johnson's ordinary business, including the fact that Johnson & Johnson already adheres to ethical business practices through its compliance with its Code of Business Conduct and Credo, which states that Johnson & Johnson's "first responsibility is to the patients, doctors and nurses, to mothers and fathers and all others who use [Johnson & Johnson's] products and services" and notes that "Johnson & Johnson is committed to citizenship and community involvement."<sup>2</sup> The Credo also directs Johnson & Johnson's strategies for enhancing shareholder value by stating that "[o]ur final responsibility is to our stockholders. Business must make a sound profit" and "stockholders should realize a fair return." Consistent with the precedent described above, decisions regarding Johnson & Johnson's ethical business practices and policies,

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<sup>2</sup> See Johnson & Johnson's Code of Business Conduct, available at <https://www.jnj.com/code-of-business-conduct/english>.

and strategies for enhancing shareholder value, fall squarely within the purview of management and could not, as a practical matter, be subject to direct shareholder oversight. For this reason, the Proposal is excludable 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. For example, in *PetSmart, Inc.* (Mar. 24, 2011), the proposal requested that the company's board require suppliers to certify that they had not violated certain laws regulating the treatment of animals. Those laws affected a wide array of matters dealing with the company's ordinary business operations beyond the humane treatment of animals, which the Staff has recognized as a significant policy issue. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted the company's view that "the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" See also, e.g., *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 touch on any significant policy issue with broad societal impact. However, even if the Proposal did touch on a significant policy issue, the Proposal's overwhelming concern with Johnson & Johnson's relationships with specific organizations and types of organizations, as well as Johnson & Johnson's general adherence to ethical business practices and policies and strategies for enhancing shareholder value, demonstrate that the Proposal's focus is on 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.

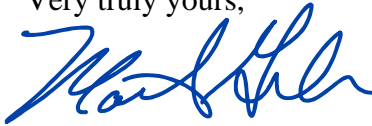
Accordingly, the Proposal should be excluded from Johnson & Johnson's 2023 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Johnson & Johnson's ordinary business operations.



**V. Conclusion**

Based upon the foregoing analysis, Johnson & Johnson respectfully requests that the Staff concur that it will take no action if Johnson & Johnson excludes the Proposal from its 2023 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Johnson & Johnson's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Marc Larkins  
Worldwide Vice President, Corporate Governance & Corporate Secretary  
Johnson & Johnson

Paul Chesser  
Director  
Corporate Integrity Project

EXHIBIT A

(see attached)

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# National Legal and Policy Center

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*"promoting ethics in public life"*



October 19, 2022

Office of the Corporate Secretary  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

VIA UPS:

Dear Corporate Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in Johnson & Johnson's ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

National Legal and Policy Center (NLPC) is the beneficial owner of 27 shares of the Company's common stock with a value exceeding \$2,000, which shares have been held continuously for more than three years prior to this date of submission. NLPC intends to hold the shares through the date of the Company's next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to deliver a disclosure report about the Company's participation in outside organizations and associations. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I am able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal. I can be reached at [REDACTED] or at [REDACTED]. I am available Monday through Friday from 9am to 5pm, Eastern Time.

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me at [REDACTED].

Nat'l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: [REDACTED] Email: [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser". The signature is fluid and written in black ink.

Paul Chesser  
Director  
Corporate Integrity Project

Enclosure: "Disclosure Report of Partnerships with  
Globalist Organizations" proposal

## **External Organizations and Associations Participation Disclosure**

**Resolved:** We request that Johnson & Johnson (“Company”) publish a report, at reasonable expense, explaining the business rationale for its participation in corporate and executive membership organizations, and how such involvement by the Company and its corporate leaders fulfills its fiduciary duty to shareholders. The report shall disclose and itemize *all* costs paid for by the Company related to participation in such organizations, including dues, memberships, communications, solicitations, meetings, travel expenses, etc.

### **Supporting Statement:**

Johnson & Johnson is involved with many external organizations, some which have dubious value to shareholders. They include: a partnership in the World Economic Forum (WEF); an affiliation with the Council on Foreign Relations (CFR); and CEO Joaquin Duato is a member of the Business Roundtable (BR).

Mr. Duato’s predecessor as CEO, current Company Executive Chairman Alex Gorsky, ran BR’s governance committee in 2019 and is credited with rewriting its “Statement on the Purpose of a Corporation” to cater to the special interests of selected “stakeholders,” rather than the interests of its owners, the shareholders.

“There were times when I felt like Thomas Jefferson,” Mr. Gorsky told *The New York Times* about his BR authorship experience.

Johnson & Johnson’s legal duty as a New Jersey business corporation requires the Company to first serve the interests of shareholders. All its actions and expenditures with third parties (while permissible) must be shown to align with the interests of shareholders.

As three examples, the agendas of WEF, CFR and BR appear antithetical with the Company’s fiduciary duty. The Board should explain how partnerships with such organizations serve the interests of shareholders (not directors, executives, or other parties).

For example, WEF describes itself as an “international organization for public-private cooperation,” and that it was “founded on the stakeholder theory, which asserts that an organization is accountable to all parts of society.”

Similarly, CFR describes itself as a “membership organization” for both “government officials” and “business executives” on an international scale.

Those agendas do not align with the interests of Company shareholders and the traditional – and legally binding – definition of a corporation. The more the Board favors preferred “stakeholders,” the less it is accountable to capital-providing shareholders. In partnering with groups like WEF, CFR and BR, the Company’s shareholders then fund the movement designed to diminish their own influence as shareholders within the Company.

Most importantly, the radical agendas of organizations such as these make partnerships with them inconsistent with the values of most Company shareholders.

For example, WEF openly advocates for transhumanism, abolishing private property, eating bugs, social credit systems, "The Great Reset," and host of other Orwellian objectives.

Most Company shareholders are unaware that their capital is in part being used to pursue this anti-human, anti-freedom agenda. Moreover, none of this aligns with the Company's basic purpose of providing value to shareholders by manufacturing and selling health care products.