



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

DIVISION OF  
CORPORATION FINANCE

February 18, 2014

Elizabeth A. Ising  
Gibson, Dunn & Crutcher LLP  
shareholderproposals@gibsondunn.com

Re: Johnson & Johnson  
Incoming letter dated December 20, 2013

Dear Ms. Ising:

This is in response to your letter dated December 20, 2013 concerning the shareholder proposal submitted to Johnson & Johnson by the National Center for Public Policy Research. We also have received a letter from the proponent dated January 13, 2014. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Special Counsel

Enclosure

cc: Justin Danhof  
The National Center for Public Policy Research  
jdanhof@nationalcenter.org

February 18, 2014

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: Johnson & Johnson  
Incoming letter dated December 20, 2013

The proposal requests that the board adopt the health care reform principles that are specified in the proposal.

There appears to be some basis for your view that Johnson & Johnson may exclude the proposal under rule 14a-8(i)(7), as relating to Johnson & Johnson's ordinary business operations. In this regard, we note that the proposal appears directed at involving Johnson & Johnson in the political or legislative process relating to an aspect of Johnson & Johnson's operations. We note in particular that, although the proposal asks the company to adopt principles of health care reform, it advocates specific legislative initiatives, including the repeal of specific laws and government mandates and the enactment of specific tax deductions or tax credits that appear to relate to Johnson & Johnson's business operations. Accordingly, we will not recommend enforcement action to the Commission if Johnson & Johnson omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Sonia Bednarowski  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

**THE NATIONAL CENTER**

★★★

**FOR PUBLIC POLICY RESEARCH**

Amy M. Ridenour

Chairman

David A. Ridenour

President

January 13, 2014

Via Email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Dear Sir or Madam,

This correspondence is in response to the letter of Elizabeth A. Ising on behalf of Johnson & Johnson and Company (the “Company”) dated December 20, 2013, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2014 proxy materials for its 2014 annual shareholder meeting.

### **RESPONSE TO JOHNSON & JOHNSON’s CLAIMS**

The Company’s no-action request is rife with misrepresentations and falsehoods concerning the language, nature and intent of our Proposal. Aware that the Staff has repeatedly allowed proposals substantially similar to ours, the Company ignores the crux of those decisions and instead cites to a number of irrelevant no-action contests.

The Staff has repeatedly ruled that proposals such as ours that ask a company to adopt health care reforms are allowable and do not “deal with matters relating to the company’s ordinary business operations.” Rule 14a-8(i)(7). To avoid this unambiguous line of precedent, Johnson & Johnson impermissibly casts our Proposal as one that relates to employee benefits and seeks to direct the Company’s lobbying operations.

The Company cannot rewrite the plain language found within the four corners of our Proposal. Our Proposal, like previously allowed proposals in the past, asks the Company to adopt basic principles for health care reform as a societal matter.

The Company has the burden of persuading the Staff that it may exclude our Proposal from its 2014 proxy materials. Staff Legal Bulletin No. 14 (CF) (July 13, 2001) (“SLB 14”). For the following reasons, the Company has fallen well short of this burden.

***The Proposal May Not Be Excluded Under Rule 14a-8(i)(7) Because It Only Asks the Company to Adopt a Set of Principles as a Societal Matter – Not to Enact or Lobby for Them***

Under Rule 14a-8(i)(7), a company may exclude a shareholder proposal if it deals with matters relating to the company’s “ordinary business.” The Commission has indicated two central considerations regarding exclusion under Rule 14a-8(i)(7). First, the Commission considers the subject matter of the proposal. Next, the Commission considers the degree to which the proposal seeks to micromanage a company. Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”).

The Company claims that our Proposal relates to its ordinary business because it “seeks to involve the Company in the political or legislative process with respect to an aspect of the Company’s operations.” This assertion is without merit. The Company goes well beyond the plain meaning of our Proposal in an attempt to turn our allowable request for the Company to adopt health care reform principles into an impermissible attempt to take over Johnson & Johnson’s lobbying operations.

The Staff should not entertain the Company’s fictions.

The Proposal never asks the Company to engage in lobbying of any kind. The resolved section of our Proposal clearly “request[s] that the Board of Directors *adopt* the following Health Care Reform Principles.” (Emphasis added). The Proposal does not ask the Company to engage with any governmental employee, agency or outside group to lobby for or against any legislation, regulation or rulemaking. Rather, our Proposal simply asks for the Company to adopt health care reform principles as a societal matter.

The Company cites to *International Business Machines Corp.*, (avail. December 17, 2008) as evidence that our Proposal is excludable under Rule 14a-8(i)(7). In that case, however, the proponent asked the company to “[j]oin with other corporations in support of the establishment of a properly financed national health insurance system as an alternative *for funding employee benefits.*” (Emphasis added). The *IBM* proposal violated clear Staff precedent, and is wholly irrelevant to our Proposal. First, the Staff has consistently ruled that proposals dealing with how a company engages its employee benefits are excludable as interfering with ordinary business. *See Bellsouth Corporation*, (avail. January 3, 2005). Unlike *IBM*, our Proposal contains no reference to the Company’s employees or their benefits. Furthermore, the *IBM* proposal asked the

company to join with other corporations to set up some form of universal health insurance. Our Proposal only asks the Company to adopt a set of principles. It contemplates no further action.

The Staff has repeatedly ruled that shareholder proposals that ask a company to adopt principles for health care reform may not be excluded under Rule 14a-8(i)(7). See *UnitedHealth Group Incorporated*, (avail. April 2, 2008);<sup>1</sup> *CBS Corporation*, (avail. March 30, 2009); *Bank of America Corporation*, (avail. Feb. 17, 2009); *General Motors Corporation*, (avail. March 26, 2008); *Exxon Mobil Corporation*, (avail. February 25, 2008); *General Motors Corporation*, (avail. February 25, 2008); *Xcel Energy Inc.*, (avail. February 15, 2008); *UST Inc.*, (February 7, 2008); *The Boeing Company*, (avail. February 5, 2008); and *United Technologies Corporation*, (avail. January 31, 2008).

In the above proposals (the “progressive proposals”), the proponents made the same ask as our Proposal – that the companies adopt principles for health care reform.

The resolved sections of the progressive proposals state that:

Shareholders... urge the Board of Directors (the ‘Board’) to *adopt principles for health care reform* based upon principles reported by the Institute of Medicine:

1. Health care coverage should be universal.
2. Health care coverage should be continuous.
3. Health care coverage should be affordable to individuals and families.
4. The health insurance strategy should be affordable and sustainable for society.
5. Health insurance should enhance health and well being by promoting access to high-quality care that is effective, efficient, safe, timely, patient-centered, and equitable. (Emphasis added).

Likewise, our Proposal’s resolved section states:

The Shareholders of Johnson & Johnson request that the Board of Directors *adopt the following Health Care Reform Principles*.

1. Repeal state-level laws that prevent insurance companies from competing across state lines.

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<sup>1</sup> Note that the Staff later allowed UnitedHealth to omit the proposal (under a request for reconsideration) on the sole ground that it had substantially implemented the proposal. This has no bearing on the Staff’s decision of not allowing the company to omit the proposal on grounds that it related to the company’s ordinary business operations.

2. Increase cost transparency of health care treatments so consumers can be better-informed market participants.
3. Repeal government mandates that dictate what insurance companies must cover.
4. Enact meaningful tort reform to reduce doctors' insurance costs. These costs are often passed onto consumers, leading to unnecessarily high prices.
5. Reform federal tax laws to allow individuals to receive a standard deduction for health insurance costs or receive tax credits.
6. Remove barriers and reform federal tax laws to allow for large health savings accounts, to give individuals greater freedom over their health care expenditures. (Emphasis added).

By seeking to exclude our Proposal, the Company is inappropriately asking the Staff to make a policy preference choice. The progressive proposals make the same exact ask as our Proposal – that a company adopt principles for health care reform. The progressive proposals spell out basic government-intensive reforms, while our reforms reflect free-market ideals. The Company is unacceptably asking the Commission to overlook the fact that it allowed proposals with liberal-leaning health care preferences as the Company demands that the Staff exclude market-based fixes.

Such favoritism is not the Staff's prerogative in the no-action determination process. And the Staff should not allow the Company to use the Commission as a tool to achieve this impermissible result.

The Company next argues that it may omit the Proposal as ordinary business, since it "relates to the Company's operations as health care is central to the Company's business." This argument ignores clear Staff precedent to the contrary.

In *UnitedHealth Group Incorporated*, (avail. April 2, 2008)<sup>2</sup>, the company argued that:

UnitedHealth is a provider of health care products and services (including health insurance), both to its customers and its employees, and, as such, any proposal requesting the Company to adopt principles on health care reform that relate to the manner in which health care coverage and insurance should be provided seeks to impact both the manner in which the Company provides its products and services to the public and the manner in which it provides health benefits to its employees.

UnitedHealth further complained that:

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<sup>2</sup> Note that *UnitedHealth* is one of the progressive proposals listed above.

the Proposal here seeks to involve the Company in lobbying efforts relating to an aspect of its operations. The Proposal requests that the Company adopt principles for 'health care reform' that aim to effect change in federal health care policy – the Proposal and Supporting Statement indicate that the proposed five principles are based upon Insuring America's Health Principles and Recommendations (2004), a report 'urg[ing] the president and Congress to act immediately by establishing firm and explicit plan to reach this goal.' The report further, 'calls on the federal government to take action to achieve universal health insurance and to establish an explicit schedule to reach this goal.' (Internal citations omitted).

Despite the fact that UnitedHealth was directly engaged in the sale of health insurance, and that the progressive proposal directly implicated the health insurance market, the Staff ruled against the company, stating "[w]e are unable to concur in your view that UnitedHealth may exclude the proposal under rule 4a-8(i)(7). Accordingly we do not believe that UnitedHealth may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7)."

The Staff should uphold its clear precedent on this issue. To do otherwise would lead to absurd results in the no-action process. As the *UnitedHealth* proponent explained, the company's "argument would mean that any company receiving a shareholder proposal on a significant social issue could exclude the proposal if its business related to that significant social issue."

The Company further argues that our Proposal is different from non-excludable proposals such as that in *The Boeing Co.*, (avail. February 5, 2005), since our principles "by their very nature, would require the Company to take specific lobbying positions on health care reform." That statement would be true if we were asking the Company to lobby for the principles listed in our Proposal. We are not.

The principles espoused in our Proposal are for society writ large, not a single pharmaceutical company. The Company's delusions of grandeur aside, it could not possibly, by itself, bring forth the health care reform principles listed in the Proposal. Nor does our Proposal ask the Company to lobby for anything, let alone the health care reform principles mentioned. Furthermore, the principles listed in the progressive proposals contemplated more specific policy choices than our Proposal.

As UnitedHealth pointed out in its no-action request, "the [progressive] Proposal[s] and Supporting Statement indicate that the proposed five principles are based upon Insuring America's Health Principles and Recommendations (2004), a report 'urg[ing] the president and Congress to act immediately by establishing firm and explicit plan to reach

this goal.’ The report further, ‘calls on the federal government to take action to achieve universal health insurance and to establish an explicit schedule to reach this goal.’”

Our Proposal does not contain timetables. Our proposal does direct the Company to call on the President or Congress to do anything. The progressive proposals are far more searching in micromanaging company operations than ours.

The Company next complains that our supporting statement impermissibly criticizes past Company lobbying for the Affordable Care Act, and offers this as proof that we seek to direct its future lobbying efforts. Neither the supporting statement, nor any other section of the Proposal, ever suggests that the Company engage in any general or specific lobbying activities.

Rather, the supporting statement’s mere reference to the Affordable Care Act is offered as evidence that health care remains as one of the paramount public policy issues in the United States, and is nearly certain to remain so. According to *Talkers* magazine, the rollout of the Affordable Care Act was the most discussed story of 2013.<sup>3</sup> According to a November 2013 Gallup poll, other than dissatisfaction with the government,<sup>4</sup> more Americans felt that poor health care / the high cost of health care was the largest problem in the United States.<sup>5</sup>

According to Gallup, the issue of health care is actually a growing – not a shrinking – concern. The data showed that, “[m]entions of poor healthcare or the high cost of healthcare as a top problem in the Nov. 7-10 survey have nearly doubled since September and are higher now than in any month since the Affordable Care Act become law in March 2010. This suggests that recent troubles with the federal health exchange website and other problems with the healthcare law’s rollout, including accusations that President Barack Obama misled Americans about keeping their current coverage, may be fueling public concern.”<sup>6</sup>

Surely the Company does not mean to suggest that health care is no longer a significant public policy issue.

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<sup>3</sup> “TALKERS Magazine Compiles News/Talk Radio’s Most Talked-About Stories and People of 2013,” *Talkers*, December 24, 2013, available at <http://www.talkers.com/2013/12/24/tuesday-december-24-2013/> as of January 6, 2014.

<sup>4</sup> It can certainly be argued that the Affordable Care Act’s difficult rollout, combined with arbitrary exemptions is a driver of the public’s dissatisfaction with the government as well.

<sup>5</sup> Alyssa Brown, “More Americans Mention Healthcare as Top Problem in U.S.,” *Gallup Politics*, November 14, 2013, available at <http://www.gallup.com/poll/165848/americans-mention-healthcare-top-problem.aspx> as of January 6, 2013.

<sup>6</sup> Alyssa Brown, “More Americans Mention Healthcare as Top Problem in U.S.,” *Gallup Politics*, November 14, 2013, available at <http://www.gallup.com/poll/165848/americans-mention-healthcare-top-problem.aspx> as of January 6, 2014.

Since the Proposal does not ask the Company to lobby anyone for anything, and health care is a significant social policy issue, the Staff should uphold its prior precedent and allow our Proposal to proceed to Johnson & Johnson's shareholders for a vote.

***The Company May Not Omit Our Proposal Since it Does Not Relate to Employee Benefits***

The Staff has decided a litany of no-action contests regarding health care proposals in recent years. The distinction between impermissible health care proposals on the one hand, and the extensive Staff precedent allowing health care proposals on the other, was expressed by John W. White, the former Director of the Securities and Exchange Commission's Division of Corporation Finance, in an August 2008 speech (the "2008 speech"). In his speech, White explained:

During this past season, we were asked to make no-action determinations on a proposal of first impression – a non-binding proposal that urged companies to adopt principles for comprehensive healthcare reform. The [S]taff has taken no-action positions on various healthcare proposals in the past. For example, the [S]taff has permitted exclusion under 'ordinary business' of proposals asking a company to adopt more affordable and continuous healthcare for employees and retirees because such proposals relate to employee benefits. Similarly, proposals asking a company to lobby on employee benefit matters are excludable. This year's proposal was different – it urged companies to 'adopt principles for comprehensive healthcare reform.' Unlike prior proposals, it did not ask the companies to change their own healthcare coverage, or ask them to directly lobby anyone in support of health care change. No further action was contemplated by the proposal other than the adoption of principles.<sup>7</sup>

The 2008 speech marked a clear delineation between acceptable and excludable health care proposals. Proposals, such as ours, that ask a company to simply state its position on one of the most important issues in America – in this instance health care – are *prima facie* not excludable under Rule 14a-8(i)(7). Impermissible proposals direct either how a company handles its employee's health care benefits,<sup>8</sup> or asks a company "to directly lobby anyone in support of health care change." 2008 speech.

Our Proposal suffers from no such deficiencies.

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<sup>7</sup> Note that the allowable proposals White discusses are the progressive proposals discussed above.

<sup>8</sup> See *Bellsouth Corporation*, (avail. January 3, 2005).

The Company rightfully recognizes the distinction between permissible and impermissible health care proposals, but wrongly seeks to lump our Proposal in with the latter. Citing *CVS Caremark Corporation*, (avail. January 31, 2008, reconsideration denied February 29, 2008) and *Wyeth, Inc.*, (avail. February 25, 2008), (the impermissible proposals discussed in the 2008 speech) the Company explains that the proposals failed because they “asked the company to report to shareholders on how the company was ‘implementing such principles,’ thereby implicating employee benefits.”

Our Proposal does not request a report to shareholders. Our Proposal makes no mention of the Company’s employees or their health care benefits. Our Proposal does not require the Company to make any assessment of internal matters of risk.

The Company claims that the Proposal’s observations that we are “concerned about the rising costs of health care in the United States” and that our principles offer ways to combat these concerns “shows that the Proposal contemplates Company action regarding its internal health plans as a part of its adoption of the so-called ‘Health Care Reform Principles.’”

As stated numerous times above, we are not asking the Company to lobby for or implement the principles listed in the Proposal. We are only asking that the Company adopt the principles as a societal matter. Any action beyond that is a misreading by the Company.

***In the Interest of Expediency, the Company May Not Omit Our Proposal Because We are Willing to Amend the Proposal to Assuage the Company’s Sole Concern***

As a final matter, if the Company or the Staff would like us to amend our Proposal to unequivocally state that: “We are not asking the company to itself implement these reforms or to lobby for them. We only ask the Company to adopt these health care reform principles as a general societal matter,” we would happily do so. We do not think this qualifying section is necessary, but, in the interest of working with the Company, we are willing to do so.

The Staff has wide latitude to permit shareholders to amend proposals to align with the strictures of Rule 14a-8. *See* Staff Legal Bulletin No. 14 (CF) (July 13, 2001) (“SLB 14”). In SLB 14, the Commission stated:

There is no provision in rule 14a-8 that allows a shareholder to revise his or her proposal and supporting statement. However, we have a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. We adopted this practice to deal with proposals that generally comply with the substantive

requirements of the rule, but contain some relatively minor defects that are easily corrected. In these circumstances, we believe that the concepts underlying Exchange Act section 14(a) are best served by affording an opportunity to correct these kinds of defects.

In this instance, the addition of two short sentences – totaling 33 words<sup>9</sup> – clears up the Company's entire complaint with the Proposal. The Staff can enforce its own legal guidance by allowing this amendment. In doing so, it will rightly allow our Proposal to come before Johnson & Johnson's shareholders for a vote.

### Conclusion

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

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Staff may have with respect to this letter, please do not hesitate to call me at 202-543-4110.

Sincerely,



Justin Danhof, Esq.

cc: Elizabeth A. Ising, Gibson Dunn  
Douglas K. Chia, Johnson & Johnson

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<sup>9</sup> Note that even with the addition of these 33 words, the Proposal is still under the 500-word limit.

December 20, 2013

VIA E-MAIL

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

Re: *Johnson & Johnson*  
*Shareholder Proposal of the National Center for Public Policy Research*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Johnson & Johnson (the “Company”), intends to omit from its proxy statement and form of proxy for its 2014 Annual Meeting of Shareholders (collectively, the “2014 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof received from the National Center for Public Policy Research (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 2014 Proxy Materials with the Commission; and
- concurrently sent copies 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 this Proposal, a copy of that correspondence should concurrently be furnished 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:

The Shareholders of Johnson & Johnson request that the Board of Directors adopt the following Health Care Reform Principles.

1. Repeal state-level laws that prevent insurance companies from competing across state lines.
2. Increase cost transparency of health care treatments so consumers can be better-informed market participants.
3. Repeal government mandates that dictate what insurance companies must cover.
4. Enact meaningful tort reform to reduce doctors' insurance costs. These costs are often passed onto consumers, leading to unnecessarily high prices.
5. Reform federal tax laws to allow individuals to receive a standard deduction for health insurance costs or receive tax credits.
6. Remove barriers and reform federal tax laws to allow for large health savings accounts, to give individuals greater freedom over their health care expenditures.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2014 Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

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## ANALYSIS

### **The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Addresses Matters Related To The Company's Ordinary Business Operations.**

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal that relates to its "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 providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "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 it identified two central considerations that underlie this policy. As relevant here, one of these considerations is that certain tasks are "so fundamental to management's ability to run a company on a day to day basis" that they cannot be subject to direct shareholder oversight.

For the reasons addressed below, the Proposal relates to the Company's ordinary business operations because: (A) the Proposal seeks to involve the Company in the political or legislative process with respect to an aspect of the Company's operations; and (B) the Proposal relates to employee benefits. The Staff consistently has concurred that shareholder proposals relating to these topics implicate ordinary business matters, and as such, the Staff has concurred with the excludability of these proposals under Rule 14a-8(i)(7).

Furthermore, while the Proposal's preamble states that "[t]he Securities and Exchange Commission considers health care a significant policy issue," that assertion, even if correct, does not prevent the Proposal from being excludable. A proposal that includes ordinary business matters is excludable under Rule 14a-8(i)(7) even if it also touches upon a significant policy issue. *See Apache Corp.* (avail. Mar. 5, 2008) (concurring in the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on specified principles, where the Staff noted that "some of the principles relate to Apache's ordinary business operations"); *General Electric Co.* (avail. Feb. 10, 2000) (concurring in the exclusion of a proposal relating to the discontinuation of an accounting method and use of funds related to an executive compensation program as dealing with both the significant policy issue of senior executive compensation and the ordinary business matter of choice of accounting method); *Intel Corp.* (avail. Mar. 18, 1999) ("There appears to be some basis for

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your view that Intel may exclude the proposal under [R]ule 14a-8(i)(7), as relating, *in part*, to Intel's ordinary business operations . . ." (emphasis added)); *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) (concurring in the exclusion of a proposal requesting a report on Wal-Mart's actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, child labor or who fail to comply with laws protecting employees' rights because "paragraph 3 of the description of matters to be included in the report relates to ordinary business operations").

A. *The Proposal And Supporting Statement Involve Ordinary Business Matters By Attempting To Involve The Company In The Political Or Legislative Process Relating To An Aspect Of Its Operations.*

The Proposal is excludable because, by requesting the adoption of several so-called "Health Care Reform Principles" that require changes to various state and federal laws regarding health care, health insurance and tort reform, the Proposal seeks to involve the Company in the political or legislative process relating to an aspect of the Company's operations.

The Staff consistently has granted no-action relief to companies where, as here, a shareholder proposal seeks to involve the company in the political or legislative process relating to an aspect of its operations. For example, the proposal in *International Business Machines Corp.* (avail. Dec. 17, 2008) ("*IBM 2008*") asked the company to provide its shareholders a comparison of health benefits costs in the United States vs. other countries and "[j]oin with other corporations in support of the establishment of a properly financed national health insurance system as an alternative for funding employee health benefits." The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7), noting that it was "directed at involving IBM in the political or legislative process relating to an aspect of IBM's operations." Similarly, in *Brunswick Corp.* (avail. Feb. 10, 1992), the Staff concurred that a proposal calling for a report (i) comparing health care standards, methods of administration, costs and financing of health care plans in all countries where the company does business, and (ii) describing aspects of governmental policy affecting those plans that should be included in the United States' development of a national health insurance plan could be excluded from the company's proxy materials in reliance on the predecessor to Rule 14a-8(i)(7) because it was directed at involving the company in the political or legislative process relating to an aspect of the company's operations. It is noteworthy that the Staff's determination regarding this shareholder proposal was challenged by its proponent, the New York City Employees' Retirement System ("NYCERS"), and the Staff's determination that the proposal could be excluded as ordinary business was upheld. *See New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144 (S.D.N.Y. 1992). Judge Patterson, who heard the challenge, noted that "[NYCERS's] [p]roposal as adopted is

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not limited to corporate policy but seeks to cause the corporation to form national policy,” and that “as admirable as [NYCERS’s] objectives may be, there is no precedent to support such a proposal . . . .” *Id.* at 147. *See also International Business Machines Corp.* (avail. Jan. 21, 2002) (same as *IBM 2008*); *Chrysler Corp.* (avail. Feb. 10, 1992) (concurring in the exclusion of a proposal requesting that the company support and lobby for universal health coverage, which the company argued related to its employee health benefit plans, because it was “directed at involving the [c]ompany in the political or legislative process relating to an aspect of the [c]ompany’s operations”).

Similar to the proposal in *IBM 2008*, the Proposal is directed at involving the Company in the political or legislative process relating to an aspect of the Company’s operations—namely, the Company’s operations, through its operating subsidiaries, as a developer, manufacturer and seller of health care products. Just as the proposal in *IBM 2008* urged the company to “support . . . the establishment of a properly financed national health insurance system,” the Proposal requests that the Company’s Board of Directors support specified state- and federal-level reform measures, including “[r]epeal state-level laws that prevent insurance companies from competing across state lines”; “[r]epeal government mandates that dictate what insurance companies must cover”; “[e]nact meaningful tort reform to reduce doctors’ insurance costs”; [r]eform federal tax laws to allow individuals to receive a standard deduction for health insurance costs or receive tax credits”; and “[r]emove barriers and reform federal tax laws to allow for large health savings accounts.” In addition, paralleling the *IBM 2008* proposal’s preamble, the Proposal’s preamble and supporting statement express “concern[] about the rising costs of health care in the United States,” assert that the health care “cost curve is unsustainable,” and observe that “the debate over the government’s role in providing health care insurance and regulating the health care marketplace continues.”

The Proposal relates to the Company’s operations as health care is central to the Company’s business. As disclosed in the Company’s 2012 Annual Report, in 2012 the Company generated \$25.4 billion in worldwide pharmaceutical sales, \$27.4 billion in worldwide medical device and diagnostics sales, and \$14.4 billion in worldwide consumer health care products sales. The Company has the world’s largest medical device and diagnostics business, eighth largest pharmaceutical business, sixth largest consumer health care business and fifth largest biologics business. The Proposal explicitly acknowledges the centrality of health care to the Company’s business, referring to the Company as “a leading American health care company.” As such, the Proposal, which would dictate the Company’s legislative priorities and strategies concerning U.S. health care reform, would direct the Company in “certain core matters involving the company’s business and operations.” *See* 1998 Release.

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The Staff also has concurred that shareholder proposals directed at lobbying activities related to a company's products involve such company's ordinary business. For example, in *Bristol-Myers Squibb Co. (AFL-CIO Reserve Fund)* (avail. Feb. 17, 2009), a proposal requested that the company's board prepare a report regarding the company's lobbying activities and expenses relating to the Medicare Prescription Drug Plans (Part D). The company noted in its no-action request that the company's pharmaceuticals segment manufactured and sold numerous company products covered by the Medicare Prescription Drug Plans (Part D). In concurring that the proposal could be excluded under Rule 14a-8(i)(7), the Staff noted that the proposal "relat[es] to [the company's] ordinary business operations (i.e., lobbying activities concerning its products)." See also *Abbott Laboratories* (avail. Feb. 11, 2009) (same); *General Electric Co. (Flowers)* (avail. Jan. 29 1997) (concurring with the exclusion of a shareholder proposal requesting that the company refrain from the use of company funds to oppose specific citizen ballot initiatives, including initiatives related to the company's nuclear reactor products, because it focused on "lobbying activities which relate to the [c]ompany's products"); *General Motors Corp.* (avail. Mar. 17, 1993) (concurring in the exclusion under Rule 14a-8(c)(7) of a proposal to require an automobile manufacturer to cease lobbying to influence legislation dealing with automobile fuel economy standards, because "the proposal appears to be directed toward the [c]ompany's lobbying activities concerning its products").

In contrast to proposals, such as the non-excludable proposal in *The Boeing Co.* (avail. Feb. 5, 2008), which requested that a company adopt broadly phrased principles, the "[p]rinciples" set forth in the Proposal call for specific legislative actions. For example, one of the action items in the Proposal is "[r]epeal state-level laws that prevent insurance companies from competing across state lines." Another is "[r]epeal government mandates that dictate what insurance companies must cover." Other action items involve the enactment of "meaningful tort reform" and the reform of the federal tax code to permit "a standard deduction for health insurance costs" or the receipt of tax credits. These items, by their very nature, would require the Company to take specific lobbying positions on health care reform.

The Proposal's supporting statement also confirms that the Proposal envisions the Company engaging in lobbying activities concerning health care. For example, the supporting statement states that "[a]s a leading American health care company, Johnson & Johnson is positioned to influence the discussion of American health care reform." It suggests that adopting the suggested principles will enable the Company to "be a leader in cost-saving measures that will ensure greater access to health care for Americans and superior health care products and outcomes." The Proposal's supporting statement directly criticizes the Company's support of specific policies, such as those reflected in "the Affordable Care Act,"

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arguing that such policies “increased the federal government’s control over the health care marketplace.” These statements make it clear that the Proposal contemplates that the Company will engage in the legislative process, including lobbying, in matters related to health care reform. *Cf. Bristol-Myers Squibb Co.* (avail. Jan. 29, 2013) (concurring that, due to the supporting statement’s focus on a specific piece of legislation, an otherwise neutrally worded proposal could be excluded as focusing on the company’s lobbying activities relating to the operation of its business).

Determining whether to support changes in public policies and specific laws and regulations impacts many aspects of the Company’s business. These determinations are “fundamental to management’s ability to run a company on a day to day basis.” The Company devotes significant time and resources to participating in the legislative and regulatory process as an integral aspect of its short- and long-term business goals and strategies. This process involves the study of a number of factors, including the effects of specific laws and regulations on the Company’s products, financial position and shareholder value. In developing policy positions and lobbying priorities, the Company also takes into account its stated beliefs and foundational principles, such as those embodied in its Credo.<sup>1</sup> Likewise, decisions as to how and whether to lobby on behalf of certain issues of public policy, or whether to otherwise participate in the political process, involve complex considerations. Management must analyze and gauge the impact of proposed legislation on the Company’s business, the likelihood that lobbying efforts will be successful, whether to use corporate resources and the interaction of such efforts with other lobbying and public policy objectives of the Company. Indeed, the Company shares on its website much information regarding its public policy positions and U.S. government affairs activities, including its positions and activities relating to health care.<sup>2</sup> These positions and activities are the product of extensive consideration and analysis by management, yet the Proposal seeks to dictate which positions and activities the Company should pursue—positions and activities that might well conflict with the Company’s business interests.

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<sup>1</sup> *Available at* [http://www.jnj.com/sites/default/files/pdf/jnj\\_ourcredo\\_english\\_us\\_8.5x11\\_cmyk.pdf](http://www.jnj.com/sites/default/files/pdf/jnj_ourcredo_english_us_8.5x11_cmyk.pdf).

<sup>2</sup> *See, e.g.,* “U.S. Health Care Reform Principles,” *available at* <http://www.jnj.com/sites/default/files/pdf/us-health-care-reform-principles.pdf>; “Public Policy Positions,” *available at* [http://www.jnj.com/responsibility/ESG/Governance/Public\\_Policy\\_and\\_Contributions/Platforms](http://www.jnj.com/responsibility/ESG/Governance/Public_Policy_and_Contributions/Platforms).

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Thus, the Proposal seeks to have the Company engage in political and lobbying activities with respect to matters that are closely related to the Company's operations. As a result, consistent with the Staff precedent discussed above, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

*B. The Proposal Involves Ordinary Business Matters Because It Relates to Employee Benefits.*

The Proposal also relates to another area of the Company's ordinary business operations—its employee benefits—and therefore is excludable under Rule 14a-8(i)(7). The Staff consistently has concurred that shareholder proposals concerning health care benefits and health insurance costs are excludable as relating to ordinary business operations, specifically employee benefits. For example, in *Target Corp.* (avail. Feb. 27, 2007), the proposal requested a report on “the implications of rising health care expenses and how [the company] is positioning itself to address this issue without compromising the health and productivity of its workforce.” The proposal, which the Staff concurred could be excluded under Rule 14a-8(i)(7) as relating to employee benefits, discussed the rising cost of health care and its effect on the company's actions with respect to employee benefits. Similarly, in *General Motors Corp.* (avail. Mar. 24, 2005), the Staff concurred that the company could exclude under Rule 14a-8(i)(7) a shareholder proposal requesting the formation of a “directors committee to develop specific reforms for the health cost problem” because it related to “employee benefits.” See also *General Motors Corp.* (avail. Apr. 11, 2007) (permitting the exclusion of a similar proposal under Rule 14a-8(i)(7)); *International Business Machines Corp.* (avail. Jan. 13, 2005) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting a board report on the competitive impact of rising health insurance costs, including information regarding policies that the board has adopted, or is considering, to reduce such costs); *Sprint Corp.* (avail. Jan. 28, 2004) (permitting the exclusion of a shareholder proposal requesting a report on health insurance as “relating to . . . ordinary business operations”); *SBC Communications Inc.* (avail. Jan. 9, 2004) (permitting exclusion of proposal regarding health care coverage as relating to “ordinary business operations”); *PepsiCo, Inc.* (avail. Mar. 7, 1991) (permitting the exclusion of a shareholder proposal, noting that “decisions relating to the evaluation of employee health and welfare plans are matters involving the [c]ompany's ordinary business operations”).

Likewise, in *CVS Caremark Corp.* (avail. Jan. 31, 2008, *recon. denied* Feb. 29, 2008) (“*CVS*”), the Staff concurred that a proposal requesting that a company adopt and take action on principles concerning health care was excludable “under [R]ule 14a-8(i)(7), as relating to CVS' ordinary business operations (i.e., employee benefits).” See also *Wyeth* (avail. Feb. 25, 2008) (“*Wyeth*”) (same). The proposals in *CVS* and *Wyeth* each requested that the relevant

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company adopt broad principles for “comprehensive health care reform,” such as “[h]ealth care coverage should be universal” and “[h]ealth care coverage should be continuous,” which were significantly less specific than the “Health Care Reform Principles” presented in the Proposal. Although the proposals in *CVS* and *Wyeth* were virtually identical to the non-excludable proposals addressed in *United Technologies Corp.* (Jan. 31, 2008) (“*United Technologies*”) and several other no-action letters, the *CVS* and *Wyeth* proposals, in their respective supporting statements, included an additional phrase that “urge[d] the [b]oard to report annually about how it is implementing such principles.”

The reason for this distinction between *CVS* and *Wyeth*, on the one hand, and *United Technologies* and the other no-action letters, on the other hand, was discussed by John W. White, the former Director of the Division of Corporation Finance, in his speech to the Committee on Federal Regulation of Securities of the American Bar Association, Section of Business Law, on August 11, 2008 (the “2008 Speech”).<sup>3</sup> Mr. White noted:

During this past season, we were asked to make no-action determinations on a proposal of first impression—a non-binding proposal that urged companies to adopt principles for comprehensive healthcare reform. The [S]taff has taken no-action positions on various healthcare proposals in the past. For example, the [S]taff has permitted exclusion under “ordinary business” of proposals asking a company to adopt more affordable and continuous healthcare for employees and retirees because such proposals relate to employee benefits. Similarly, proposals asking a company to lobby on employee benefit matters are excludable. This year’s proposal was different — it urged companies to “adopt principles for comprehensive healthcare reform.” Unlike prior proposals, it did not ask the companies to change their own healthcare coverage, or ask them to directly lobby anyone in support of healthcare change. No further action was contemplated by the proposal other than the adoption of principles.

Mr. White noted that the Staff had generally denied requests to exclude such proposals, but emphasized that the Staff’s decisions in *United Technologies* and related letters “were not a reversal of prior no-actions positions.” He indicated that exclusion was permitted in *CVS* and *Wyeth* “where the proposal not only asked the company to adopt ‘principles for comprehensive healthcare reform,’ but also asked the company to report to shareholders on

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<sup>3</sup> Mr. White’s remarks represented his own views and did not necessarily represent the views of the Commission.

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how the company was ‘implementing such principles,’” thereby implicating employee benefits.

The Proposal, similar to the proposals in *CVS* and *Wyeth*, relates to the provision of employee benefits. It states that “[s]hareholders of Johnson & Johnson are concerned about the rising costs of health care in the United States,” and it proposes several measures that the Proponent asserts will cause “[c]osts [to] decrease” and will remove requirements that “artificially increase health care costs.” In addition, the Proposal’s statement that the Company “can be a leader in cost-saving measures that will ensure greater access to health care for Americans and superior health care products and outcomes,” like the request in the supporting statements of *CVS* and *Wyeth* that the relevant company report on implementation, shows that the Proposal contemplates Company action regarding its internal employee health plans as a part of its adoption of the so-called “Health Care Reform Principles.”

The design, maintenance and administration of health care coverage are part of the Company’s business. In its day-to-day employee benefits administration, the Company determines the coverage and applicable eligibility requirements for employees, retirees and others. The “Health Care Reform Principles” advocated by the Proposal would impact the nature of health care coverage provided to the Company’s employees. Thus, because the Proposal relates to the Company’s employee benefits, the Proposal is excludable under Rule 14a-8(i)(7) as implicating the Company’s ordinary business operations.

#### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2014 Proxy Materials.

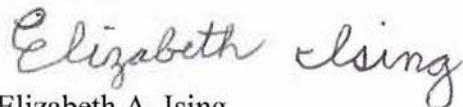
We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter

# GIBSON DUNN

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should be sent to [shareholderproposals@gibsondunn.com](mailto: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 or Douglas K. Chia, the Company's Assistant General Counsel and Corporate Secretary, at (732) 524-3292.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Douglas K. Chia, Johnson & Johnson  
Justin Danhof, National Center for Public Policy Research

101646589.12

**EXHIBIT A**

THE NATIONAL CENTER



FOR PUBLIC POLICY RESEARCH

RECEIVED

NOV 13 2013

D. Chia

Amy M. Ridenour

Chairman

David A. Ridenour

President

Via FedEx

November 12, 2013

Douglas Chia, Corporate Secretary  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick,  
New Jersey 08933

Dear Mr. Chia,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Johnson & Johnson (the "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 United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as General Counsel of the National Center for Public Policy Research, which has continuously owned Johnson & Johnson stock with a value exceeding \$2,000 for a year prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2014 annual meeting of shareholders.

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 forwarded to Justin Danhof, Esq, General Counsel, National Center For Public Policy Research, 501 Capitol Court NE, Suite 200, Washington, D.C. 20002.

Sincerely,



Justin Danhof, Esq.

Enclosure: Shareholder Proposal -- Free Market Health Care Reform Policies

## **Free-Market Health Care Reform Policies**

### **Whereas:**

The Securities and Exchange Commission considers health care a significant public policy issue.

And the debate over the government's role in providing health care insurance and regulating the health care marketplace continues.

### **Resolved:**

The Shareholders of Johnson & Johnson request that the Board of Directors adopt the following Health Care Reform Principles.

1. Repeal state-level laws that prevent insurance companies from competing across state lines.
2. Increase cost transparency of health care treatments so consumers can be better-informed market participants.
3. Repeal government mandates that dictate what insurance companies must cover.
4. Enact meaningful tort reform to reduce doctors' insurance costs. These costs are often passed onto consumers, leading to unnecessarily high prices.
5. Reform federal tax laws to allow individuals to receive a standard deduction for health insurance costs or receive tax credits.
6. Remove barriers and reform federal tax laws to allow for large health savings accounts, to give individuals greater freedom over their health care expenditures.

### **Supporting Statement:**

Shareholders of Johnson & Johnson are concerned about the rising costs of health care in the United States. According to Aetna, “[t]otal health care spending in the United States is expected to reach \$4.8 trillion in 2021, up from \$2.6 trillion in 2010 and \$75 billion in 1970... this means that health care spending will account for nearly 20 percent of gross domestic product... by 2021.”

Shareholders are concerned this cost curve is unsustainable and continued government controls could lead to rationing of health care supplies and services. In the past, Johnson & Johnson promoted policies, such as the Affordable Care Act, that increased the federal government's control over the health care marketplace.

Shareholders believe that health care reform must move away from government controls and move toward individual empowerment.

As a leading American health care company, Johnson & Johnson is positioned to influence the discussion of American health care reform. By adopting the above free-market health care policies, Johnson & Johnson can be a leader in cost-saving measures that will ensure greater access to health care for Americans and superior health care products and outcomes.

Costs will decrease, and transparency will increase, if Americans are legally able to purchase insurance across state lines.

Government mandates dictating what insurance companies must cover artificially increase health care costs. Consumers should be able to determine what type of coverage plan best fits their needs.

Individual empowerment is increased when individuals and families can deduct health insurance costs or receive tax credits.

THE NATIONAL CENTER



FOR PUBLIC POLICY RESEARCH

Amy M. Ridenour

Chairman

David A. Ridenour

President

Via FedEx

November 19, 2013

Douglas Chia, Corporate Secretary  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick,  
New Jersey 08933

Dear Mr. Chia,

Enclosed please find a Proof of Ownership letter from UBS Financial Services Inc. in connection with the shareholder proposal (Free Market Health Care Reform Policies) submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations by the National Center for Public Policy Research on November 12, 2013.

Sincerely,



Justin Danhof, Esq.

Enclosure: Proof of Ownership



UBS Financial Services Inc.  
1501 K Street NW, Suite 1100  
Washington, DC 20005  
Tel. 202-585-4000  
Fax 202-585-5317  
800-382-9989

[www.ubs.com](http://www.ubs.com)

November 19, 2013

Douglas Chia, Corporate Secretary  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick,  
New Jersey 08933

Dear Mr. Chia,

UBS holds 60 shares of Johnson & Johnson (the "Company") common stock beneficially for the National Center for Public Policy Research, the proponent of the shareholder proposal submitted to Johnson & Johnson in accordance with Rule 14(a)-8 of the Securities and Exchange Act of 1934. The shares of the Company stock have been beneficially owned by the National Center for Public Policy Research for more than one year prior to the submission of its resolution. Of the 60 shares, 17 were purchased on October 29, 2009, and 43 were purchased on May 5, 2011, and UBS continues to hold the said stock.

If you should have any questions regarding this matter, please give me a call. My telephone number is 202-585-5368.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Brinckhaus".

Steve Brinckhaus  
Registered Client Service Associate  
UBS Financial Services Inc.

cc: Justin Danhof, Esq., National Center for Public Policy Research