



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-4561

February 14, 2012

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

Re: Johnson & Johnson  
Incoming letter dated December 23, 2011

Dear Ms. Ising:

This is in response to your letter dated December 23, 2011 concerning the shareholder proposal submitted to Johnson & Johnson by Betsy Strausberg. We also have received a letter on the proponent's behalf dated January 23, 2012. 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,

Ted Yu  
Senior Special Counsel

Enclosure

cc: Sanford J. Lewis  
sanfordlewis@strategiccounsel.net

February 14, 2012

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

Re: Johnson & Johnson  
Incoming letter dated December 23, 2011

The proposal requests a report describing “new initiatives instituted by management to address the health and social welfare concerns of people harmed by adverse effects from Levaquin.”

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 company is presently involved in litigation relating to the subject matter of the proposal. Proposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable under rule 14a-8(i)(7). 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-8a(i)(7).

Sincerely,

Erin E. Martin  
Attorney-Advisor

**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.

# **SANFORD J. LEWIS, ATTORNEY**

January 23, 2012

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

Via email

Re: Shareholder Proposal Submitted to Johnson & Johnson (Report Regarding  
Levaquin) On Behalf of Betsy Strausberg

Ladies and Gentlemen:

Betsy Strausberg (the Proponent) is the beneficial owner of common stock of Johnson & Johnson Company and has submitted a shareholder proposal ("Proposal") to the company requesting that it report on any new initiatives to aid people injured by its product, Levaquin. We have been asked to respond on behalf of the proponent to the letter dated December 23, 2011, sent to the Securities and Exchange Commission by Elizabeth A. Isling of Gibson, Dunn & Crutcher, LLP, on behalf of the Company. In that letter, the Company contends that the proponent's Proposal may be excluded from the Company's 2012 proxy materials by virtue of Rules 14a-8(i)(7).

We have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the relevant rule, it is our opinion that the Proposal must be included in the Company's 2007 proxy materials and that it is not excludable by virtue of the rule.

We are emailing a copy of this letter to Elizabeth A. Isling.

## **THE PROPOSAL**

The resolved clause of the Proposal states:

Resolved: Shareholders request Johnson & Johnson management to report to shareholders by October 2012, at reasonable cost and excluding confidential or legally prejudicial information, descriptions of any new initiatives instituted by management to address the health and social welfare concerns of people harmed by adverse effects from Levaquin.

## **SUMMARY**

According to the Food & Drug Administration, the users of the Johnson & Johnson product Levaquin can be expected to suffer in higher proportion than the general population from certain known side effects, causing severe injuries including tendon ruptures and nervous system damage.

This proposal seeks to encourage the management of Johnson & Johnson to undertake initiatives to address the health and welfare concerns of the affected population. By contrast, this proposal does not seek to meddle in issues of liability, such as whether the Company has given users adequate warning of these side effects, or whether Levaquin has caused particular individuals to suffer the characteristic harms. Instead, it addresses the significant social policy issue facing the Company, which is whether it has a moral or ethical obligation, or whether it is in the Company's interests as a matter of reputation management, to undertake initiatives to assist the affected population. As such, it is directly analogous to a prior proposal at Dow Chemical regarding the Bhopal chemical disaster, which sought initiatives to assist another injured population. In both instances, the proposals did not seek to interfere with ongoing determinations of liability, but instead seek initiatives to address the ethical and reputational implications of the injuries. Therefore, this proposal does not impermissibly intrude on matters of ordinary business and should not be deemed excludable.

### **BACKGROUND**

In 2008, the FDA upgraded warnings to users of the antibiotic Levaquin to a Black Box warning, because of statistical evidence that a substantial number of people were suffering severe injuries – tendinitis and tendon rupture – due to side effects of the product.<sup>1</sup> A Black Box warning is the most severe warning that a drug can have under FDA rules short of being removed from the market. Preceding this decision, the Illinois Attorney General and Public Citizen, a consumer advocacy group, petitioned the Food & Drug Administration (FDA) for a Black Box warning for Levaquin for tendon rupture. According to the petition, Public Citizen had reviewed the FDA's adverse event database and found 262 cases of tendon ruptures, 258 cases of tendinitis and 274 cases of other tendon disorders reported between November 1997 and December 2005 associated with the class of drugs known as fluoroquinolones which includes Levaquin as well as Cipro. About 61% of the reported tendon problems were associated with Levaquin. The lawsuit asserted that the warnings regarding tendon injury were buried within a long list of other possible side effects and therefore were too easy to be missed.

In 2011, the FDA issued a second Black Box warning for Levaquin. The two Black Box warnings currently in effect are in reference to spontaneous tendon ruptures and the fact that Levaquin may cause worsening of myasthenia gravis symptoms, including muscle weakness and breathing problems. This latter adverse reaction is a potentially life-threatening event and may require ventilator support.

### **ANALYSIS**

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<sup>1</sup> FDA ALERT [7/8/2008]: FDA is notifying the makers of fluoroquinolone antimicrobial drugs for systemic use of the need to add a boxed warning to the prescribing information about the increased risk of developing tendinitis and tendon rupture in patients taking fluoroquinolones and to develop a Medication Guide for patients. The addition of a boxed warning and a Medication Guide would strengthen the existing warning information already included in the prescribing information for fluoroquinolone drugs. Fluoroquinolones are associated with an increased risk of tendinitis and tendon rupture. This risk is further increased in those over age 60, in kidney, heart, and lung transplant recipients, and with use of concomitant steroid therapy. Physicians should advise patients, at the first sign of tendon pain, swelling, or inflammation, to stop taking the fluoroquinolone, to avoid exercise and use of the affected area, and to promptly contact their doctor about changing to a non-fluoroquinolone antimicrobial drug.

***Media coverage of the Levaquin issue has been extensive and has affected the reputation of the Company***

The issue of injuries caused as a side effect of the use of Levaquin is a high visibility issue for Johnson & Johnson and represents a significant social policy issue that transcends ordinary business.

In June of 2011, PBS broadcasted a national news segment on Levaquin titled "Certain Antibiotics Spur Widening Reports of Severe Side Effects." The PBS segment shows a young school teacher named Jenne Wilcox who could no longer walk after taking Levaquin. Bedridden for over a year, she lost her teaching job. Without her income, the Wilcox family had to give up their home.

The PBS segment also shows John Fratti, who suffered neurological damage and chronic tendonitis. He also lost his job after taking Levaquin. Senator Harkin and Senator Grassley's offices have begun an investigation into whether the FDA should issue more safety warnings for Levaquin.

"Johnson & Johnson's Quality Catastrophe" is the title of the March 31st, 2011 cover story of BusinessWeek. The article states, "After 50 plus product recalls in 15 months, the \$60 Billion company is fighting to clear its once-trusted name." The article mentions the Levaquin claims. J&J faces reputational concerns due to quality concerns as well as severe drug side effects.

***The issues involved in the proposal are not the same as, or similar to, the issues at the heart of the litigation regarding Levaquin.***

Litigation regarding Levaquin has focused on whether warnings issued by the company prior to the Black Box warning were adequate to warn consumers. Where the Company has been found not to be liable, it is because the juries found that the prior warnings buried in a list of possible side effects, and therefore less visible than the Black Box, nevertheless gave adequate warning of potential effects. In contrast, in the present matter the issue is not adequacy of warnings, nor causation of particular individuals' injuries, but rather whether there are initiatives that can be taken by the company which would help to alleviate suffering of the population of injured people.

As such, the proposal is not analogous to Reynolds American Inc. (March 7, 2007) , AT&T Incorporated (February 9, 2007) nor the other cases cited by the company because these requested disclosures are inconsistent with the position taken by the company in ongoing litigation. In contrast, the present proposal does not seek to require any action or disclosures inconsistent with the company's position in litigation. The Company asserts that the existence and nature of adverse effects from Levaquin "is the very legal issue that the Company is currently litigating in thousands of cases," and that therefore this might compel the company to disclose its internal assessment of any adverse effects that Levaquin may have caused. The company discounts the language in the proposal that the Company may "exclude any "confidential or legally prejudicial information."

In contrast to the Company's assertions that disclosure of initiatives to aid people harmed by Levaquin would be by its very nature legally prejudicial as an admission of liability, such initiatives can be reported and conducted in a way that involves no such admissions. Further, the existence of these injuries is beyond question – the only real questions relate to proof of causation in individual cases and whether warnings were adequate.

In contrast to this assertion, the Food and Drug Administration has already concluded that the risk associated with this product is clear. The FDA has determined in the course of issuing its requirement for a Black Box warning that

“Fluoroquinolones are associated with an increased risk of tendinitis and tendon rupture. This risk is further increased in those over age 60, in kidney, heart, and lung transplant recipients, and with use of concomitant steroid therapy. Physicians should advise patients, at the first sign of tendon pain, swelling, or inflammation, to stop taking the fluoroquinolone, to avoid exercise and use of the affected area, and to promptly contact their doctor about changing to a non-fluoroquinolone antimicrobial drug.”<sup>2</sup>

Moreover, Johnson & Johnson's own package insert for Levaquin states that Levaquin can cause irreversible pain and irreversible neurological disorders. In this instance, the proposal is simply asking the Company to consider and report on initiatives to assist the population already acknowledged to exist by the company's and FDA's disclosures and warnings, those who suffer the harms that have been identified as associated with the product.

Examples of initiatives that could be taken to assist this population without in any way undermining the company's position in litigation could include identifying or developing antidotes to the conditions that can be caused by the products, developing better early warning indicators to avoid the health impacts, health assessment methodologies, creating a research project, creating a fund or foundation to provide research, assistance or relief, etc.

**The proposal is analogous to the Bhopal proposal on which it was modeled, and which was found by the staff to be not excludable as ordinary business.**

In both the present matter and in the Bhopal disaster example, the proposal seeks initiatives by a company to address the needs of a harmed population, regardless of the outcome of litigation that could otherwise necessitate action or compensation by the corporation.

The Bhopal resolution referenced by the Company's letter, Dow Chemical (Feb. 11, 2004) and found by the staff to not represent excludable ordinary business, asked Dow Chemical Company "to report to shareholders by October 2007, at reasonable cost and excluding confidential information, descriptions of any new initiatives instituted by management to address specific health, environmental and social concerns of Bhopal, India survivors."

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<sup>2</sup> <http://www.fda.gov/Safety/MedWatch/SafetyInformation/Safety-RelatedDrugLabelingChanges/ucm161812.htm>

The Company asserts that the proposal at issue in Dow did not concern the issues being litigated, but in reality it concerned them in the same manner and degree. In both the Dow case and the present matter, there was no real question of the existence of an injured population. In that case, as in the present one, the Company was actively involved in litigation to contest its responsibility for injuries, including arguments about legal liability as well as causation.

Contrary to the assertion of the Company that in the Bhopal resolution oral argument had been made “in the single pending lawsuit” remaining, legal issues pending in the Bhopal disaster at the time of the resolution included numerous suits. Civil suits concerning the ongoing contamination were filed in the United States against Union Carbide and former CEO Warren Anderson, and were currently pending in the US Court of Appeals, 2d Circuit. The cases focused on claims for personal injury, property damages and medical monitoring, and for remediation of soil and groundwater in the vicinity of the Bhopal site. There was also litigation pending in the Madhya Pradesh High Court, India regarding remediation of soil and groundwater contamination in the area of the Bhopal site. There also remained criminal litigation in India related to the gas disaster. Despite all of this ongoing litigation, the staff found that the proposal seeking a description of any new initiatives to address the concerns of the survivors did not represent an inappropriate interference in the litigation nor ordinary business.

In the present matter, it is not necessary for the Company to take any action that would facilitate goals of plaintiffs in pending litigation, such as assessing the causation of any individual’s injuries, in order to develop initiatives that would be responsive to the proposal.

**The proposal does not impermissibly address labeling, customer relations or customer complaints.**

The present proposal does not present the same issues that were a basis for exclusion in the prior proposal relating to Johnson & Johnson. (February 22, 2011). That proposal requested that the company work with the FDA “to add warning on labels to all Levaquin tablets, and injection solutions, informing all patients that Levaquin has a ‘Black Box’ Warning. As such, the proposal was excludable because it related to the manner in which the company labels particular products. This is a long-standing SEC exclusion category not applicable to the present proposal.

Nor does the present proposal relate as the referenced, excluded proposals did to mundane issues of customer relations or complaints. Instead, the current proposal relates to a high visibility, significant policy issue associated with a population suffering disproportionate harms from a line of the company’s products. To the extent that it relates to customers of the company, the significant policy issue facing the company over the population affected by Levaquin, including reputational and brand damage, and moral and ethical issues, necessitates inclusion of the proposal as a significant social policy issue.

The issue of harms being caused by Levaquin is part of an even larger social policy problem facing the company, a crushing loss of trust in its previously trusted brand. As an article in

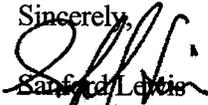
Businessweek, "Johnson & Johnson's Quality Catastrophe," noted in April 4, 2011, the Company and its brand is under siege due to an array of recalls, brand disasters, and litigation.

"This is a real American tragedy," says Erik Gordon, a professor at the University of Michigan's Ross School of Business in Ann Arbor who studies the biomedical industry. "They really have blown one of the great brands."<sup>3</sup>

### CONCLUSION

In conclusion, we respectfully request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no-action request. In the event that the Staff decides to concur with the Company, we respectfully request an opportunity to confer with the Staff. Please call me at (413) 549-7333 with respect to any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,

  
Sanford Lewis  
Attorney at Law

cc:

Elizabeth A. Isling, Gibson, Dunn & Crutcher LLP  
Betsy Strausberg

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<sup>3</sup> [http://www.businessweek.com/magazine/content/11\\_15/b4223064555570.htm](http://www.businessweek.com/magazine/content/11_15/b4223064555570.htm)

December 23, 2011

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 Betsy Strausberg*  
*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 2012 Annual Meeting of Shareholders (collectively, the “2012 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof received from Betsy Strausberg (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 2012 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 be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 2

## THE PROPOSAL

The Proposal states:

Resolved: Shareholders request Johnson & Johnson management to report to shareholders by October 2012, at reasonable cost and excluding confidential or legally prejudicial information, descriptions of any new initiatives instituted by management to address the health and social welfare concerns of people harmed by adverse effects from Levaquin. These initiatives could include measures to help improve the health or comfort of those who are suffering from alleged Levaquin side effects.

A copy of the Proposal, as well as related correspondence from 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 2012 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's litigation strategy and customer relations. While requesting a different action from the Company, the Proposal raises the same issues and concerns that were present in *Johnson & Johnson* (avail. Feb. 22, 2011), in which the Staff concurred in the exclusion of a proposal relating to the LEVAQUIN® product.

## ANALYSIS

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

#### *A. Introduction.*

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." 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

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 3

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. The first 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.” The second consideration related 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.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company’s Litigation Strategy In Pending Litigation.*

We believe that the Proposal may be excluded from the 2012 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal implicates the Company’s litigation strategy in pending lawsuits involving the Company and is therefore excludable as relating to the Company’s ordinary business operations.

The Company believes that it may omit the Proposal from its 2012 Proxy Materials because disclosure of the information requested by the Proposal would adversely affect the litigation strategy of the Company in thousands of pending lawsuits concerning LEVAQUIN® in which it has been named as defendant. LEVAQUIN® is a pharmaceutical product that is manufactured, marketed and distributed by a wholly-owned subsidiary of the Company for the treatment of bacterial infections. The U.S. Food & Drug Administration (“FDA”) has determined more than a dozen times over the past fifteen years that LEVAQUIN® is a safe and effective medicine that helps cure serious infections and, therefore, saves thousands of lives a year in this country. The principal legal issue in the lawsuits referenced in the Proposal, and which forms the basis for the Proposal, is whether plaintiffs have been, as stated in the Proposal, “harmed by adverse effects from Levaquin.” In the LEVAQUIN® cases, the Company and its subsidiary are vigorously contesting that the medicine in fact caused plaintiffs’ injuries. In addition, the Company’s subsidiary is taking the position that: (1) it fully complied with all its obligations pursuant to FDA regulations to demonstrate that LEVAQUIN® had a favorable safety profile; and (2) adequate and timely information about the benefits and risks of the medicine were communicated to healthcare professionals and their patients.

For example, John Fratti, one of the two individuals specifically identified in the Proposal, has sued the Company alleging tendon and neurological injuries associated with the use of LEVAQUIN®. His claims are similar to the claims made by over 3,000 other individuals in

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 4

consolidated proceedings in a federal court in Minnesota and a state court in New Jersey. To date, the claims of four individuals have been tried to juries and the Company has prevailed in three of the cases because the juries concluded that LEVAQUIN® did not cause injuries alleged by the plaintiffs or that the Company's subsidiary provided adequate warnings about the benefits and risks of the medicine. The one adverse verdict against the Company is currently on appeal.

The Company is currently aggressively litigating over 3,000 lawsuits involving LEVAQUIN®. While the Company believes it will continue to be successful in the LEVAQUIN® litigation—in part because the medicine helps the health and welfare of the hundreds of thousands of patients who are prescribed it each year—if the cases are decided against the Company, the Company may be subject to liability that could total hundreds of millions of dollars.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that implicate and seek to oversee a company's ordinary business operations, including when the subject matter of the proposal is the same as or similar to that which is at the heart of litigation in which a company is then involved. *See, e.g., Reynolds American Inc.* (avail. Mar. 7, 2007) (permitting exclusion, as relating to litigation strategy, of a proposal requesting that the company provide information on the health hazards of secondhand smoke, including legal options available to minors to ensure their environments are smoke free, where the company was currently litigating six separate cases alleging injury as a result of exposure to secondhand smoke and a principal issue concerned the health hazards of secondhand smoke); *AT&T Inc.* (avail. Feb. 9, 2007) (concurring in the exclusion, as relating to ordinary business operations (*i.e.*, litigation strategy), of a proposal requesting that the company issue a report containing specified information regarding the alleged disclosure of customer records to governmental agencies, while the company was a defendant in multiple pending lawsuits alleging unlawful acts by the company in relation to such disclosures); *Reynolds American Inc.* (avail. Feb. 10, 2006) (proposal requesting that the company notify African Americans of the unique health hazards to them associated with smoking menthol cigarettes excludable under the "ordinary business" exception as relating to litigation strategy, where the company noted that undertaking such a campaign would be inconsistent with positions it was taking in denying such health hazards as defendant in a lawsuit alleging that the use of menthol cigarettes by the African American community poses unique health risks to this community); *Philip Morris Companies Inc.* (avail. Feb. 4, 1997) (noting that although the Staff "has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business,"

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 5

the company could exclude a proposal that “primarily addresses the litigation strategy of the Company, which is viewed as inherently the ordinary business of management to direct”).

In *R.J. Reynolds Tobacco Holdings, Inc.* (avail. Feb. 6, 2004), the Staff concurred in the exclusion of a proposal that directed the company to stop using the terms “light,” “ultralight,” “mild” and similar words in marketing cigarettes until shareholders could be assured through independent research that light and ultralight brands actually reduce the risk of smoking-related diseases. At the time the proposal was submitted, the company was a defendant in multiple lawsuits in which the plaintiffs were alleging that the terms “light” and “ultralight” were deceptive. The company argued in its no-action request that implementing the proposal while the lawsuits were pending “would be a de facto admission by the Company that ‘light’ and ‘ultralight’ cigarettes do not pose reduced health risks as compared to regular cigarettes. . . . Whether ‘light’ and ‘ultralight’ cigarettes pose reduced health risks as compared to regular cigarettes is an issue at the heart of the Company’s . . . litigation.” See also *Exxon Mobil Corp.* (avail. Mar. 21, 2000) (proposal requesting immediate payment of settlements associated with Exxon Valdez oil spill excludable as relating to litigation strategy and related decisions). Similar to the *R.J. Reynolds Tobacco* proposal, the Proposal relates to actions the Company may take in response to an issue that is the subject of pending litigation. Disclosure of any “initiatives” the Company has taken “to address the health and social welfare concerns” of people who have allegedly been harmed by the Company’s LEVAQUIN® product could, just as in *R.J. Reynolds Tobacco*, be viewed as an admission by the Company in the pending litigation.

The Proposal, if implemented, would require the Company to publish a report describing the Company’s initiatives to “address the health and social welfare concerns of people harmed by adverse effects from Levaquin.” As discussed above, the existence and nature of adverse effects from LEVAQUIN®, and any causal relation of alleged adverse effects to LEVAQUIN®, is the very legal issue that the Company is currently litigating in thousands of cases. Thus, by requesting the Company to furnish information in a public report with respect to initiatives concerning those “harmed by adverse effects from Levaquin,” the Proposal interferes with the Company’s defense of pending litigation. Specifically, by requiring the Company to disclose any such initiatives, the Proposal would obligate the Company to take a public position, outside the context of pending litigation and the discovery process, with respect to the adverse effects of LEVAQUIN®. It would also potentially compel the Company to disclose its internal assessment of the existence and nature of any adverse effects that LEVAQUIN® may have caused. Any such assessment may be inconsistent with the Company’s litigation defense or may prematurely disclose the Company’s litigation strategy to its opposing parties in pending litigation. Moreover, the Proposal’s statement that the Company may exclude any “confidential or legally prejudicial

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 6

information” does not resolve this issue. The premise of the Proposal’s request is that “people [have been] harmed by adverse effects from Levaquin.” Thus, all information covered by the Proposal’s request for any “new initiatives instituted by management” to address their “health and social welfare concerns” is “legally prejudicial information” because disclosure of any such “initiatives” could be asserted as an admission of liability in litigation against the Company.

Every company’s management has a basic responsibility to defend the company’s interests against unwarranted litigation. A shareholder proposal that interferes with this obligation is inappropriate, particularly when the company is involved in pending litigation on the very issues that form the basis for the proposal. For that reason, the Staff consistently has viewed shareholder proposals that implicate a company’s conduct of litigation or its litigation strategy as properly excludable under the “ordinary course of business” exception contained in Rule 14a-8(i)(7). *See, e.g., NetCurrents, Inc.* (avail. May 8, 2001) (excluding a proposal as relating to company’s ordinary business operations (*i.e.*, litigation strategy) where the proposal required the company to file suit against certain of its officers for financial improprieties); *Benihana National Corp.* (avail. Sept. 13, 1991) (permitting exclusion under Rule 14a-8(c)(7) of a proposal requesting the company to publish a report prepared by a board committee analyzing claims asserted in a pending lawsuit).

The Proposal is distinguishable from *The Dow Chemical Co.* (avail. Feb. 11, 2004), in which the Staff did not concur in the exclusion of a proposal that requested a report describing any new initiatives instituted by management to address the health, environmental, and social concerns of survivors of the incident at the Bhopal Facility in India. In *Dow*, the information requested did not implicate the subject matter of then-pending litigation involving the company. Dow was then involved as a defendant in a lawsuit alleging that the Bhopal Facility caused pollution that resulted in health problems. The claims at issue in that case concerned a leak of toxic gas at a facility owned by Union Carbide Corporation, which Dow subsequently acquired. In that instance, the occurrence of the gas leak was not contested, and Union Carbide Corporation publicly accepted moral responsibility for the tragedy. Thus, the proposal at issue in *Dow* did not concern the issue being litigated and, thus, did not implicate the company’s litigation strategy. Unlike the *Dow* proposal, the Proposal at issue directly concerns the subject matter of pending litigation. As discussed above, the Company is involved in pending litigation in which the central issue is whether the plaintiffs’ injuries were caused by LEVAQUIN®. Therefore, the Proposal, which would require the Company to address the concerns of “people harmed by adverse effects from Levaquin,” concerns the principal legal issue in pending litigation involving the Company. Furthermore, at the time Dow submitted its no-action request, oral argument in the single pending lawsuit remaining had already occurred, and the court’s ruling was pending. In the present case, however, as

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 7

indicated above, the Company and its subsidiary are currently litigating over 3,000 ongoing lawsuits concerning LEVAQUIN®, in which the Company and its subsidiary are still developing their litigation strategy and the bases for their defense.

In summary, the Proposal requests that the Company take action that would facilitate the goals of the plaintiffs in pending litigation against the Company at the same time that the Company is actively challenging those plaintiffs' allegations. In this regard, the Proposal seeks to substitute the judgment of shareholders for that of the Company on decisions involving litigation strategy by requiring the Company to take action that is contrary to its legal defense in pending litigation. Thus, implementation of the Proposal would intrude upon Company management's exercise of its day-to-day business judgment with respect to pending litigation in the ordinary course of its business operations. Accordingly, we believe that the Proposal may be excluded from the Company's 2012 Proxy Materials under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

*C. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To Customer Relations And Procedures For Handling Customer Complaints.*

We believe that the Proposal impermissibly relates to the Company's ordinary business operations because the Proposal requests information on how the Company is responding to certain of the customers of one of the Company's subsidiaries—namely, customers alleging that they have been “harmed by adverse effects from Levaquin.” Thus, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the customer relations activities of one of the Company's subsidiaries.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to how companies deal with their customers on a day-to-day basis and how they handle customer complaints. For example, in *Houston Industries, Inc.* (avail. Mar. 1, 1999), the Staff concurred with the exclusion of a shareholder proposal requiring that the company respond to customer complaints within ten business days. Similarly, in *AT&T Corp.* (avail. Feb. 8, 1998), the Staff concurred with the exclusion of a shareholder proposal requiring specific procedures for handling customer complaints and certain policies for customer service. The Staff responses in *Houston Industries* and *AT&T* explicitly recognized “procedures for handling customer complaints” as a matter of ordinary business. See also *Marriott International, Inc.* (avail. Mar. 16, 2011) (concurring with the exclusion of a shareholder proposal requesting the establishment of an office of owner advocacy ombudsman and an owner advisory committee within the company); *Consolidated Edison, Inc.* (avail. Mar. 10, 2003) (concurring with the exclusion of a shareholder proposal regarding the company's customer relations and employee management policies); *Verizon*

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 8

*Communications Inc.* (avail. Jan. 9, 2003) (concurring with the exclusion of a shareholder proposal to establish quality control procedures to resolve customer complaints regarding errors and omissions in advertisements); *WorldCom, Inc.* (avail. Apr. 4, 2002) (concurring with the exclusion of a shareholder proposal requesting disclosures regarding customer billing disputes and the retention of an independent auditor to contact and audit each customer's account because the proposal related to various ordinary business matters, including "customer relations"); *AMERCO* (avail. Jul. 21, 2000) (concurring with the exclusion of a shareholder proposal requesting a "U-Haul Dealer Forum" to, among other things, "gain valuable feedback on customer perceptions and problems" because the proposal related to "customer and dealer relations"); *BankAmerica Corp.* (avail. Mar. 23, 1992) (concurring with the exclusion of a shareholder proposal to establish a committee and provide procedures to deal with customers whose credit applications are denied).

Similarly, the Proposal requests disclosure of measures taken to address concerns that certain customers may have regarding one of the products of a Company subsidiary. Specifically, the Proposal requests the Company to report on initiatives to address "the health and social welfare concerns" of customers allegedly harmed by LEVAQUIN®, a pharmaceutical product that is manufactured, marketed and distributed by a wholly-owned subsidiary of the Company. The subsidiary's methods for addressing and responding to concerns raised by its customers, including any customer complaints, is one aspect of the subsidiary's customer relations procedures. Specifically, all customer inquiries, concerns and complaints are received and managed by the subsidiary's Medical Information Center according to its standard operating procedures for adverse events handling, product quality complaint reporting, and medical information request responses. As in the cited precedent, a company's management of day-to-day customer relations issues is a task that is fundamental to management's ability to run the company and should not be subject to shareholder oversight. Furthermore, as reflected in *Johnson & Johnson* (avail. Feb. 22, 2011) (concurring in the exclusion of a proposal regarding the addition of a warning on the LEVAQUIN® label), the Staff has not recognized issues relating to LEVAQUIN® as a significant policy issue for purposes of Rule 14a-8(i)(7). Thus, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business matters.

## 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 2012 Proxy Materials.

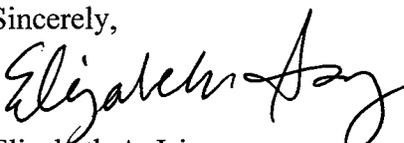
We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter

# GIBSON DUNN

Office of Chief Counsel  
Division of Corporation Finance  
December 23, 2011  
Page 9

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

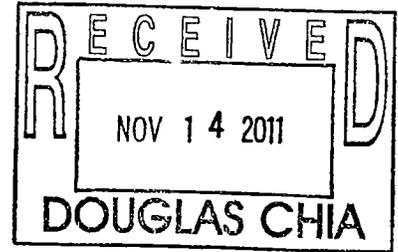
Enclosures

cc: Douglas K. Chia, Johnson & Johnson  
Betsy Strausberg, c/o Harrington Investments, Inc.

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GIBSON DUNN

EXHIBIT A



November 9, 2011

Corporate Secretary  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

**RE: Shareholder Proposal**

Dear Corporate Secretary,

As a beneficial owner of Johnson & Johnson company stock, I am submitting the enclosed shareholder resolution for inclusion in the 2012 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (the "Act"). I am the beneficial owner, as defined in Rule 13d-3 of the Act, of at least \$2,000 in market value of Johnson & Johnson common stock. I have held these securities for more than one year as of the filing date and will continue to hold at least the requisite number of shares for a resolution through the shareholder's meeting. I have enclosed a copy of Proof of Ownership from Charles Schwab & Company. I or a representative will attend the shareholder's meeting to move the resolution as required.

Sincerely,

Betsy Strausberg

encl.



Whereas:

Our company is built on a strong ethical foundation. Our values begin with our famed credo which states the following: "We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services... We must be good citizens - support good works and charities."

We should do our best to honor our credo in our company's actions.

Levaquin, produced by our company, is in a class of drugs known as fluoroquinolones. Consumer concern over the safety of Levaquin has escalated sharply. Dr. Jay Cohen, a medical researcher, writes that adverse reactions to Levaquin are acute, severe, frightening, and often disabling. These adverse effects include, but are not limited to, tendon rupture requiring surgical repair, chronic tendonitis, irreversible peripheral neuropathy, toxic psychosis, kidney failure, liver failure. Dr. Cohen asserts that the manufacturer has ignored thousands of people who are suffering.

Unlike most drug side effects which are transient, Levaquin toxicity can result in devastating life-long disabilities that can ruin the lives of individuals and families. A recent FDA Freedom of Information Report for Levaquin, for the dates 11/1997 to 05/2011, indicates that there have been 1,174 death outcomes asserted in regard to Levaquin and over 20,000 individual safety reports filed.

Our annual report states that there are a significant number of claimants with pending lawsuits or claims regarding injuries allegedly due to Levaquin. Quoting the 10K report "these claimants seek substantial compensatory and, where available, punitive damages." There are over 2,700 current Levaquin lawsuits pending.

"Johnson & Johnson's Quality Catastrophe" is the title of the March 31st, 2011 cover story of BusinessWeek. The article states, "After 50 plus product recalls in 15 months, the \$60 Billion company is fighting to clear its once-trusted name." The article mentions the Levaquin claims.

In June of 2011, PBS broadcasted a national news segment on Levaquin titled "Certain Antibiotics Spur Widening Reports of Severe Side Effects." The PBS segment shows a young school teacher named Jenne Wilcox who could no longer walk after taking Levaquin. Bedridden for over a year, she lost her teaching job. Without her income, the Wilcox family had to give up their home. The PBS segment shows John Fratti, who suffered neurological damage and chronic tendonitis. He also lost his job after taking Levaquin. Senator Harkin and Senator Grassley's offices have begun an investigation into whether the FDA should issue more safety warnings for Levaquin.

Resolved: Shareholders request Johnson & Johnson management to report to shareholders by October 2012, at reasonable cost and excluding confidential or legally prejudicial information, descriptions of any new initiatives instituted by management to address the health and social welfare concerns of people harmed by adverse effects from

Levaquin. These initiatives could include measures to help improve the health or comfort of those who are suffering from alleged Levaquin side effects.

*charles* SCHWAB  
ADVISOR SERVICES

November 9, 2011

Corporate Secretary  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

RE: Betsy Strausberg  
Johnson & Johnson Stock Ownership (JNJ)  
Account xxxx-████

Dear Corporate Secretary:

This letter is to verify that Betsy Strausberg has continuously held at least \$2000 in market value of JNJ stock for at least one year prior to November 9, 2011 (November 9, 2010 to present).

If you need additional information to satisfy your requirements, please contact me at 877-615-2386.

Sincerely,



Charles Schwab Institutional Service Group