BRYAN CAVE

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December 21, 2017

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Securities Exchange Act of 1934 / Rule 14a-8

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: 2018 Express Scripts Holding Company Annual Meeting of Stockholders - Notice of Intent to Omit Stockholder Proposal Submitted by John Chevedden & Walden Asset Management Pursuant to Rule 14a-8

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), our client, Express Scripts Holding Company, a Delaware corporation ("Express Scripts" or the "Company"), hereby notifies the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") of its intention to exclude a shareholder proposal (the "Proposal") submitted by John Chevedden and Walden Asset Management (the "Proponents") from Express Scripts' proxy materials for its 2018 Annual Meeting of Stockholders (the "2018 Proxy Materials") for the reasons stated below. The Company requests confirmation that the Staff will not recommend any enforcement action if the Company omits the Proposal from the 2018 Proxy Materials for the reasons detailed below.

This letter, together with the Proposal and the related correspondence, are being submitted to the Staff via e-mail in lieu of mailing paper copies. In accordance with Rule 14a-8(j), this letter is being submitted more than 80 calendar days before the date on which the Company expects to file the definitive 2018 Proxy Materials. A copy of this letter and the attachments are being sent on this date to the Proponents advising of Express Scripts' intention to omit the Proposal from its 2018 Proxy Materials. We respectfully remind the Proponents that if they elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned pursuant to Rule 14a-8(k).

I. The Proposal

The Proposal, in its entirety, reads as follows:

Express Scripts - Separate Chair & CEO

RESOLVED: The shareholders request the Board of Directors to adopt as policy, and amend the bylaws as necessary, to require the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. This policy would be phased in for the next CEO transition.

If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chair.

Supporting Statement:

We believe:

- The role of the CEO and management is to run the company.
- The role of the Board of Directors is to provide independent oversight of management and the CEO.
- There is a potential conflict of interest for a CEO to be her/his own overseer as Chair while managing the business.

Express Scripts' CEO Tim Wentworth serves both as CEO and Chair of the Company's Board of Directors. We believe the combination of these two roles in a single person weakens a corporation's governance structure.

As Andrew Grove, Intel's former chair, stated, "The separation of the two jobs goes to the heart of the conception of a corporation. Is a company a sandbox for the CEO, or is the CEO an employee? If he's an employee, he needs a boss, and that boss is the Board. The Chairman runs the Board. How can the CEO be his own boss?"

In our view, shareholders are best served by an independent Board Chair who can provide a balance of power between the CEO and the Board. The primary duty of a Board of Directors is to oversee the management of a company on behalf of shareholders. A combined CEO / Chair creates a potential conflict of interest, resulting in excessive management influence on the Board and weaker oversight of management.

Numerous institutional investors recommend separation of these two roles. For example, California's Retirement System CalPERS' Principles & Guidelines encourage separation, even with a lead director in place.

According to ISS "2015 Board Practices", (April 2015), 53% of S&P 1,500 firms separate these two positions and the number of companies separating these roles is growing.

Chairing and overseeing the Board is a time intensive responsibility. A separate Chair also frees the CEO to manage the company and build effective business strategies.

Shareholder resolutions urging separation of CEO and Chair received approximately 30% in 2017 according to Sullivan & Cromwell's "2017 Proxy Review, an indication of strong investor support.
To simplify the transition, this policy would be phased in and implemented when the next CEO is chosen.

A copy of the Proposal and related correspondence with the Proponents is attached to this letter as Exhibit A.

II. The Company may exclude the Proposal from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal is materially false and misleading and, in the alternative, pursuant to Rule 14a-8(i)(10) because the Proposal has been substantially implemented.

A. The Proposal is materially false and misleading and therefore may be excluded pursuant to Rule 14a-8(i)(3).

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. Rule 14a-9 provides that no solicitation may be made by means of any proxy statement containing "any statement, which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." In Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"), the Staff articulated the application of this exclusion by explaining that it is appropriate where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires — *this objection also may be appropriate where the proposal and the supporting statement, when read together, have the same result*" (emphasis added). The Staff earlier expressed the application of this exclusion by noting that a proposal can be sufficiently misleading and therefore excludable under Rule 14a-8(i)(3) when the company and its shareholders might interpret the proposal differently such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991).

In addition, the Staff also recognized in SLB 14B two other circumstances under which a proposal may be excluded pursuant to Rule 14a-8(i)(3). First, exclusion is also warranted where "substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote." *See also The Kroger Co.* Mar. 27, 2017 (concurring in the exclusion of supporting statements involving "neonics" as irrelevant to a consideration of whether to adopt a policy requiring an independent chair because there was "a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote"). Additionally, exclusion is warranted where the "company demonstrates objectively that a factual statement is materially false or misleading." *See also JPMorgan Chase & Co. (Mar.* 11, 2014, *recon. denied* Mar. 28, 2014) (concurring in the exclusion of a proposal as false and misleading because, among other things, it misrepresented the company's vote counting standard for electing directors and mischaracterized the company's treatment of abstentions); *Johnson & Johnson* (Jan. 31, 2007) (concurring in the exclusion of a proposal as false and misleading where the proposal concerned an advisory vote to approve the compensation committee report because it contained misleading implications about SEC rules concerning the contents of the report).

The subject matter of the Proposal, as highlighted by the title of the Proposal ("Separate Chair & CEO") and as further articulated by the entirety of the supporting statement, appears to be the separation of the roles of CEO and chairman of the Company's board of directors (the "Chairman"). Bizarrely, in spite of the Proponents' apparent intention expressed through the Proposal's title and supporting statement, the resolution statement makes reference to adopting a policy that the Chairman be an independent member of the board, without reference to separating the roles of Chairman and CEO. There

is, in fact, an obvious disconnect between the apparent purpose of the Proposal and substance of the resolution statement. Namely, in the supporting statement's twenty sentences, only one makes reference to the independence of the Chairman. Instead, the title and supporting statement focus almost exclusively on separating the roles of Chairman and CEO, citing the following arguments for separating the two roles:

- "There is a potential conflict of interest for a CEO to be her/his own overseer as Chair while managing the business."
- "Express Scripts' CEO Tim Wentworth serves both as CEO and Chair of the Company's Board of Directors. We believe the combination of these two roles in a single person weakens a corporation's governance structure."
- "The separation of the two jobs goes to the heart of the conception of a corporation. Is a company a sandbox for the CEO, or is the CEO an employee? If he's an employee, he needs a boss, and that boss is the Board. The Chairman runs the Board. How can the CEO be his own boss?"
- "The primary duty of a Board of Directors is to oversee the management of a company on behalf of shareholders. A combined CEO / Chair creates a potential conflict of interest, resulting in excessive management influence on the Board and weaker oversight of management."
- "Numerous institutional investors recommend separation of these two roles. For example, California's Retirement System CalPERS' Principles & Guidelines encourage separation, even with a lead director in place."
- "According to ISS '2015 Board Practices', (April 2015), 53% of S&P 1,500 firms separate these two positions and the number of companies separating these roles is growing."
- "Chairing and overseeing the Board is a time intensive responsibility. A separate Chair also frees the CEO to manage the company and build effective business strategies."
- "Shareholder resolutions urging separation of CEO and Chair received approximately 30% in 2017 according to Sullivan & Cromwell's 2017 Proxy Review, an indication of strong investor support."

Additionally, the concluding statement ("this policy would be phased in and implemented when the next CEO is chosen") is relevant to a proposal to separate the CEO and Chair.

The Proposal is based on an objectively and materially false and misleading premise.

The entire premise of the Proposal's purpose (i.e., that the Company should separate the roles of Chairman and CEO) is based on the objectively false assertion that the CEO of Express Scripts is also the Chairman. In fact, the roles are separated. As disclosed in the Company's Current Report on Form 8-K, filed on May 4, 2016, Mr. Wentworth is President and CEO of the Company, and George Paz is the Chairman.[1] This information is also readily available on the Company's corporate governance web page[2] as well as throughout its definitive proxy materials for its most recent annual meeting of stockholders, including in the opening "Letter to Stockholders from the Lead Independent Director."[3]

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[1] Available at: https://www.sec.gov/Archives/edgar/data/1532063/000119312516577530/d174618d8k.htm.

[2] Available at: https://expressscriptsholdingco.gcs-web.com/corporate-governance/board-of-directors.

[3] Available at: https://www.sec.gov/Archives/edgar/data/1532063/000119312517087287/d331565ddef14a.htm.

This is a *material* misstatement of fact. Information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote. *TSC Industries, Inc. v. Northway, Inc.,* 426 U.S. 438 (1976). The Company has been down this road before with one of the Proponents involving a proposal regarding the Chairman. In *Express Scripts Holding Company v. Chevedden*, the U.S. District Court for the Eastern District of Missouri held that the proponent's incorrect statements about the company's corporate governance structure amounted to materially false and misleading statements in violation of Rule 14a-9. *Express Scripts Holding Company v. Chevedden,* No. 4:13-CV-2520-JAR, 2014 U.S. Dist. LEXIS 19689 (E.D. Mo. Feb. 18, 2014) (where, among other things, the proponent incorrectly stated that the company did not have a clawback provision and provided for only plurality voting in the election of directors, misrepresented the CEO's compensation and incorrectly identified a director as having the highest negative vote at the most recent annual shareholder meeting). In particular, the court stated: "Here, when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company's existing corporate governance practices are important to the shareholder's decision whether to vote in favor of the proposed measure." *Id.* at *12. The principles underlying the decision in *Express Scripts* stand, as the falsity of this material misstatement, as well as the misleading nature of the entire supporting statement in light of this falsity, go to the heart of the Proposal. It is not only objectively false, it is materially misleading, because the very basis for persuading stockholders to vote in favor of a Proposal that appears to focus on separating the roles of Chairman and CEO is that Mr. Wentworth is both Chairman and CEO. In other words, it would involve soliciting votes in favor of a proposed corporate governance measure using proxy materials of the kind that were the court's central concern in *Express Scripts*.

Staff precedent indicates that when the premise of a proposal is based on an objectively false or materially misleading statement, total exclusion is warranted. *See, e.g.*, *Ferro Corp.* (Mar. 17, 2015) (concurring in the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the shareholders would have increased rights if Delaware law governed the company); *State Street Corp.* (Mar. 1, 2005) (concurring in the exclusion of a proposal requesting shareholder action pursuant to a section of state law that had been re-codified and was thus no longer applicable). The effect of the false and misleading premise of this Proposal is no less adverse than those in *Ferro* and *State Street*, where the false and misleading statements were so fundamental to the proposals that "the proposal as a whole [was] materially false and misleading." Accordingly, the entire Proposal should be excluded.

> *The resolution and the supporting statement, when read together, are inherently indefinite and misleading such that neither the stockholders nor the Company would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.*

The Company, of course, acknowledges that in some circumstances the Staff, as noted in SLB 14B, believes that "it is appropriate under rule 14a-8 for companies to address [certain] objections in their statements of opposition," such as when a proposal contains:

i. unsupported factual assertions;
ii. factual assertions that, "while not materially false or misleading," are disputable;
iii. factual assertions that "may be interpreted by shareholders in a manner that is unfavorable"; and/or
iv. opinions of the proponent or a referenced source that are not identified as opinions.

For example, recently the Staff has declined to grant no-action relief under Rule 14a-8(i)(3) where: (a) shareholders may not understand that the policy requested by the proposal is permanent and potentially binding on future boards (*see Caterpillar Inc.*, (Mar. 28, 2017)); (b) a proposed bylaw amendment may have created a potential conflict with existing bylaw provisions (*see Netflix, Inc.* (Mar. 13, 2017)); and (c) the proposal regarding director independence provided two standards for independence, with the company arguing that it was unclear which of the two would prevail in the event of a conflict (*see Dominion Resources, Inc.* (Feb. 11, 2016)). In each case, any clarifying or disputing of erroneous or misleading assertions was left to the company's statement of opposition.

The problems with this Proposal, however, go far beyond those identified by the Staff in SLB 14B or discussed in the recent no-action correspondence referenced above. As noted, the Proposal contains an objectively false and materially misleading statement concerning the central issue of the Proposal — that the Company's CEO serves as its Chairman. In *Caterpillar*, *Netflix*, and *Dominion Resources*, for example, it was at least possible to explain to shareholders that adoption of the proposals may have unintended or undesired consequences that were not clearly spelled out in the proposal itself. Moreover, the ambiguities and inconsistences claimed by the companies in each of those instances did not go to the very heart of the rationale for adopting the proposals. Not so here. As stated in Staff Legal Bulletin 14G (Oct. 16, 2012), when the Staff evaluates whether a proposal may be excluded under Rule 14a-8(i)(3), it "consider[s] only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the company can determine what actions the proposal seeks." Based on that criterion, there is simply no means for the Company or its stockholders to discern what actions this Proposal seeks when its title and the entirety of its supporting statement clearly contemplate one governance question while the resolution statement appears to contemplate a different governance question. Therefore, it would not be possible for the Company to address this fundamental ambiguity in its statement of opposition. As such, the complete disconnect between the three sentences in the resolution statement and the apparent purpose of the Proposal expressed by the title and the entirety of the supporting statement renders the Proposal inherently misleading from beginning to end.

In describing the Proposal to its stockholders, the Company cannot reason away or explain the inherently misleading nature of the Proposal. If required to include this Proposal in the 2018 Proxy Materials, management would effectively be compelled to disseminate the Proposal's vague and misleading statements to stockholders, including in the proxy statement summary, table of contents, narrative description of the Proposal, the statement of opposition, and even on the proxy card which "should clearly identify and describe the specific action on which shareholders will be asked to vote." Division of Corporation Finance, Exchange Act Rule 14a-4(a)(3), Questions and Answers of General Applicability (Mar. 22, 2016) (the "Staff Q&A"). To take a very simple but meaningful example, how should the Company title the Proposal in the table of contents to the 2018 Proxy Materials? It cannot identify it by its own title, "Proposal X: Separate Chair & CEO," without inviting widespread confusion because (i) the two roles are already separated at Express Scripts and (ii) the resolution statement has nothing to do with separating the two roles. Nor can it identify the Proposal as "Proposal X: Independent Chair" without also inviting widespread confusion because stockholders will look at the actual title of the Proposal and the fact that 80% of the Proposal's statements address an entirely different substantive question.

Similarly, in its narrative descriptions of the Proposal or in its form of proxy, can the Company fairly tell its stockholders that they are being asked to vote on a proposal relating to the separation of the roles of Chairman and CEO? Again, that is not what the resolution statement addresses, and the premise

of the supporting statement is based on the materially and objectively false assertion that the two roles are not already separated at Express Scripts. But can management straightforwardly tell its stockholders that they are being asked to vote on a proposal relating to the independence of the Chairman without inviting substantial confusion? Certainly not, when many stockholders may look only to the title of the Proposal or, if the whole Proposal is read, will see that, with few exceptions, the entirety of the Proposal corresponds to the title, which addresses a separate governance question. A reasonable stockholder would, after reading the title and supporting statement, be uncertain as to whether his or her vote relates to the independence of the Chairman or the separation of the Chairman and CEO roles. This is not a minor stylistic question. Rule 14a-4(a)(3) requires that the "form of proxy… [s]hall identify clearly and impartially each separate matter intended to be acted upon." The inclusion of this Proposal, therefore, might put the Company in a position where it cannot comply with Rule 14a-4(a)(3) because the Company would have to provide an ambiguous or vague description of the matter to be acted upon, but the Staff made clear in the Staff Q&A that describing voting matters in an ambiguous, highly general, or vague way is not permitted under Rule 14a-4(a)(3).

The false and misleading nature of the Proposal is aggravated further by the reasonable expectations of the Company's stockholders, which have developed over recent years in light of other proposals previously submitted to the Company and voted on by its stockholders. As an example, attached as Exhibits B, C and D are excerpts from the Company's definitive proxy materials for its 2017, 2016 and 2015 annual meetings of stockholders, respectively. In each year, the Company received, and stockholders voted on, proposals relating to the independence of the Chairman. In each instance, the titles clearly identified the substance of the proposals, and the resolution statements generally corresponded to the supporting statements. Particularly given the consistent nature of the prior proposals, stockholders of the Company, including those who have voted many times on past independent chairman proposals presented to other companies, may be further misled and confused. On the one hand, they may think that the Proposal is consistent with the prior proposals (an independent chair proposal) and therefore need not be considered separately. Or, on the other, they may think that the Proposal is entirely different from the other proposals (a separate chair/CEO proposal) and therefore does not implicate Chairman independence. But it is not at all clear which interpretation is correct or, indeed, whether either interpretation is correct.

The Company need not engage in rhetorical hairsplitting by magnifying only selected assertions in the Proposal. Rather, this is a straightforward application of SLB 14B: "[T]he proposal and the supporting statement, *when read together*, have the… result" of being "so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." And it is certainly the case that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." We respectfully submit that this is the paradigmatic type of proposal to which total exclusion under Rule 14a-8(i)(3) was designed to apply.

> *Even if construed as an independent chair proposal, revisions of the Proposal should not be permitted because the entirety of the supporting statement and title would be materially false and misleading and irrelevant to a consideration of the subject matter of the Proposal.*

Even if the Staff or the Company were to attempt to divine that the Proponents in fact intended the Proposal to focus on the independence of the Chairman, not only are "substantial portions of the supporting statement… irrelevant to a consideration of the subject matter of the proposal," the *entirety* of the supporting

statement as well as the title of the Proposal itself are wholly irrelevant to that subject matter, "such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote." On that basis as well, the entire Proposal should be excluded.

The Staff has, of course, developed a practice of issuing no-action responses to Rule 14a-8(i)(3) requests that permit shareholders to make "revisions that are minor in nature and do not alter the substance of the proposal," but the intent of this practice is to limit revisions to minor defects, not of the kind that "would require detailed and extensive editing in order to bring it into compliance with the proxy rules." SLB 14B. In recent application, this practice has indeed been limited to such minor revisions. For example, in *Kroger* (*supra*), the proposal concerned a policy requiring that the company's board chairmen be independent, but the supporting statement contained a paragraph discussing the company's sale of produce treated with "neonic" insecticides. Consistent with its practice of permitting minor revisions to a proposal that is not otherwise defective, the Staff permitted the exclusion of this paragraph alone as "irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote." *See Kroger* (*supra*). *See also Rite Aid Corporation* (Mar. 13, 2015) (concurring in the partial exclusion of a proposal concerning proxy access as materially false or misleading under Rule 14a-9, specifically a single statement asserting, "The SEC fully supports this Proposal and the two largest institutional proxy advisory firms, ISS and Glass Lewis, generally support this shareholder protection proposal to include shareholder director nominees in Rite Aid's proxy statement and proxy cards, providing an inexpensive means for opposing management's slate.").

This Proposal is markedly different. The problem is not merely that the Proponents have included stray commentary unrelated to the substance of the Proposal or that the Proposal contains a litany of unsupported complaints and dubious assertions or even numerous objectively false statements, whether related or unrelated to the underlying substance of the Proposal. Instead, the *entirety* of the Proposal other than the resolution statement addresses one substantive governance question, and the resolution statement addresses a completely different substantive governance question. As such, neither the stockholders voting on the proposal, nor the Company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Deleting or revising a single sentence or even an entire paragraph would not cure these defects. Rather, the defects rendering the Proposal materially false and misleading are so fundamental and pervasive that it would require not just deleting the objectively false statement about the Company's CEO serving as its Chairman, or even a detailed and extensive revision, but a total revision of the Proposal. Namely, it would require either (a) revising the entire resolution statement to address the distinct substantive question of separating the roles of Chairman and CEO, and correcting the objectively false statement about combined role of Chair and CEO in the supporting statement, so that the Proposal is internally coherent and does not contain false and misleading statements, or (b) permitting the Proponents to revise the entirety of the supporting statement and the title of the Proposal. We do not believe that there is an alternative option of permitting the Company to exclude those portions of the Proposal that are irrelevant to the current resolution statement, which would require removing the title and the entirety of the supporting statement, perhaps other than a lone sentence asserting that "an independent Board Chair… can provide a balance of power between the CEO and the Board."

For these reasons, it is not feasible for the Staff, consistent with SLB 14B and recent no-action correspondence, to save some variation of the Proposal from exclusion by either (i) permitting the Proponents to undertake a total revision of the resolution statement or supporting statement or (ii) allowing the Company to exclude only portions of the Proposal. Neither the Proponents' editing of the Proposal nor the Company's opportunity to draft a statement of opposition to the Proposal would provide an adequate

remedy for curing its fundamental defects. Instead, this Proposal is akin to recent proposals reviewed by the Staff where the proposal and the supporting statement, when read together, are fundamentally vague and misleading that total exclusion is warranted. *See, e.g.*, *Walgreens Boots Alliance, Inc.* (Sep. 19, 2016) (concurring in the total exclusion of a proposal asking that the board determine there was a "compelling justification" whenever it took "any action whose primary purpose is to prevent the effectiveness of shareholder vote" because the substance of these terms and the effects of adopting the proposal were likely to be inherently vague and misleading to shareholders).

Accordingly, Express Scripts believes that the entire Proposal may be excluded from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(3) as materially false and misleading.

B. To the extent the Proposal is revised to require the separation of the Chairman and CEO roles or is so construed, the Proposal has been substantially implemented and may be excluded pursuant to Rule 14a-8(i)(10).

Alternatively, and to the extent that the Staff does not concur that the entire Proposal may be excluded as materially false and misleading and either (i) requires the Proponents to revise the resolution statement to address the apparent purpose of the Proposal, namely the separation of the Chairman and CEO roles, or (ii) construes the Proposal as relating to the separation of such roles, Express Scripts believes the Proposal may be excluded pursuant to Rule 14a-8(i)(10) as substantially implemented.

Rule 14a-8(i)(10) provides that a company may exclude a proposal from its proxy materials if "the company has already substantially implemented the proposal." According to the Commission, this exclusion "is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." *See* Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release"). The Staff has articulated this standard by stating that "a determination that the company has substantially implemented the proposal depends upon whether particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc*, (Mar. 28, 1991) (concurring in the exclusion of a proposal requesting the company to implement a specific set of environmental guidelines as substantially implemented because the company had established a compliance and disclosure program related to its environmental program, even though the company's guidelines did not satisfy the specific inspection, public disclosure or substantive commitments that the proposal sought). A company need not implement every detail of a proposal in order for the Staff to permit exclusion under Rule 14a-8(i)(10). *See* 1983 Release. Rather, the Staff has consistently permitted exclusion of a shareholder proposal when a company already has policies and procedures in place satisfactorily addressing the underlying concerns of the proposal or has implemented the essential objectives of the proposal. *See, e.g., Dominion Resources, Inc.* (Feb. 9, 2016) (concurring in the exclusion of a proposal requesting the company to publish a report on measuring, mitigating, disclosing and setting reduction targets for methane emissions where existing company disclosures compared favorably to the guidelines of the proposal, in spite of the proponent's allegation that the company's disclosures did not cover all facilities, address means of measuring methane reduction, or include specific reduction targets); *Pfizer Inc.* (Jan. 11, 2013) (concurring in the exclusion of a proposal requesting the company to produce a report on measures implemented to reduce the use of animal testing and plans to promote alternatives to animal use where existing company laboratory animal care guidelines and policy were available on its website); *MGM Resorts International* (Feb. 28, 2012) (concurring in the exclusion of a proposal requesting a report on the company's sustainability policies and performance, including multiple, objective statistical indicators, where the company published an annual sustainability report).

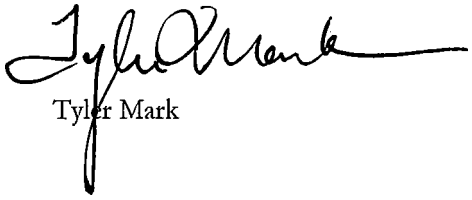
As noted above, the most prominent element of the Proposal – the title – as well as nineteen of the twenty sentences in the supporting statement expressly or implicitly focus on the separation of the roles of Chairman and CEO. Investors need look no further than the Company's website[4] or the proxy materials for its most recent annual meeting[5] to discover that Timothy Wentworth is President and CEO of the Company and George Paz is the Chairman.

Accordingly, to the extent the Staff either (i) requires the Proponents to revise the resolution statement to address the apparent purpose of the Proposal, namely the separation of the Chairman and CEO roles or (ii) construes the Proposal as relating to the separation of such roles, the Company's current management structure substantially implements, compares favorably to, and satisfies the essential objective of the Proposal. The Proposal may therefore be excluded pursuant to Rule 14a-8(i)(10).

III. Conclusion

Based on the foregoing analysis, we respectfully request the Staff concur that it will take no action if Company excludes the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If the Staff is unable to agree with our conclusions without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter. Correspondence regarding this letter should be sent to me at tyler.mark@bryancave.com. If I can be of any further assistance in this matter, please do not hesitate to contact me at (303) 866-0238 or my colleague Taavi Annus at (314) 259-2037.

Sincerely,



Tyler Mark

Attachments

cc: Martin P. Akins, Senior Vice President, General Counsel, Express Scripts Holdings Company
Nick H. Varsam, Vice President & Associate General Counsel, Express Scripts Holdings Company
Taavi Annus, Partner, Bryan Cave LLP
John Chevedden
Timothy Smith, Senior Vice President, Walden Asset Management

[4] Available at: https://expressscriptsholdingco.gcs-web.com/corporate-governance/board-of-directors.

[5] Available at: https://www.sec.gov/Archives/edgar/data/1532063/000119312517087287/d331565ddef14a.htm.

John Chevedden, *** sponsors this proposal.

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;t
- the company objects to factual assertions that, while not materially false or misleading,t may be disputed or countered;t
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/ort
- the company objects to statements because they represent the opinion of thet shareholder proponent or a referenced source, but the statements are not identifiedt specifically as such.t

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email
***

usbank

Institutional Trust and Custody
425 Walnut Street
Cincinnati, OH 45202

usbank.com

Date: November 13, 2017

To Whom It May Concern:

U.S. Bank has acted as sub-custodian for Boston Trust & Investment Management Company (Boston Trust) since July 18, 2016. Walden Asset Management is the investment division of Boston Trust dealing with environmental, social and governance matter.

We are writing to confirm that Boston Trust has had beneficial ownership of a least $2,000 in market value of the voting securities of **Express Scripts Holding Company (Cusip#30219G108)** for more than one year.

U.S. Bank serves as the sub-custodian for Boston Trust and Investment Management Company. U. S. Bank is a DTC participant.

Sincerely,

Joanne MacVey
Officer, Client Service Manager
Institutional Trust & Custody

Exhibit B

Excerpt from the Company's Definitive Proxy Materials for Its 2017 Annual Meeting of Stockholders[6]

Proposal 5 – Independent Board Chairman

Resolved: Shareholders request our Board of Directors to adopt as policy, and amend our governing documents as necessary, to require the Chair of the Board of Directors, whenever possible, to be an independent member of the Board.

If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chair. The Board would have the discretion to phase in this policy for the next CEO transition. It is the responsibility of the Board of Directors to protect shareholders' long-term interests by providing independent oversight of management.

A board chairman who is independent of the Company and its management will promote greater management accountability to shareholders and lead to a more objective evaluation of management.

As Intel's former chair Andrew Grove stated, "The separation of the two jobs goes to the heart of the conception of a corporation. Is a company a sandbox for the CEO, or is the CEO an employee? If he's an employee, he needs a boss, and that boss is the Board. The Chairman runs the Board. How can the CEO be his own boss?"

According to the Millstein Center for Corporate Governance and Performance (Yale), "The independent chair curbs conflicts of interest, promotes oversight of risk, manages the relationship between the board and CEO, serves as a conduit for regular communication with shareowners, and is a logical next step in the development of an independent board."

An NACD Blue Ribbon Commission on Directors' Professionalism recommended that an independent director should be charged with "organizing the board's evaluation of the CEO and provide ongoing feedback; chairing executive sessions of the board; setting the agenda and leading the board in anticipating and responding to crises."

A number of prominent institutional investors publicly advocate for strong board leadership to best provide necessary oversight of management. The California Public Employees' Retirement System's Global Principles of Accountable Corporate Governance recommends that a company's board should be chaired by an independent director, as does the Council of Institutional Investors.

Caterpillar reversed itself by naming an independent board chairman in October 2016. Caterpillar had opposed a shareholder proposal for an independent board chairman as recent as its June 2016 annual meeting. Wells Fargo also reversed itself and named an independent board chairman in October 2016.

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[6] Available at pp. 67-68:
https://www.sec.gov/Archives/edgar/data/1532063/000119312517087287/d331565ddef14a.htm.

ESRX shareholders gave an impressive 43% vote of support for this topic in 2015 and 46.8% in 2016. According to ISS (ISS 2015 Board Practices), 53% of S&P 1,500 firms separate these two positions and the trend is growing.

An independent director serving as chairman can help ensure the functioning of an effective board.

Exhibit C

Excerpt from the Company's Definitive Proxy Materials for Its 2016 Annual Meeting of Stockholders[7]

Proposal 5 – Independent Board Chairman

Shareholders request our Board of Directors to adopt as policy, and amend our governing documents as necessary, to require the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next CEO transition, implemented so it does not violate any existing agreement. If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chair. This proposal requests that all the necessary steps be taken to accomplish the above.

This proposal topic won 50%-plus support at 5 major U.S. companies in 2013 including 73%-support at Netflix. Shareholders of our company gave an impressive 43% vote of support for this topic in 2015.

It is the responsibility of the Board of Directors to protect shareholders' long-term interests by providing independent oversight of management. By setting agendas, priorities and procedures, the Chairman is critical in shaping the work of the Board.

A board of directors is less likely to provide rigorous independent oversight of management if the Chairman is the CEO, as is the case with our Company. Having a board chairman who is independent of the Company and its management is a practice that will promote greater management accountability to shareholders and lead to a more objective evaluation of management.

According to the Millstein Center for Corporate Governance and Performance (Yale School of Management), "The independent chair curbs conflicts of interest, promotes oversight of risk, manages the relationship between the board and CEO, serves as a conduit for regular communication with shareowners, and is a logical next step in the development of an independent board."

An NACD Blue Ribbon Commission on Directors' Professionalism recommended that an independent director should be charged with "organizing the board's evaluation of the CEO and provide ongoing feedback; chairing executive sessions of the board; setting the agenda and leading the board in anticipating and responding to crises." A blue-ribbon report from The Conference Board echoed that position.

A number of institutional investors said that a strong, objective board leader can best provide the necessary oversight of management. Thus, the California Public Employees' Retirement System's Global Principles of Accountable Corporate Governance recommends that a company's board should be chaired by an independent director, as does the Council of Institutional Investors.

An independent director serving as chairman can help ensure the functioning of an effective board. Please vote to enhance shareholder value.

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[7] Available at pp. 83-84:
https://www.sec.gov/Archives/edgar/data/1532063/000119312516511918/d70696ddef14a.htm.

Exhibit D

Excerpt from the Company's Definitive Proxy Materials for Its 2015 Annual Meeting of Stockholders[8]

Proxy Item No. 5:

STOCKHOLDER PROPOSAL REGARDING INDEPENDENT BOARD CHAIRMAN

Proposal 5 – Independent Board Chairman

RESOLVED: The shareholders request the Board of Directors to adopt as policy, and amend the bylaws as necessary, to require the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next CEO transition, implemented so it did not violate any existing agreement. If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chair.

The role of the CEO and management is to run the company. The role of the Board of Directors is to provide independent oversight of management and the CEO. There is a potential conflict of interest for a CEO to be her/his own overseer as Chair while managing the business. The combination of these two roles in a single person weakens a corporation's governance structure, which can harm shareholder value.

As Intel's former chair Andrew Grove stated, "The separation of the two jobs goes to the heart of the conception of a corporation. Is a company a sandbox for the CEO, or is the CEO an employee? If he's an employee, he needs a boss, and that boss is the Board. The Chairman runs the Board. How can the CEO be his own boss?"

Shareholders are best served by an independent Board Chair who can provide a balance of power between the CEO and the Board empowering strong Board leadership. The primary duty of a Board of Directors is to oversee the management of a company on behalf of shareholders. A combined CEO / Chair creates a potential conflict of interest, resulting in excessive management influence on the Board and weaker oversight of management.

Numerous institutional investors recommend separation of these two roles. For example, California's Retirement System CalPERS' Principles & Guidelines encourage separation, even with a lead director in place.

Chairing and overseeing the Board is a time intensive responsibility. A separate Chair also frees the CEO to manage the company and build effective business strategies.

Many companies have separate and/or independent Chairs. An independent Chair is the prevailing practice in the United Kingdom and many international markets and is an increasing trend in the U.S. This proposal topic won 50% plus support at five major U.S. companies in 2013.

Please vote to protect shareholder value:

Independent Board Chairman – Proposal 5

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[8] Available at pp. 70-71:
https://www.sec.gov/Archives/edgar/data/1532063/000119312515103240/d820006ddef14a.htm#toc820006_36.