

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).

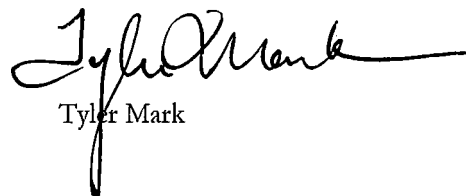
As noted above, the most prominent element of the Proposal – the title – as well as nineteen of the twenty sentences in the supporting statement expressly or implicitly focus on the separation of the roles of Chairman and CEO. Investors need look no further than the Company's website⁴ or the proxy materials for its most recent annual meeting⁵ 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>.

Exhibit A

Proposal and Related Correspondence

JOHN CHEVEDDEN

Mr. Martin P. Akins
Corporate Secretary
Express Scripts Holding Company (ESRX)
One Express Way
Saint Louis MO 63121
PH: 314-996-0900
FX: 866-276-7055

Dear Mr. Akins,

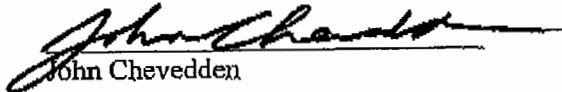
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

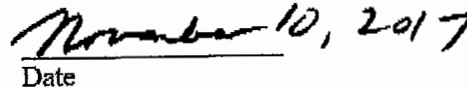
This Rule 14a-8 proposal is intended as a low-cost method to improve company performance -- especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to

Sincerely,


John Chevedden


Date

cc: Joseph J. Satorius <JJSatorius@express-scripts.com>
Martin Akins <MAkins@express-scripts.com>

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.

John Chevedden,
proposal.

sponsors this

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;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- 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/or
- the company objects to statements because they represent the opinion of that shareholder proponent or a referenced source, but the statements are not identified specifically as such.

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



Walden Asset Management

Advancing sustainable business practices since 1975

November 13, 2017

Mr. Martin P. Akins
Corporate Secretary
Express Scripts Holding Company
One Express Way
St. Louis, MO 63121

Dear Mr. Akins

Boston Trust & Investment Management Company, including our socially responsive investment practice Walden Asset Management, incorporates environmental, social and governance (ESG) analysis into investment decision-making. We also strive to strengthen corporate ESG policies, performance, and accountability through shareholder engagement. As you know from our past conversations, we are strongly supportive of good corporate governance practices.

Walden is filing the attached shareholder resolution addressing separation of chair and CEO, as we have done in previous years. We hold more than 5,000 shares of Express Scripts stock.

Walden Asset Management is filing the enclosed shareholder proposal for inclusion in the 2018 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. We have been a continuous owner of at least \$2,000 of Express Scripts stock for over a year and will continue to be a holder of the requisite number of shares for filing a resolution through the 2018 stockholders meeting. We are the beneficial owner, as defined in Rule 13d-3 of the Securities Exchange Act of 1934, and will act as the primary sponsor of this resolution. Proof of ownership is forthcoming from our sub-custodian, U.S. Bank, a DTC participant. Mr. John Chevedden will act as the primary filer.

We welcome a constructive dialogue that would lead to the withdrawal of this resolution. We deputize Mr. John Chevedden to act on our behalf in withdrawing this resolution.

Sincerely,

Timothy Smith
Senior Vice President
Director of ESG Shareowner Engagement

Cc: John Chevedden

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.

Exhibit D

Excerpt from the Company's Definitive Proxy Materials for Its 2015 Annual Meeting of Stockholders⁸

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

⁸ Available at pp. 70-71:

https://www.sec.gov/Archives/edgar/data/1532063/000119312515103240/d820006ddef14a.htm#toc820006_36.