



DIVISION OF
CORPORATION FINANCE

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

January 11, 2018

Sean M. Donahue
Morgan, Lewis & Bockius LLP
sean.donahue@morganlewis.com

Re: AmerisourceBergen Corporation
Incoming letter dated October 30, 2017

Dear Mr. Donahue:

This letter is in response to your correspondence dated October 30, 2017 and December 7, 2017 concerning the shareholder proposal (the "Proposal") submitted to AmerisourceBergen Corporation (the "Company") by the UAW Retiree Medical Benefits Trust and the Connecticut Retirement Plans and Trust Funds (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponents dated November 29, 2017. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Meredith Miller
UAW Retiree Medical Benefits Trust
mamiller@rhac.com

January 11, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: AmerisourceBergen Corporation
Incoming letter dated October 30, 2017

The Proposal urges the board to adopt a policy that the Company will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal is so inherently vague or indefinite that neither shareholders voting on the Proposal, nor the Company in implementing the Proposal, would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). We note that the Proposal focuses on senior executive compensation. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

William Mastrianna
Attorney-Adviser

DIVISION OF CORPORATION FINANCE INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 company's management omit the proposal from the company's proxy materials.

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December 7, 2017

VIA HAND DELIVERY AND EMAIL (shareholderproposals@sec.gov)

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

Re: *AmerisourceBergen Corporation
Supplemental Letter for Stockholder Proposal of the UAW Retiree Medical
Benefits Trust and the Connecticut Retirement Plans and Trust Funds, as co-filers
Rule 14a-8 of the Securities Exchange Act of 1934*

Ladies and Gentlemen:

On behalf of our client, AmerisourceBergen Corporation, a Delaware corporation (the “Company”), we are writing this letter (this “Supplemental Letter”) to supplement the no-action request letter dated October 30, 2017 (the “Initial No-Action Request Letter”) that we submitted on behalf of the Company regarding a stockholder proposal (the “Proposal”) and the statement in support thereof (the “Supporting Statement”; the Supporting Statement and the Proposal are referred to collectively as the “Proposal”) that was submitted by the UAW Retiree Medical Benefits Trust and the Connecticut Retirement Plans and Trust Funds, as co-filers (the “Proponents”), for inclusion in the Company’s proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the “2018 Proxy Materials”).

We are submitting this Supplemental Letter on behalf of the Company to address certain aspects of the letter dated November 29, 2017 that one of the Proponents—the UAW Retiree Medical Benefits Trust (the “UAW”)—submitted to the staff of the Division of Corporation Finance of

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the Securities and Exchange Commission (the “SEC Staff”), a copy of which is attached hereto as Exhibit A (the “UAW Response Letter”).¹

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this Supplemental Letter, including the exhibit, is being delivered by email to shareholderproposals@sec.gov. A copy of this Supplemental Letter, including the exhibit, is also being sent on this date to the Proponents. As counsel to the Company, we continue to request confirmation that the SEC Staff will not recommend enforcement action if the Company excludes the Proposal from the 2018 Proxy Materials for the reasons set forth in the Initial No-Action Request Letter and this Supplemental Letter. This Supplemental Letter does not replace the Initial No-Action Request Letter.

This Supplemental Letter discusses (i) certain aspects of the UAW Response Letter, including the UAW’s request to revise the Proposal to avoid its exclusion under Rule 14a-8(i)(3), with which we disagree, and (ii) the consideration of the Company’s Governance and Nominating Committee (the “Governance Committee”) of its Board of Directors (the “Board”), and the full Board, of the guidance issued by the SEC Staff in Staff Legal Bulletin No. 14I (November 1, 2017) (“SLB 14I”), which discusses, among other things, Rule 14a-8(i)(7), since the Initial No-Action Request Letter also stated that the Company believes and continues to believe that the Proposal may be omitted pursuant to Rule 14a-8(i)(7).

THE UAW RESPONSE LETTER

The Company believes that the Proposal is excludable from the 2018 Proxy Materials for the reasons discussed in the Initial No-Action Request Letter. For the sake of brevity, those reasons are not repeated here. The Company wants to highlight certain aspects of the UAW Response Letter with which it disagrees.

A. The UAW Response Letter Incorrectly Analyzes Rule 14a-8(i)(3) and SEC Staff Precedent Relating Thereto

The Company does not believe the UAW should be permitted to revise the Proposal because the revision that the UAW seeks to make is not the kind of revision that the SEC Staff has permitted under Rule 14a-8(i)(3). In Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”), the SEC Staff discussed the circumstances under which it would grant requests to exclude either all or part of a proposal under Rule 14a-8(i)(3). The SEC Staff noted, as it had in Staff Legal Bulletin No. 14 (Jul. 13, 2001), that “there is no provision in [R]ule 14a-8 that allows a shareholder to

¹ We note that the Connecticut Retirement Plans and Trust Funds did not state in the letter to the Company accompanying the Proposal and in which it identifies itself as a co-filer, nor in any other communication with the Company, that it designated the UAW as the lead proponent or authorized the UAW to act on its behalf.

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revise his or her proposal and supporting statement,” and, further, the SEC Staff will only permit “revisions that are minor in nature and do not alter the substance of the proposal.”² On this point, the SEC Staff reaffirmed that exclusion of a proposal under Rule 14a-8(i)(3) remains appropriate when “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.”³ Implicit in this statement is that proponents should not be allowed an opportunity to cure an otherwise substantively defective proposal.

Consistent with this guidance, the SEC Staff routinely has rejected proponents’ requests to revise their proposals to address deficiencies under Rule 14a-8(i)(3). For example, in Chevron Corp. (Mar. 15, 2013), the SEC Staff agreed to the exclusion of a proposal requesting that the board adopt a policy that the chairman be an independent director according to the definition set forth in the New York Stock Exchange listing standards, notwithstanding the proponent’s offer to clarify the definition from the listing standards within the proposal. Similarly, in Staples, Inc. (Apr. 13, 2012, recon. denied Apr. 19, 2012), the SEC Staff agreed to the exclusion of a proxy access proposal that would have created a conflict in the company’s bylaws even though the proponent offered to add three words to the proposal to resolve the conflict.⁴

The SEC Staff’s guidance from SLB 14B and the foregoing precedent belie the UAW’s claim that the revision it requests to make to the Proposal—substituting “ABC’s clawback policy” for “the Policy”—“would be a minor revision.” In reality, this revision would “alter the substance of the [P]roposal,” contrary to the SEC Staff’s long-standing practice articulated in SLB 14B. As explained in the Initial No-Action Request Letter, the entire meaning of the Proposal turns on whether there will be any clawbacks resulting from application of “the Policy.” In this regard, the Proposal’s use of the defined term “the Policy” parallels the Chevron proposal, where the SEC Staff noted that the definition of “independent director” was “a central aspect of the proposal.” Also, the UAW’s proposed revision to replace “the Policy” with the three words “ABC’s clawback policy” would alter the substance of the Proposal to the same extent as the proposed revision to change three words in Staples. Accordingly, the Company respectfully

² SLB 14B, Section B.2 (emphasis added).

³ Id.

⁴ See also AT&T Inc. (Feb. 16, 2010, recon. denied Mar. 2, 2010) (concurring with the exclusion of a proposal that referred to “grassroots lobbying communications as defined in 26 CFR § 56.4911-2” despite the proponent’s request to eliminate the CFR citation and/or provide a definition of “grassroots lobbying communications”); Johnson & Johnson (Feb. 7, 2003) (concurring with the exclusion of a proposal requesting a report on, in part, “[s]teps the company has taken to use the Glass Ceiling Commission Report and management’s recommendations flowing from it,” where in response to the company’s argument that the proposal did not describe the substantive provisions of the “Glass Ceiling Commission Report,” the proponent offered to “add to the supporting statement a reference to the Department of Labor web site where the report can be found”).

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requests that the SEC Staff not permit the UAW to effect this fundamental change to the Proposal.

To the extent the UAW's proposed revision can be considered a new proposal, the Company hereby exercises its right to reject the revised/new proposal and exclude it pursuant to Rule 14a-8(e). The UAW Response Letter seeking to revise the Proposal was submitted 68 days after the Company's September 22, 2017 deadline for submitting stockholder proposals under Rule 14a-8. Based on the guidance in Staff Legal Bulletin No. 14F (Oct. 18, 2011), "[i]f a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions." The Company does not accept the UAW's proposed revision.

B. The UAW Response Letter Mischaracterizes the Proposal and One of the Company's Arguments

The UAW Response Letter states on page 3 that the Proposal "asks (both before and after the [requested] revision) for ABC to disclose when it has clawed back incentive compensation from senior executives of the Company." This is an inaccurate description of the Proposal, which, as set forth in the Resolved Clause, requests the adoption of a policy to disclose clawbacks "as a result of applying the Policy." The Proposal is not a request to disclose clawbacks generally, as the UAW now claims. Instead, the Proposal seeks disclosure of clawbacks made pursuant to a policy, the meaning of which is unclear, as established in the Initial No-Action Request Letter.

The UAW also mischaracterizes one of the Company's arguments under Rule 14a-8(i)(7), claiming that "ABC argues that ... the Proposal's principal thrust is the opioid epidemic, which is not a significant social policy issue and even if it is, a sufficient nexus does not exist between ABC and the opioid epidemic." The Initial No-Action Request Letter does not state that the opioid epidemic is not a significant policy issue. Rather, the Initial No-Action Request Letter demonstrates the lack of a sufficient nexus between the Proposal and the Company's business operations so as to warrant exclusion of the Proposal pursuant to Rule 14a-8(i)(7). We further address that lack of a sufficient nexus below in light of the SEC Staff's recent guidance in SLB 14I.

C. The UAW Letter Incorrectly Analyzes Nexus under Rule 14a-8(i)(7)

The UAW claims that all distributors are the same and should be treated the same way. The Company believes that this assumption is inaccurate and results in an incorrect way to analyze nexus. In this regard, the UAW Response Letter states that the "attention and criticism [that has] focused on wholesale drug distributors like ABC for ignoring red flags and hereby allowing

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enormous quantities of prescription opioids to be shipped to—and potentially diverted to illegal use in--areas affected by the epidemic [sic]” provides a sufficient nexus between the “opioid epidemic,” which the UAW describes as a significant social policy issue, and the Company’s business. The Company notes that the SEC Staff has rejected the treatment of all members of an industry in the same way. It has stated that “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations,”⁵ and not on the company’s industry or the company’s peers. Accordingly, actions of several companies or an industry as a whole do not establish a nexus between a proposal and the subject company.

D. The Proposal Does Not Relate to Executive Compensation

The Proposal does not relate to executive compensation, as the UAW claims. Curiously, the UAW asserts on page 3 of the UAW Response Letter that the Proposal relates “solely” to executive compensation, but discusses the opioid epidemic for the remainder of the paragraph, including its concern with “ABC’s role in the opioid crisis” and its belief that the epidemic “is an urgent public health problem and a significant social policy issue.” The UAW does not provide any factual support for its contention that the Proposal relates solely to executive compensation and dedicates more than 5 of the 11 pages of the UAW Response Letter to a discussion about its concerns about the “opioid crisis.”

E. The Proposal Relates to Ordinary Business Because It Requires Disclosure When the Company’s Operations Constitute “Business as Usual”

The Company disagrees with the claim on page 11 of the UAW Response Letter that “[a] statement that no clawback has occurred is analogous to a zero in a column of the total compensation table.” A zero in a column of the Summary Compensation Table is quite different from disclosure that the Company did not claw back any incentive compensation in a particular year. A zero in a column of the Summary Compensation Table means that there was no compensation awarded that was required to be disclosed in the Summary Compensation Table by Item 402 of Regulation S-K. In contrast, disclosure that there was no clawing back of incentive compensation in a particular year means that the Company’s operations and the conduct of its employees were consistent with business as usual, i.e., that no event occurred that required a determination by the Board or the applicable Board committee, as administrator of the Omnibus Plan (the “Omnibus Plan”), that a “Triggering Event” (as defined in the Omnibus Plan) had

⁵ Staff Legal Bulletin No. 14H (Oct. 22, 2015) at note 32, citing Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable “as long as a sufficient nexus exists between the nature of the proposal and the company”).

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occurred.⁶ Each event identified as a Triggering Event in the Omnibus Plan is an unusual event that is inherently different from the absence of an award of compensation as shown in a Summary Compensation Table and, as such, a Triggering Event may deserve to be addressed through disciplinary action that includes recoupment by the Company or forfeiture by the employee of incentive compensation.

STAFF LEGAL BULLETIN NO. 14I

On November 1, 2017, the SEC Staff issued SLB 14I, which discusses, among other things, the Division of Corporation Finance's application of Rule 14a-8(i)(7). SLB 14I provides that, in a no-action request under Rule 14a-8(i)(7) where a significant policy issue is involved, the SEC Staff "would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance." SLB 14I further provides that the "explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned" and that such a "well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7)." The SEC Staff has explained that a board's analysis will help it determine whether a sufficient nexus exists between the policy issue raised in the proposal and the company's business.

SLB 14I further provides that "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations." In this regard "a proposal generally will not be excludable 'as long as a sufficient nexus exists between the nature of the proposal and the company.'"⁷ As such, where there is not a sufficient nexus between a company's business and the nature of a proposal, the SEC Staff has found that the proposal is excludable pursuant to Rule 14a-8(i)(7).

On November 15, 2017, the Governance Committee held a regularly scheduled meeting during which it discussed, among other things, the Proposal's request that the Company's Board adopt "a policy (the 'Policy') that ABC will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award (each, a 'clawback') as a result of applying the Policy" in light of the new guidance in SLB 14I. In addition, the members of the Governance Committee

⁶ Of course, this interpretation assumes that the clawback provisions in the Company's Omnibus Plan are the "policy" to which the Proponents intended to refer in the Resolved Clause (and not a policy that the Proponents would prefer that the Company have).

⁷ SLB 14I, citing Staff Legal Bulletin No. 14H (Oct. 22, 2015), citing Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable "as long as a sufficient nexus exists between the nature of the proposal and the company").

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discussed the Proponents' concerns about opioid abuse and the Company's role in the distribution of opioids. The members of the Governance Committee had previously received a copy of the Proposal, which states that the Company had disclosed business practices related to its distribution of opioids in West Virginia and other states and notes that the Proponents "are concerned about risks associated with these business practices."

The members of the Governance Committee, who had authorized members of the management of the Company ("Management") to seek the SEC Staff's concurrence with the exclusion of the Proposal from the 2018 Proxy Materials, received the Initial No-Action Request Letter prior to the meeting. At the meeting, the Company's Corporate Secretary (the "Secretary") discussed the Proposal with the Governance Committee, including the fact that the Proponents had expressed concerns about the abuse of opioid medications in the Proposal. The Secretary also discussed with the Governance Committee the views of the SEC Staff related to the circumstances in which (a) the SEC Staff believes that a proposal relates to a significant policy issue and (b) the SEC Staff, notwithstanding its view that a proposal relates to a significant policy issue, concurs with the exclusion from a company's proxy materials of the stockholder proposal under the ordinary business exclusion of Rule 14a-8(i)(7) because of the absence of a sufficient nexus between the policy issue raised in the proposal and the business of the company that received the proposal. The Secretary further discussed with the Governance Committee SLB 14I, as well as the SEC Staff's public comments about SLB 14I. The Secretary informed the Governance Committee that SLB 14I provides that the SEC Staff "would expect" companies to include in their no-action request letters that are submitted after the issuance of SLB 14I, and that rely on Rule 14a-8(i)(7) as a basis for exclusion, a discussion that reflects the analysis of the board of directors of the particular policy issue raised in a proposal and its significance to the company, as well as information about the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

After the Secretary's presentation, the members of the Governance Committee discussed the Proposal and the significance of the policy issue raised in the Proposal to the Company and its stockholders as well as the Proponents' concerns and observations. In addition, members of Management addressed various questions posed by the Governance Committee. Upon completion of the discussion, the Governance Committee determined that, based on its understanding of the SEC Staff's views and the Governance Committee's consideration of the Company's business, there is not a sufficient nexus between the Proposal's focus on the abuse of opioid medications and the Company's core operations as a distributor of pharmaceutical products to hospitals, pharmacies and other customers, and between the Company's business of providing services and distributing pharmaceutical products, on the one hand, and opioid use, abuse and dependency, on the other. The Governance Committee further determined that, based on its understanding of the SEC Staff's implementation of Rule 14a-8(i)(7) and the lack of a

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sufficient nexus between the nature of the Proposal and the Company's business, the Company should be able to exclude the Proposal from the 2018 Proxy Materials. Lastly, the Governance Committee determined to recommend that the Board consider this issue as well so that the Board's determinations could be described in any further correspondence that the Company may have with the SEC Staff relating to the Proposal, notwithstanding the fact that the Initial No-Action Request Letter was submitted prior to the issuance of SLB 14I.

On November 16, 2017, at a regularly scheduled meeting of the Company's Board, the Board discussed, among other things, the Governance Committee's determinations and recommendation. The members of the Board had received a copy of the Proposal and the Initial No-Action Request Letter prior to the meeting.

At the Board meeting, the Governance Committee reported to the Board its discussions about the Proposal and the concerns of the Proponents about the abuse of opioid medications, the policy issue raised by the Proposal. At the request of the Chair of the Governance Committee, the Secretary discussed with the Board the views of the SEC Staff related to significant policy issues and the exclusion of proposals that relate, or may relate, to a significant policy issue based upon the absence of a sufficient nexus between the policy issue raised in a particular proposal and the business of the company that received the proposal. The Secretary also discussed with the Board SLB 14I. Finally, the Chair of the Governance Committee discussed the Governance Committee's recommendation that the Board authorize the Secretary to include in any additional correspondence with the SEC Staff the information described in SLB 14I.

The members of the Board discussed the Proposal and the significance of the policy issue raised in the Proposal to the Company and its stockholders in light of SLB 14I. The discussion about the Proposal was informed by the periodic discussions that the Board has had and continues to have with members of Management about the Company's business, including, among other aspects, the Board's oversight of the Company's management of risks that affect the Company, including risks related to the distribution of opioid medications. The discussion about the Proposal also included additional questions from members of the Board to members of Management. Based on the discussion, the Board determined that, based on its understanding of the SEC Staff's views and the Board's consideration of the Company's business, there is not a sufficient nexus between the Proposal's concern about the abuse of opioid medications and the Company's core operations as a distributor of pharmaceutical products to hospitals, pharmacies and other customers, and between the Company's business of providing services and distributing pharmaceutical products, on the one hand, and opioid use, abuse and dependency, on the other. Accordingly, based on its understanding of the SEC Staff's implementation of Rule 14a-8(i)(7) and the lack of a sufficient nexus between the policy issue raised by the Proposal and the Company's business, it further determined that it concurred with the Governance Committee's

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view that the Company should be able to exclude the Proposal from the 2018 Proxy Materials. The Board further authorized the inclusion in any further correspondence with the SEC Staff of the information requested by SLB 14I.

CONCLUSION

For the reasons set forth above and in the Initial No-Action Request Letter, the Company believes that the Proposal may be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(3) and Rule 14a-8(i)(7). The Company respectfully requests the SEC Staff's concurrence with the Company's view or, alternatively, that the SEC Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2018 Proxy Materials.

The Company notes that it plans to file its definitive proxy statement for the 2018 Annual Meeting of Stockholders on January 19, 2018.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (202) 739-5658. If the SEC Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the SEC Staff prior to the issuance of any written response to the Initial No-Action Request Letter and this Supplemental Letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to the Initial No-Action Request Letter and this Supplemental Letter by email to sean.donahue@morganlewis.com.

Very truly yours,



Sean M. Donahue

Enclosures

cc: Hyung J. Bak, AmerisourceBergen Corporation
Meredith Miller, UAW Retiree Medical Benefits Trust
Christine Shaw, Connecticut State Treasurer

Morgan Lewis

EXHIBIT A

THE UAW
RESPONSE LETTER



November 29, 2017

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by AmerisourceBergen Corp. to omit proposal submitted by the UAW Retiree Medical Benefits Trust and Connecticut Retirement Plans and Trust Funds

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the UAW Retiree Medical Benefits Trust and Connecticut Retirement Plans and Trust Funds (the "Proponents") submitted a shareholder proposal (the "Proposal") to AmerisourceBergen Corporation ("ABC" or the "Company"). The Proposal asks ABC's board to adopt a policy that it will annually disclose whether the Company has applied its incentive compensation clawback policy to senior executives.

In a letter to the Division dated October 30, 2017 (the "No-Action Request"), ABC stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2018 annual meeting of shareholders. ABC argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(3), as excessively vague and indefinite; and Rule 14a-8(i)(7), on the ground that the Proposal deals with ABC's ordinary business operations. As discussed more fully below, ABC has not met its burden of proving its entitlement to exclude the Proposal in reliance on Rule 14a-8(i)(7), and the Proponents respectfully request permission to make a minor revision to the Proposal to ensure that it is not impermissibly vague.

The Proposal

The Proposal states:

RESOLVED, that shareholders of AmerisourceBergen Corporation ("ABC") urge the board of directors ("Board") to adopt a policy (the "Policy") that ABC will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award (each, a "clawback") as a result of applying the Policy. "Senior executive" includes a former senior executive.

The Policy should provide that the general circumstances of the clawback will be described. The Policy should also provide that if no clawback of the kind described above occurred in the previous fiscal year, a statement to that effect will be made. The disclosure requested in this proposal is intended to supplement, not supplant, any clawback disclosure required by law or regulation.

Vagueness

ABC points out that the resolved clause of the Proposal is circular, in that it defines the requested disclosure commitment as "the Policy" but then asks for disclosure of whether the Company has clawed back incentive compensation as a result of applying "the Policy." ABC correctly notes that "the Policy" provides no basis for recovering incentive compensation paid to a senior executive.

The Proponents acknowledge that a typographical error was made during the drafting process in which "ABC's clawback policy" was changed to "the Policy." We ask for permission to revise the Proposal to change the language back to "ABC's clawback policy," which refers to the provisions in ABC's current plans authorizing clawback as well as any additional mechanisms ABC may adopt in the future.

Allowing revision is consistent with previous Staff guidance, which has focused on the extent of the revision and whether it would alter the substance of the proposal. Staff Legal Bulletin 14 (July 13, 2001) provides:

[W]e have a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. **We adopted this practice to deal with proposals that generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected.** In these circumstances, we believe that the concepts underlying Exchange Act section 14(a) are best served by affording an opportunity to correct these kinds of defects. . . . [W]hen a proposal and supporting statement will require detailed and extensive editing in order to bring them

into compliance with the proxy rules, we may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading. (emphasis added)

Substituting “ABC’s clawback policy” for “the Policy” would be a minor revision; it could not be fairly characterized as “detailed and extensive editing.” As well, the revision would not alter the substance of the Proposal, which asks (both before and after the revision) for ABC to disclose when it has clawed back incentive compensation from senior executives of the Company. The supporting statement makes clear what the Proposal aims to achieve. The supporting statement notes that “ABC has mechanisms in place to claw back incentive compensation as a result of intentional misconduct not limited to the financial restatement context” and puts forth arguments supporting disclosure of incentive compensation recoveries from senior executives.

The vagueness objection ABC makes here does not go to the Proposal’s basic objective but rather to one of the terms used to describe the requested commitment. In that way, it differs from a situation in which “**the resolution contained in the proposal** is so inherently vague or indefinite” that neither the company nor shareholders would be able to understand what it sought. (Staff Legal Bulletin 14B (Sept. 15, 2004) (emphasis added)) Instead, the problem with the Proposal is one of a “vague term[],” which the Staff may allow a proponent to revise “in rare circumstances.” Proponents respectfully request, given the minor nature of the requested revision and the lack of impact on the Proposal’s core objective, that this be one of those circumstances.

Ordinary Business

ABC argues that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7), which allows exclusion of proposals related to a company’s ordinary business operations. ABC’s specific contentions fall into three categories: (a) the Proposal’s principal thrust is legal compliance and/or discipline of employees; (b) the Proposal’s principal thrust is the opioid epidemic, which is not a significant social policy issue and, even if it is, a sufficient nexus does not exist between ABC and the opioid epidemic; and (c) the request for annual disclosure regarding application of ABC’s clawback provisions transforms the Proposal’s subject from senior executive compensation to the ordinary business matter of “business as usual.”

The Proposal by its terms deals solely with senior executive compensation. That Proponents are concerned with ABC’s role in the opioid crisis does not overwrite the resolved clause to change the Proposal’s subject. Even assuming that discussing the opioid epidemic in the supporting statement were enough to negate the clear language of the resolved clause, the opioid epidemic is an urgent public health problem and a significant social policy issue; ABC’s contribution to the crisis

provides the nexus necessary to preclude application of the ordinary business exclusion. Finally, asking ABC to make a statement each year regarding an aspect of senior executive compensation is not so far afield from the significant social policy issue of senior executive pay that exclusion would be appropriate.

The Proposal's Subject is Not Legal Compliance or the Discipline of Employees

ABC urges that the true subject of the Proposal is one of two topics the Staff has consistently found to relate to ordinary business operations: legal compliance and discipline of employees. ABC first points to the fact that the clawback triggering events in the Company's Omnibus Plan include conduct that would constitute legal violations, arguing that therefore "the Proposal would relate to the Company's administration of its compliance program. . . ." (No-Action Request, at 8)

But the Proposal does not ask for information about ABC's compliance programs or the administration of its ethics code. In contrast, the proposals in *Walt Disney Co.* (Dec. 12, 2011) and *Sprint Nextel Corp.* (Mar. 16, 2010), cited by ABC, sought disclosure regarding directors' compliance with a director code of conduct and the reason the company had not adopted a sufficiently strict code of ethics, respectively. The fact that an underlying legal violation may trigger a clawback, disclosure of which is the subject of the Proposal, is too remote to justify characterizing the Proposal's subject as legal compliance.

The Staff rejected similar arguments to ABC's in *JPMorgan Chase & Co.* (Feb. 23, 2016). There, the proposal urged JPMorgan Chase to adopt a policy that a substantial portion of executive officer compensation be deferred and subject to forfeiture in the event of certain legal violations by the company; the proposal also asked the company to disclose "any forfeiture and relevant circumstances" to shareholders. The supporting statement opined that a policy of this kind would discourage executive misconduct and encourage executives to monitor each others' behavior. JPMorgan Chase sought relief on ordinary business grounds, pointing to the Proposal's triggering event and claiming that the proposal's subject was legal compliance and the code of ethics. Like ABC, JPMorgan Chase cited the 2011 *Walt Disney Co.* determination. The Staff declined to grant relief.

In a related argument, ABC characterizes the Proposal's subject as discipline of employees, again because the triggering events for clawback could involve disciplinary actions. ABC asks the Staff to disregard the fact that incentive compensation clawbacks from senior executives involve taking back incentive compensation previously paid to them, the award of which would be clearly outside the realm of ordinary business under the Staff's longstanding interpretation. Instead, ABC asserts, the most important aspect of senior executive incentive compensation clawbacks is the fact that some triggering events might constitute grounds for termination or other disciplinary action.

The tail should not be allowed to wag the dog in the manner ABC urges, however. Under ABC's reasoning, the entire category of proposals dealing with incentive compensation clawbacks from senior executives would be considered excludable as relating to ordinary business matters, despite the primary emphasis on senior executive incentive pay, because at least some of the offenses triggering clawback would likely justify disciplinary action. Here, nothing about the Proposal would involve shareholders in the administration of ABC's legal compliance or employee discipline functions. Because the Proposal's subject is senior executive incentive pay, the Proposal is not excludable on ordinary business grounds.

The Proposal's Subject is not the Opioid Epidemic; Even if it is, the Opioid Crisis is a Significant Social Policy Issue with a Sufficient Nexus to ABC's Business

ABC makes much of the fact that two paragraphs of the supporting statement discuss the opioid crisis and ABC's contribution to the problem of opioid misuse. According to ABC, that material suggests that "the Proponents are concerned primarily with the abuse of opioids by individuals and the Company's business practices related to the distribution of opioid products." (No-Action Request, at 11)

If the Proponents were not concerned with the effect of senior executive incentives, the Proposal's resolved clause would not have asked ABC to begin disclosing clawbacks of senior executive incentive pay. It is true that the supporting statement describes the opioid epidemic and ABC's conduct in connection with distribution of opioids, though the minority of paragraphs in the supporting statement mention opioids. We are concerned about other kinds of misconduct as well at ABC; for example, just last week ABC announced that it would set aside another \$50 million, for a total of \$625 million, to settle federal civil and criminal charges that two of ABC's subsidiaries prepared millions of syringes of cancer drugs in a facility that lacked FDA approval.¹

We submit that it is not unusual for business-related misconduct to serve as the impetus for investors to press for incentive compensation reforms, on the theory that incentives work to focus senior executives' attention. Simply mentioning such misconduct in the supporting statement does not shift the subject of the Proposal away from senior executive incentive pay clawbacks and toward the opioid epidemic.

¹ <https://www.fiercepharma.com/pharma/amerisourcebergen-says-civil-penalty-to-resolve-doj-probe-now-at-625m>

Even if it did, the opioid epidemic, and ABC's role in it, surely is a "consistent topic of widespread debate" and therefore qualifies as a significant social policy issue.

According to the Center for Disease Control and Prevention ("CDC"), the number of opioid painkillers dispensed in the U.S. quadrupled from 1999 to 2010, despite no change in reported pain levels.² In 2015, opioid overdoses killed more than 33,000 Americans, and that number is expected to be up significantly when official data for 2016 are released.³ Opioid addiction alone has lowered U.S. average life expectancy by 2.5 months.⁴

The sheer volume of national media coverage, expressions of public sentiment and legislative and regulatory initiatives spawned by the opioid epidemic precludes an exhaustive list. Some key examples are:

- President Trump declared the opioid epidemic a public health emergency in October 2017.⁵ He has empaneled a Presidential Commission on Combating Addiction and the Opioid Crisis to make recommendations on the federal response.⁶
- During the 2016 Presidential election campaign, addressing the opioid crisis ranked as the most important issue for voters in some areas.⁷ Candidates discussed the opioid epidemic on the campaign trail in both the primaries⁸ and general election.⁹

² <https://www.cdc.gov/drugoverdose/epidemic/index.html>.

³ Centers for Disease Control and Prevention data on 2015 deaths (<https://www.cdc.gov/drugoverdose/>); Lenny Bernstein, "Deaths from Drug Overdoses Soared in the First Nine Months of 2016," *The Washington Post*, Aug. 8, 2017 (<https://www.washingtonpost.com/news/to-your-health/wp/2017/08/08/deaths-from-drug-overdoses-soared-in-the-first-nine-months-of-2016/>) ("Given available state data and anecdotal information, many experts are expecting a big increase in deaths in 2016, driven by the worsening crisis in overdoses from opioids, especially fentanyl and heroin").

⁴ <http://www.chicagotribune.com/news/nationworld/ct-opioids-life-expectancy-20170920-story.html>

⁵ <http://www.cnn.com/2017/10/26/politics/donald-trump-opioid-epidemic/index.html>

⁶ <https://www.whitehouse.gov/the-press-office/2017/03/30/presidential-executive-order-establishing-presidents-commission>

⁷ <https://www.wsj.com/articles/drug-deaths-becoming-a-2016-presidential-election-issue-1446596075>

⁸ E.g., <https://www.wsj.com/articles/drug-deaths-becoming-a-2016-presidential-election-issue-1446596075>; <http://www.cnn.com/2016/02/06/politics/donald-trump-new-hampshire-drug-epidemic/index.html>

⁹ E.g., <https://web.archive.org/web/20170504001021/https://www.donaldjtrump.com/press-releases/donald-j.-trump-remarks-in-portsmouth-nh>

- Continuous coverage of the epidemic over the past several years in national publications, including The New York Times,¹⁰ The Washington Post,¹¹ The Wall Street Journal¹² and USA Today.¹³
- Seventy-three bills dealing with opioids have been introduced in the 115th Congress, including the Effective Opioid Enforcement Act, the DEA Opioid Enforcement Restoration Act, the Opioid Addiction Prevention Act and the Combating the Opioid Epidemic Act.¹⁴
- Concerns over the effect of cuts in Medicaid and resulting loss of access to opioid addiction treatment featured prominently in the debate over repeal of the Affordable Care Act.¹⁵
- Local budgets are being strained by the increase in opioid overdoses and hikes in the price of overdose reversal drug naloxone.¹⁶
- The opioid epidemic is taxing child welfare and foster care systems: Between 2013 and 2016, the number of children removed from their parents' care grew by 40%, driven mainly by opioid addiction.¹⁷ Several Ohio counties asked

¹⁰ E.g., <https://www.nytimes.com/2017/01/06/us/opioid-crisis-epidemic.html>;
<https://www.nytimes.com/2017/10/26/us/opioid-crisis-public-health-emergency.html>;
<https://www.nytimes.com/2017/08/21/health/hospitals-opioid-epidemic-patients.html>;
<https://www.nytimes.com/2016/02/22/us/politics/governors-devise-bipartisan-effort-to-reduce-opioid-abuse.html>; <https://www.nytimes.com/2014/06/18/us/governors-unite-to-fight-heroin-in-new-england.html>; <https://www.nytimes.com/2015/01/13/us/after-stabilizing-overdose-deaths-rose-in-2013-.html>.

¹¹ E.g., https://www.washingtonpost.com/graphics/2017/investigations/dea-drug-industry-congress/?tid=a_inl&utm_term=.84592cf7ad5d;
https://www.washingtonpost.com/national/health-science/no-longer-mayberry-a-small-ohio-city-fights-an-epidemic-of-self-destruction/2016/12/29/a95076f2-9a01-11e6-b3c9-f662adaa0048_story.html?tid=sm_fb&utm_term=.91264e23e0fa;
https://www.washingtonpost.com/news/to-your-health/wp/2017/03/?utm_term=.c6d46b0eeefe.

¹² E.g., <http://www.wsj.com/graphics/toll-of-opioids/>; <https://www.wsj.com/articles/opioid-addiction-diagnoses-up-nearly-500-in-past-seven-years-study-shows-1498737603>;
<https://www.wsj.com/articles/colleges-take-action-on-opioid-epidemic-1494158403?tesla=y>;
<https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178>.

¹³ <https://www.usatoday.com/story/news/politics/2017/10/23/fda-chief-supports-opioid-prescription-limits-regrets-agencys-prior-inaction/774007001/>;
<https://www.usatoday.com/story/news/2017/11/08/its-far-more-than-overdoses-iv-opioid-users-diseases-overwhelm-hospitals/821693001/>;
<https://www.usatoday.com/story/news/nation/2016/09/25/drug-addiction-treatment-insurance-heroin/91079496/>;

¹⁴ Data as of November 20, 2017 from Carol Nolan Drake, President and CEO, Carlow Consulting LLC (private correspondence dated November 20, 2017).

¹⁵ E.g., <http://www.latimes.com/politics/la-na-pol-obamacare-repeal-opioids-20170621-story.html>; <http://www.nejm.org/doi/full/10.1056/NEJMp1700834#t=article>

¹⁶ <https://www.cnn.com/2017/01/04/as-opioid-epidemic-worsens-the-cost-of-waking-up-from-an-overdose-soars.html>; https://www.washingtonpost.com/world/as-opioid-overdoses-exact-a-higher-price-communities-ponder-who-should-be-saved/2017/07/15/1ea91890-67f3-11e7-8eb5-cbccc2e7bfbf_story.html?utm_term=.adb4f9214ba6.

¹⁷ <https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178>

voters to approve ballot initiatives providing additional funding for family services in November 2017 due to opioid addiction.¹⁸

- Opioid use has been identified as a possible reason working-age men's participation in the labor force has been low.¹⁹
- The hospital costs associated with treating addicted newborns rose to \$1.5 billion in 2013, from \$732 million in 2009, according to a study in the Journal of Perinatology.²⁰ Stories like the one about James Schenk, born addicted to opioids, illustrate the difficulties of weaning these babies after birth.²¹

Although wholesale distributors like ABC do not manufacture or prescribe opioids, they play a key role in preventing diversion of prescription opioids to illegal use; that role has come under scrutiny as the opioid epidemic has grown. Controlling distribution of prescription opioids is important, even though just under half of overdoses involve traditional prescription opioid painkillers, because four out of five new heroin users misused prescription opioids before moving to heroin.²²

Federal and state rules require distributors to report suspicious orders of controlled substances. Rules implementing the Controlled Substances Act require wholesalers to "design and operate a system to [detect] suspicious orders of controlled substances," including "orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency," and to report such orders to the Drug Enforcement Administration ("DEA").²³ Distributors are also required, under some circumstances, to put a halt to suspicious orders. Noncompliance with DEA rules can result in losing one's license to sell controlled substances.

An October 2017 "60 Minutes" segment focused on the failure of drug distributors to flag such orders. Former head of the DEA's Office of Diversion Control Joe Rannazzisi described "seeing hundreds of bad orders that involved millions and millions of tablets" and realizing that distributors like ABC were the "choke point" because they knew the bigger picture of aggregate order volume.²⁴ The segment led Congressman Joe Marino, who had sponsored 2016 legislation that

¹⁸ <https://www.nytimes.com/aponline/2017/11/06/us/ap-us-opioid-crisis-children.html>

¹⁹ <https://nypost.com/2017/07/23/yellen-links-opioid-crisis-to-low-workforce-participation/>

²⁰ <https://www.nytimes.com/2016/12/12/health/rise-in-infant-drug-dependence-in-us-is-felt-most-in-rural-areas.html>

²¹ http://host.madison.com/wsj/news/local/health-med-fit/babies-dependent-on-opioids-wisconsin-sees-surge-in-infants-born/article_1da6faee-827d-5435-aada-23a1d5fc8024.html

²² American Society of Addiction Medicine, Opioid Addiction: 2016 Facts and Figures, at 2 (<https://www.asam.org/docs/default-source/advocacy/opioid-addiction-disease-facts-figures.pdf>).

²³ <https://www.justice.gov/opa/press-release/file/928481/download> (citing 21 C.F.R. § 1301.74(b), 21 U.S.C. § 823(b)(1))

²⁴ <https://www.cbsnews.com/news/ex-dea-agent-opioid-crisis-fueled-by-drug-industry-and-congress/>

made it harder for the DEA to prosecute distributors, to withdraw from consideration to become U.S. Drug Czar.²⁵ Coverage of Marino's withdrawal focused on the campaign contributions he had accepted from the pharmaceutical industry and predicted that his reelection campaign in 2018 would "inevitab[ly]" involve "contrast ads over opioids."²⁶

The "60 Minutes" segment received widespread coverage in the print and broadcast media.²⁷ Following the broadcast, Sen. Claire McCaskill (D-MO) stated that she intended to introduce legislation to repeal the 2016 law, which she said "significantly affected the government's ability to crack down on opioid distributors that are failing to meet their obligations and endangering our communities."²⁸ The House Energy and Commerce Committee held a hearing on October 25th featuring "the committee's ongoing bipartisan investigation" into the flow of prescription opioids into West Virginia.²⁹

Distributors are facing legal liability for their lapses. As discussed more fully below, McKesson has settled claims that it violated DEA rules regarding reporting suspicious orders. Court records from a case brought by the hard-hit state of West Virginia, which ABC fought to keep under seal, show that ABC shipped 149,000 hydrocodone pills, or 12,400 tablets per month, to one pharmacy in Mingo County, West Virginia. ABC shipped 8,000 hydrocodone pills *in two days* to a West Virginia "drive-in" pharmacy.³⁰ (ABC paid \$16 million to settle the state's claims that the Company failed to report suspicious orders.)³¹

Eric Eyre of the Charleston (WV) Gazette-Mail, who fought for release of the distribution records, won the 2017 Pulitzer Prize for Investigative Reporting for his reporting on the flow of opioids into West Virginia.³² The Pulitzer board called

²⁵ <http://money.cnn.com/2017/10/17/media/washington-post-60-minutes-tom-marino/index.html>

²⁶ <https://www.nytimes.com/2017/10/19/us/marino-opioids-pennsylvania-congress.html>

²⁷ E.g., <http://fortune.com/2017/10/16/rannazzisi-dea-drug-distributors-opioids/>;
<http://www.businessinsider.com/60-minutes-drug-industry-worked-against-dea-fight-opioid-epidemic-investigation-2017-10>; <http://www.cnn.com/2017/10/16/politics/dea-drug-lobby-opioids/index.html> <http://thehill.com/homenews/news/355580-former-dea-agent-congress-drug-industry-hindered-opioid-crackdown>; <https://www.pbs.org/newshour/show/drug-distributors-reportedly-hobbled-law-enforcement-policing-flow-opioids>

²⁸ <http://www.cnn.com/2017/10/16/politics/dea-drug-lobby-opioids/index.html>

²⁹ <https://energycommerce.house.gov/news/press-release/walden-grills-dea-lack-cooperation-response-committee-investigation/>

³⁰ https://www.wvgazettemail.com/placement/drug-firms-fueled-pill-mills-in-rural-wv/article_14c8e1a5-19b1-579d-9ed5-770f09589a22.html

³¹ <https://www.wsj.com/articles/lawyers-hope-to-do-to-opioid-makers-what-they-did-to-big-tobacco-1500830715>

³² <http://www.pulitzer.org/winners/eric-eyre>

Eyre's work "courageous reporting, performed in the face of powerful opposition."³³ His reporting attracted attention and follow-up articles from numerous national outlets, including NPR,³⁴ Quartz,³⁵ US News,³⁶ Fortune³⁷ and CNN.³⁸

It also outraged officials like Sheriff Martin West of McDowell County, WV, which has the second-highest rate of opioid overdoses in the nation. After West read Eyre's account of the role of wholesale distributors in flooding small West Virginia towns with opioids, McDowell County sued the distributors; states, other counties and towns have done the same.³⁹

The recent vote at McKesson Corp. illustrates the relevance of wholesale distributors' opioid-related conduct to investors. At McKesson's July 26, 2017 annual meeting, holders of over 70% of shares voting opposed the company's advisory vote on executive compensation following an investor campaign focused on McKesson's opioid-related conduct and liabilities.⁴⁰

In sum, the opioid abuse crisis is one of the most urgent social problems facing the U.S., with major effects on health, prosperity and well-being. Significant attention and criticism have focused on wholesale drug distributors like ABC for ignoring red flags and thereby allowing enormous quantities of prescription opioids to be shipped to—and potentially diverted to illegal use in—areas affected by the epidemic. Accordingly, the opioid epidemic is a significant social policy issue with a sufficient nexus to ABC's business.

The Request for Annual Disclosure Whether Incentive Pay Has Been Clawed Back From any Senior Executive Does Not Mean the Proposal's Topic is, in Part, "Business as Usual"

³³ <https://www.usnews.com/news/best-states/west-virginia/articles/2017-04-10/gazette-mail-reporter-wins-pulitzer-for-drug-stories>

³⁴ <https://www.npr.org/2016/12/22/506550248/drug-firms-make-millions-by-sending-opioid-pills-to-w-v-report-says>

³⁵ <https://qz.com/866771/drug-wholesalers-shipped-9-million-opioid-painkillers-over-two-years-to-a-single-west-virginia-pharmacy/>

³⁶ <https://www.usnews.com/news/best-states/west-virginia/articles/2017-04-10/gazette-mail-reporter-wins-pulitzer-for-drug-stories>

³⁷ <http://fortune.com/2017/06/13/fortune-500-mckesson-opioid-epidemic/>

³⁸ <http://www.cnn.com/videos/tv/2016/12/20/report-show-companies-profit-from-flooding-state-with-drugs-lead-eyre-live.cnn>

³⁹ <http://fortune.com/2017/09/27/big-pharma-opioid-lawsuits/>;

http://www.cleveland.com/metro/index.ssf/2017/10/cuyahoga_county_files_lawsuit.html;

https://www.washingtonpost.com/investigations/drugmakers-and-distributors-face-barrage-of-lawsuits-over-opioid-epidemic/2017/07/04/3fc33c64-5794-11e7-b38e-35fd8e0c288f_story.html?utm_term=.5479777fd205.

⁴⁰ <http://www.foxbusiness.com/features/2017/07/26/mckesson-shareholders-reject-executive-compensation-packages.html>

Finally, ABC contends that the Proposal deals with ordinary business by asking for annual disclosure of whether any senior executive incentive pay has been clawed back. In the years when no clawback has occurred, disclosure would be "business as usual," according to ABC.

But the subject of disclosure, even in years when no clawback has occurred, is still senior executive incentive compensation clawbacks. Presumably, the disclosure in years with no clawback would look something like: "During 20xx, ABC did not recover any incentive compensation from a senior executive, and no senior executive forfeited incentive compensation." That disclosure does not address an ordinary business matter, like information systems for distribution facilities or privacy practices, just because no amounts were clawed back.

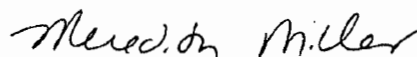
A statement that no clawback has occurred is analogous to a zero in a column of the total compensation table. That zero still relates to the underlying element of compensation, even though none of it was paid or awarded in that year.

* * *

For the reasons set forth above, ABC has not met its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7). The Proponents thus respectfully request that ABC's request for relief be denied and that the Proponents be permitted to make the minor revision to the Proposal discussed above.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (734) 929-5789.

Sincerely,



Meredith Miller
Chief Corporate Governance Officer
UAW Retiree Medical Benefits Trust

cc: Sean M. Donahue
Morgan, Lewis & Bockius, LLP
Sean.donahue@morganlewis.com



November 29, 2017

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by AmerisourceBergen Corp. to omit proposal submitted by the UAW Retiree Medical Benefits Trust and Connecticut Retirement Plans and Trust Funds

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the UAW Retiree Medical Benefits Trust and Connecticut Retirement Plans and Trust Funds (the "Proponents") submitted a shareholder proposal (the "Proposal") to AmerisourceBergen Corporation ("ABC" or the "Company"). The Proposal asks ABC's board to adopt a policy that it will annually disclose whether the Company has applied its incentive compensation clawback policy to senior executives.

In a letter to the Division dated October 30, 2017 (the "No-Action Request"), ABC stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2018 annual meeting of shareholders. ABC argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(3), as excessively vague and indefinite; and Rule 14a-8(i)(7), on the ground that the Proposal deals with ABC's ordinary business operations. As discussed more fully below, ABC has not met its burden of proving its entitlement to exclude the Proposal in reliance on Rule 14a-8(i)(7), and the Proponents respectfully request permission to make a minor revision to the Proposal to ensure that it is not impermissibly vague.

The Proposal

The Proposal states:

RESOLVED, that shareholders of AmerisourceBergen Corporation ("ABC") urge the board of directors ("Board") to adopt a policy (the "Policy") that ABC will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award (each, a "clawback") as a result of applying the Policy. "Senior executive" includes a former senior executive.

The Policy should provide that the general circumstances of the clawback will be described. The Policy should also provide that if no clawback of the kind described above occurred in the previous fiscal year, a statement to that effect will be made. The disclosure requested in this proposal is intended to supplement, not supplant, any clawback disclosure required by law or regulation.

Vagueness

ABC points out that the resolved clause of the Proposal is circular, in that it defines the requested disclosure commitment as "the Policy" but then asks for disclosure of whether the Company has clawed back incentive compensation as a result of applying "the Policy." ABC correctly notes that "the Policy" provides no basis for recovering incentive compensation paid to a senior executive.

The Proponents acknowledge that a typographical error was made during the drafting process in which "ABC's clawback policy" was changed to "the Policy." We ask for permission to revise the Proposal to change the language back to "ABC's clawback policy," which refers to the provisions in ABC's current plans authorizing clawback as well as any additional mechanisms ABC may adopt in the future.

Allowing revision is consistent with previous Staff guidance, which has focused on the extent of the revision and whether it would alter the substance of the proposal. Staff Legal Bulletin 14 (July 13, 2001) provides:

[W]e have a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. **We adopted this practice to deal with proposals that generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected.** In these circumstances, we believe that the concepts underlying Exchange Act section 14(a) are best served by affording an opportunity to correct these kinds of defects. . . . [W]hen a proposal and supporting statement will require detailed and extensive editing in order to bring them

into compliance with the proxy rules, we may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading. (emphasis added)

Substituting “ABC’s clawback policy” for “the Policy” would be a minor revision; it could not be fairly characterized as “detailed and extensive editing.” As well, the revision would not alter the substance of the Proposal, which asks (both before and after the revision) for ABC to disclose when it has clawed back incentive compensation from senior executives of the Company. The supporting statement makes clear what the Proposal aims to achieve. The supporting statement notes that “ABC has mechanisms in place to claw back incentive compensation as a result of intentional misconduct not limited to the financial restatement context” and puts forth arguments supporting disclosure of incentive compensation recoveries from senior executives.

The vagueness objection ABC makes here does not go to the Proposal’s basic objective but rather to one of the terms used to describe the requested commitment. In that way, it differs from a situation in which “**the resolution contained in the proposal** is so inherently vague or indefinite” that neither the company nor shareholders would be able to understand what it sought. (Staff Legal Bulletin 14B (Sept. 15, 2004) (emphasis added)) Instead, the problem with the Proposal is one of a “vague term[],” which the Staff may allow a proponent to revise “in rare circumstances.” Proponents respectfully request, given the minor nature of the requested revision and the lack of impact on the Proposal’s core objective, that this be one of those circumstances.

Ordinary Business

ABC argues that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7), which allows exclusion of proposals related to a company’s ordinary business operations. ABC’s specific contentions fall into three categories: (a) the Proposal’s principal thrust is legal compliance and/or discipline of employees; (b) the Proposal’s principal thrust is the opioid epidemic, which is not a significant social policy issue and, even if it is, a sufficient nexus does not exist between ABC and the opioid epidemic; and (c) the request for annual disclosure regarding application of ABC’s clawback provisions transforms the Proposal’s subject from senior executive compensation to the ordinary business matter of “business as usual.”

The Proposal by its terms deals solely with senior executive compensation. That Proponents are concerned with ABC’s role in the opioid crisis does not overwrite the resolved clause to change the Proposal’s subject. Even assuming that discussing the opioid epidemic in the supporting statement were enough to negate the clear language of the resolved clause, the opioid epidemic is an urgent public health problem and a significant social policy issue; ABC’s contribution to the crisis

provides the nexus necessary to preclude application of the ordinary business exclusion. Finally, asking ABC to make a statement each year regarding an aspect of senior executive compensation is not so far afield from the significant social policy issue of senior executive pay that exclusion would be appropriate.

The Proposal's Subject is Not Legal Compliance or the Discipline of Employees

ABC urges that the true subject of the Proposal is one of two topics the Staff has consistently found to relate to ordinary business operations: legal compliance and discipline of employees. ABC first points to the fact that the clawback triggering events in the Company's Omnibus Plan include conduct that would constitute legal violations, arguing that therefore "the Proposal would relate to the Company's administration of its compliance program. . . ." (No-Action Request, at 8)

But the Proposal does not ask for information about ABC's compliance programs or the administration of its ethics code. In contrast, the proposals in *Walt Disney Co.* (Dec. 12, 2011) and *Sprint Nextel Corp.* (Mar. 16, 2010), cited by ABC, sought disclosure regarding directors' compliance with a director code of conduct and the reason the company had not adopted a sufficiently strict code of ethics, respectively. The fact that an underlying legal violation may trigger a clawback, disclosure of which is the subject of the Proposal, is too remote to justify characterizing the Proposal's subject as legal compliance.

The Staff rejected similar arguments to ABC's in *JPMorgan Chase & Co.* (Feb. 23, 2016). There, the proposal urged JPMorgan Chase to adopt a policy that a substantial portion of executive officer compensation be deferred and subject to forfeiture in the event of certain legal violations by the company; the proposal also asked the company to disclose "any forfeiture and relevant circumstances" to shareholders. The supporting statement opined that a policy of this kind would discourage executive misconduct and encourage executives to monitor each others' behavior. JPMorgan Chase sought relief on ordinary business grounds, pointing to the Proposal's triggering event and claiming that the proposal's subject was legal compliance and the code of ethics. Like ABC, JPMorgan Chase cited the 2011 *Walt Disney Co.* determination. The Staff declined to grant relief.

In a related argument, ABC characterizes the Proposal's subject as discipline of employees, again because the triggering events for clawback could involve disciplinary actions. ABC asks the Staff to disregard the fact that incentive compensation clawbacks from senior executives involve taking back incentive compensation previously paid to them, the award of which would be clearly outside the realm of ordinary business under the Staff's longstanding interpretation. Instead, ABC asserts, the most important aspect of senior executive incentive compensation clawbacks is the fact that some triggering events might constitute grounds for termination or other disciplinary action.

The tail should not be allowed to wag the dog in the manner ABC urges, however. Under ABC's reasoning, the entire category of proposals dealing with incentive compensation clawbacks from senior executives would be considered excludable as relating to ordinary business matters, despite the primary emphasis on senior executive incentive pay, because at least some of the offenses triggering clawback would likely justify disciplinary action. Here, nothing about the Proposal would involve shareholders in the administration of ABC's legal compliance or employee discipline functions. Because the Proposal's subject is senior executive incentive pay, the Proposal is not excludable on ordinary business grounds.

The Proposal's Subject is not the Opioid Epidemic; Even if it is, the Opioid Crisis is a Significant Social Policy Issue with a Sufficient Nexus to ABC's Business

ABC makes much of the fact that two paragraphs of the supporting statement discuss the opioid crisis and ABC's contribution to the problem of opioid misuse. According to ABC, that material suggests that "the Proponents are concerned primarily with the abuse of opioids by individuals and the Company's business practices related to the distribution of opioid products." (No-Action Request, at 11)

If the Proponents were not concerned with the effect of senior executive incentives, the Proposal's resolved clause would not have asked ABC to begin disclosing clawbacks of senior executive incentive pay. It is true that the supporting statement describes the opioid epidemic and ABC's conduct in connection with distribution of opioids, though the minority of paragraphs in the supporting statement mention opioids. We are concerned about other kinds of misconduct as well at ABC; for example, just last week ABC announced that it would set aside another \$50 million, for a total of \$625 million, to settle federal civil and criminal charges that two of ABC's subsidiaries prepared millions of syringes of cancer drugs in a facility that lacked FDA approval.¹

We submit that it is not unusual for business-related misconduct to serve as the impetus for investors to press for incentive compensation reforms, on the theory that incentives work to focus senior executives' attention. Simply mentioning such misconduct in the supporting statement does not shift the subject of the Proposal away from senior executive incentive pay clawbacks and toward the opioid epidemic.

¹ <https://www.fiercepharma.com/pharma/amerisourcebergen-says-civil-penalty-to-resolve-doj-probe-now-at-625m>

Even if it did, the opioid epidemic, and ABC's role in it, surely is a "consistent topic of widespread debate" and therefore qualifies as a significant social policy issue.

According to the Center for Disease Control and Prevention ("CDC"), the number of opioid painkillers dispensed in the U.S. quadrupled from 1999 to 2010, despite no change in reported pain levels.² In 2015, opioid overdoses killed more than 33,000 Americans, and that number is expected to be up significantly when official data for 2016 are released.³ Opioid addiction alone has lowered U.S. average life expectancy by 2.5 months.⁴

The sheer volume of national media coverage, expressions of public sentiment and legislative and regulatory initiatives spawned by the opioid epidemic precludes an exhaustive list. Some key examples are:

- President Trump declared the opioid epidemic a public health emergency in October 2017.⁵ He has empaneled a Presidential Commission on Combating Addiction and the Opioid Crisis to make recommendations on the federal response.⁶
- During the 2016 Presidential election campaign, addressing the opioid crisis ranked as the most important issue for voters in some areas.⁷ Candidates discussed the opioid epidemic on the campaign trail in both the primaries⁸ and general election.⁹

² <https://www.cdc.gov/drugoverdose/epidemic/index.html>.

³ Centers for Disease Control and Prevention data on 2015 deaths (<https://www.cdc.gov/drugoverdose/>); Lenny Bernstein, "Deaths from Drug Overdoses Soared in the First Nine Months of 2016," The Washington Post, Aug. 8, 2017 (<https://www.washingtonpost.com/news/to-your-health/wp/2017/08/08/deaths-from-drug-overdoses-soared-in-the-first-nine-months-of-2016/>) ("Given available state data and anecdotal information, many experts are expecting a big increase in deaths in 2016, driven by the worsening crisis in overdoses from opioids, especially fentanyl and heroin").

⁴ <http://www.chicagotribune.com/news/nationworld/ct-opioids-life-expectancy-20170920-story.html>

⁵ <http://www.cnn.com/2017/10/26/politics/donald-trump-opioid-epidemic/index.html>

⁶ <https://www.whitehouse.gov/the-press-office/2017/03/30/presidential-executive-order-establishing-presidents-commission>

⁷ <https://www.wsj.com/articles/drug-deaths-becoming-a-2016-presidential-election-issue-1446596075>

⁸ E.g., <https://www.wsj.com/articles/drug-deaths-becoming-a-2016-presidential-election-issue-1446596075>; <http://www.cnn.com/2016/02/06/politics/donald-trump-new-hampshire-drug-epidemic/index.html>

⁹ E.g., <https://web.archive.org/web/20170504001021/https://www.donaldjtrump.com/press-releases/donald-j.-trump-remarks-in-portsmouth-nh>

- Continuous coverage of the epidemic over the past several years in national publications, including The New York Times,¹⁰ The Washington Post,¹¹ The Wall Street Journal¹² and USA Today.¹³
- Seventy-three bills dealing with opioids have been introduced in the 115th Congress, including the Effective Opioid Enforcement Act, the DEA Opioid Enforcement Restoration Act, the Opioid Addiction Prevention Act and the Combating the Opioid Epidemic Act.¹⁴
- Concerns over the effect of cuts in Medicaid and resulting loss of access to opioid addiction treatment featured prominently in the debate over repeal of the Affordable Care Act.¹⁵
- Local budgets are being strained by the increase in opioid overdoses and hikes in the price of overdose reversal drug naloxone.¹⁶
- The opioid epidemic is taxing child welfare and foster care systems: Between 2013 and 2016, the number of children removed from their parents' care grew by 40%, driven mainly by opioid addiction.¹⁷ Several Ohio counties asked

¹⁰ E.g., <https://www.nytimes.com/2017/01/06/us/opioid-crisis-epidemic.html>;
<https://www.nytimes.com/2017/10/26/us/opioid-crisis-public-health-emergency.html>;
<https://www.nytimes.com/2017/08/21/health/hospitals-opioid-epidemic-patients.html>;
<https://www.nytimes.com/2016/02/22/us/politics/governors-devise-bipartisan-effort-to-reduce-opioid-abuse.html>; <https://www.nytimes.com/2014/06/18/us/governors-unite-to-fight-heroin-in-new-england.html>; <https://www.nytimes.com/2015/01/13/us/after-stabilizing-overdose-deaths-rose-in-2013-.html>.

¹¹ E.g., https://www.washingtonpost.com/graphics/2017/investigations/dea-drug-industry-congress/?tid=a_inl&utm_term=.84592cf7ad5d;
https://www.washingtonpost.com/national/health-science/no-longer-mayberry-a-small-ohio-city-fights-an-epidemic-of-self-destruction/2016/12/29/a9b076f2-9a01-11e6-b3c9-f662adaa0048_story.html?tid=sm_fb&utm_term=.91264e23e0fa;
https://www.washingtonpost.com/news/to-your-health/wp/2017/03/?utm_term=.c6d46b0eeefe.

¹² E.g., <http://www.wsj.com/graphics/toll-of-opioids/>; <https://www.wsj.com/articles/opioid-addiction-diagnoses-up-nearly-500-in-past-seven-years-study-shows-1498737603>;
<https://www.wsj.com/articles/colleges-take-action-on-opioid-epidemic-1494158403?tesla=y>;
<https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178>.

¹³ <https://www.usatoday.com/story/news/politics/2017/10/23/fda-chief-supports-opioid-prescription-limits-regrets-agencys-prior-inaction/774007001/>;
<https://www.usatoday.com/story/news/2017/11/08/its-far-more-than-overdoses-iv-opioid-users-diseases-overwhelm-hospitals/821693001/>;
<https://www.usatoday.com/story/news/nation/2016/09/25/drug-addiction-treatment-insurance-heroin/91079496/>;

¹⁴ Data as of November 20, 2017 from Carol Nolan Drake, President and CEO, Carlow Consulting LLC (private correspondence dated November 20, 2017).

¹⁵ E.g., <http://www.latimes.com/politics/la-na-pol-obamacare-repeal-opioids-20170621-story.html>; <http://www.nejm.org/doi/full/10.1056/NEJMp1700834#t=article>

¹⁶ <https://www.cnn.com/2017/01/04/as-opioid-epidemic-worsens-the-cost-of-waking-up-from-an-overdose-soars.html>; https://www.washingtonpost.com/world/as-opioid-overdoses-exact-a-higher-price-communities-ponder-who-should-be-saved/2017/07/15/1ea91890-67f3-11e7-8eb5-cbccc2e7bfbf_story.html?utm_term=.adb4f9214ba6.

¹⁷ <https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178>

voters to approve ballot initiatives providing additional funding for family services in November 2017 due to opioid addiction.¹⁸

- Opioid use has been identified as a possible reason working-age men's participation in the labor force has been low.¹⁹
- The hospital costs associated with treating addicted newborns rose to \$1.5 billion in 2013, from \$732 million in 2009, according to a study in the [Journal of Perinatology](#).²⁰ Stories like the one about James Schenk, born addicted to opioids, illustrate the difficulties of weaning these babies after birth.²¹

Although wholesale distributors like ABC do not manufacture or prescribe opioids, they play a key role in preventing diversion of prescription opioids to illegal use; that role has come under scrutiny as the opioid epidemic has grown. Controlling distribution of prescription opioids is important, even though just under half of overdoses involve traditional prescription opioid painkillers, because four out of five new heroin users misused prescription opioids before moving to heroin.²²

Federal and state rules require distributors to report suspicious orders of controlled substances. Rules implementing the Controlled Substances Act require wholesalers to “design and operate a system to [detect] suspicious orders of controlled substances,” including “orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency,” and to report such orders to the Drug Enforcement Administration (“DEA”).²³ Distributors are also required, under some circumstances, to put a halt to suspicious orders. Noncompliance with DEA rules can result in losing one's license to sell controlled substances.

An October 2017 “60 Minutes” segment focused on the failure of drug distributors to flag such orders. Former head of the DEA's Office of Diversion Control Joe Rannazzisi described “seeing hundreds of bad orders that involved millions and millions of tablets” and realizing that distributors like ABC were the “choke point” because they knew the bigger picture of aggregate order volume.²⁴ The segment led Congressman Joe Marino, who had sponsored 2016 legislation that

¹⁸ <https://www.nytimes.com/aponline/2017/11/06/us/ap-us-opioid-crisis-children.html>

¹⁹ <https://nypost.com/2017/07/23/yellen-links-opioid-crisis-to-low-workforce-participation/>

²⁰ <https://www.nytimes.com/2016/12/12/health/rise-in-infant-drug-dependence-in-us-is-felt-most-in-rural-areas.html>

²¹ http://host.madison.com/wsj/news/local/health-med-fit/babies-dependent-on-opioids-wisconsin-sees-surge-in-infants-born/article_1da6faee-827d-5435-aada-23a1d5fc8024.html

²² American Society of Addiction Medicine, Opioid Addiction: 2016 Facts and Figures, at 2 (<https://www.asam.org/docs/default-source/advocacy/opioid-addiction-disease-facts-figures.pdf>).

²³ <https://www.justice.gov/opa/press-release/file/928481/download> (citing 21 C.F.R. § 1301.74(b), 21 U.S.C. § 823(b)(1))

²⁴ <https://www.cbsnews.com/news/ex-dea-agent-opioid-crisis-fueled-by-drug-industry-and-congress/>

made it harder for the DEA to prosecute distributors, to withdraw from consideration to become U.S. Drug Czar.²⁵ Coverage of Marino's withdrawal focused on the campaign contributions he had accepted from the pharmaceutical industry and predicted that his reelection campaign in 2018 would "inevitab[ly]" involve "contrast ads over opioids."²⁶

The "60 Minutes" segment received widespread coverage in the print and broadcast media.²⁷ Following the broadcast, Sen. Claire McCaskill (D-MO) stated that she intended to introduce legislation to repeal the 2016 law, which she said "significantly affected the government's ability to crack down on opioid distributors that are failing to meet their obligations and endangering our communities."²⁸ The House Energy and Commerce Committee held a hearing on October 25th featuring "the committee's ongoing bipartisan investigation" into the flow of prescription opioids into West Virginia.²⁹

Distributors are facing legal liability for their lapses. As discussed more fully below, McKesson has settled claims that it violated DEA rules regarding reporting suspicious orders. Court records from a case brought by the hard-hit state of West Virginia, which ABC fought to keep under seal, show that ABC shipped 149,000 hydrocodone pills, or 12,400 tablets per month, to one pharmacy in Mingo County, West Virginia. ABC shipped 8,000 hydrocodone pills *in two days* to a West Virginia "drive-in" pharmacy.³⁰ (ABC paid \$16 million to settle the state's claims that the Company failed to report suspicious orders.)³¹

Eric Eyre of the Charleston (WV) Gazette-Mail, who fought for release of the distribution records, won the 2017 Pulitzer Prize for Investigative Reporting for his reporting on the flow of opioids into West Virginia.³² The Pulitzer board called

²⁵ <http://money.cnn.com/2017/10/17/media/washington-post-60-minutes-tom-marino/index.html>

²⁶ <https://www.nytimes.com/2017/10/19/us/marino-opioids-pennsylvania-congress.html>

²⁷ E.g., <http://fortune.com/2017/10/16/rannazzisi-dea-drug-distributors-opioids/>; <http://www.businessinsider.com/60-minutes-drug-industry-worked-against-dea-fight-opioid-epidemic-investigation-2017-10>; <http://www.cnn.com/2017/10/16/politics/dea-drug-lobby-opioids/index.html> <http://thehill.com/homenews/news/355580-former-dea-agent-congress-drug-industry-hindered-opioid-crackdown>; <https://www.pbs.org/newshour/show/drug-distributors-reportedly-hobbled-law-enforcement-policing-flow-opioids>

²⁸ <http://www.cnn.com/2017/10/16/politics/dea-drug-lobby-opioids/index.html>

²⁹ <https://energycommerce.house.gov/news/press-release/walden-grills-dea-lack-cooperation-response-committee-investigation/>

³⁰ https://www.wvgazettemail.com/placement/drug-firms-fueled-pill-mills-in-rural-wv/article_14c8e1a5-19b1-579d-9ed5-770f09589a22.html

³¹ <https://www.wsj.com/articles/lawyers-hope-to-do-to-opioid-makers-what-they-did-to-big-tobacco-1500830715>

³² <http://www.pulitzer.org/winners/eric-eyre>

Eyre's work "courageous reporting, performed in the face of powerful opposition."³³ His reporting attracted attention and follow-up articles from numerous national outlets, including NPR,³⁴ Quartz,³⁵ US News,³⁶ Fortune³⁷ and CNN.³⁸

It also outraged officials like Sheriff Martin West of McDowell County, WV, which has the second-highest rate of opioid overdoses in the nation. After West read Eyre's account of the role of wholesale distributors in flooding small West Virginia towns with opioids, McDowell County sued the distributors; states, other counties and towns have done the same.³⁹

The recent vote at McKesson Corp. illustrates the relevance of wholesale distributors' opioid-related conduct to investors. At McKesson's July 26, 2017 annual meeting, holders of over 70% of shares voting opposed the company's advisory vote on executive compensation following an investor campaign focused on McKesson's opioid-related conduct and liabilities.⁴⁰

In sum, the opioid abuse crisis is one of the most urgent social problems facing the U.S., with major effects on health, prosperity and well-being. Significant attention and criticism have focused on wholesale drug distributors like ABC for ignoring red flags and thereby allowing enormous quantities of prescription opioids to be shipped to—and potentially diverted to illegal use in--areas affected by the epidemic. Accordingly, the opioid epidemic is a significant social policy issue with a sufficient nexus to ABC's business.

The Request for Annual Disclosure Whether Incentive Pay Has Been Clawed Back From any Senior Executive Does Not Mean the Proposal's Topic is, in Part, "Business as Usual"

³³ <https://www.usnews.com/news/best-states/west-virginia/articles/2017-04-10/gazette-mail-reporter-wins-pulitzer-for-drug-stories>

³⁴ <https://www.npr.org/2016/12/22/506550248/drug-firms-make-millions-by-sending-opioid-pills-to-w-v-report-says>

³⁵ <https://qz.com/866771/drug-wholesalers-shipped-9-million-opioid-painkillers-over-two-years-to-a-single-west-virginia-pharmacy/>

³⁶ <https://www.usnews.com/news/best-states/west-virginia/articles/2017-04-10/gazette-mail-reporter-wins-pulitzer-for-drug-stories>

³⁷ <http://fortune.com/2017/06/13/fortune-500-mckesson-opioid-epidemic/>

³⁸ <http://www.cnn.com/videos/tv/2016/12/20/report-show-companies-profit-from-flooding-state-with-drugs-lead-eyre-live.cnn>

³⁹ <http://fortune.com/2017/09/27/big-pharma-opioid-lawsuits/>;

http://www.cleveland.com/metro/index.ssf/2017/10/cuyahoga_county_files_lawsuit.html;

https://www.washingtonpost.com/investigations/drugmakers-and-distributors-face-barrage-of-lawsuits-over-opioid-epidemic/2017/07/04/3fc33c64-5794-11e7-b38e-35fd8e0c288f_story.html?utm_term=.5479777fd205.

⁴⁰ <http://www.foxbusiness.com/features/2017/07/26/mckesson-shareholders-reject-executive-compensation-packages.html>

Finally, ABC contends that the Proposal deals with ordinary business by asking for annual disclosure of whether any senior executive incentive pay has been clawed back. In the years when no clawback has occurred, disclosure would be “business as usual,” according to ABC.

But the subject of disclosure, even in years when no clawback has occurred, is still senior executive incentive compensation clawbacks. Presumably, the disclosure in years with no clawback would look something like: “During 20xx, ABC did not recover any incentive compensation from a senior executive, and no senior executive forfeited incentive compensation.” That disclosure does not address an ordinary business matter, like information systems for distribution facilities or privacy practices, just because no amounts were clawed back.

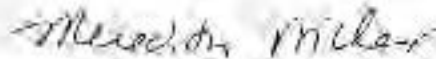
A statement that no clawback has occurred is analogous to a zero in a column of the total compensation table. That zero still relates to the underlying element of compensation, even though none of it was paid or awarded in that year.

* * *

For the reasons set forth above, ABC has not met its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7). The Proponents thus respectfully request that ABC’s request for relief be denied and that the Proponents be permitted to make the minor revision to the Proposal discussed above.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (734) 929-5789.

Sincerely,



Meredith Miller
Chief Corporate Governance Officer
UAW Retiree Medical Benefits Trust

cc: Sean M. Donahue
Morgan, Lewis & Bockius, LLP
Sean.donahue@morganlewis.com

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October 30, 2017

VIA HAND DELIVERY AND EMAIL (shareholderproposals@sec.gov)

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

Re: *AmerisourceBergen Corporation*
Stockholder Proposal of UAW Retiree Medical Benefits Trust and Connecticut
Retirement Plans and Trust Funds, as co-filers
Rule 14a-8 of the Securities Exchange Act of 1934

Ladies and Gentlemen:

This letter is to inform you that our client, AmerisourceBergen Corporation, a Delaware corporation ("AmerisourceBergen" or the "Company"), intends to exclude from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the "2018 Proxy Materials") the stockholder proposal (the "Proposal") and the statement in support thereof (the "Supporting Statement") received from the UAW Retiree Medical Benefits Trust and the Connecticut Retirement Plans and Trust Funds (the "Proponents"), as co-filers.

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we have:

- transmitted this letter by email to the staff (the "Staff") of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission") at shareholderproposals@sec.gov no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission, which is currently anticipated to be on or about January 19, 2018; and

Morgan Lewis

Office of Chief Counsel
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- concurrently sent copies of this letter, together with its attachments, to the Proponents at the email addresses they have provided as notice of the Company's intent to exclude the Proposal and the Supporting Statement from the 2018 Proxy Materials.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents 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 on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's stockholders at the Annual Meeting of Stockholders in 2018:

RESOLVED, that shareholders of AmerisourceBergen Corporation ("ABC") urge the board of directors ("Board") to adopt a policy (the "Policy") that ABC will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award (each, a "clawback") as a result of applying the Policy. "Senior executive" includes a former senior executive.

The Policy should provide that the general circumstances of the clawback will be described. The Policy should also provide that if no clawback of the kind described above occurred in the previous fiscal year, a statement to that effect will be made. The disclosure requested in this proposal is intended to supplement, not supplant, any clawback disclosure required by law or regulation.

Copies of the Proposal and the Supporting Statement, as well as related correspondence from the Proponents, are attached to this letter as Exhibit A.

BASES FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal and the Supporting Statement may be excluded from the 2018 Proxy Materials pursuant to (i) Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite so as to be inherently misleading, and (ii) Rule 14a-8(i)(7), because the Proposal involves matters that relate to the ordinary business operations of the Company.

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ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because the Proposal Is Impermissibly Vague And Indefinite so as to Be Inherently Misleading.

The Company believes that the Proposal may be excluded under Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading, given the use of the key defined term “Policy” in the last phrase of the first sentence of the Proposal, which is reproduced below:

“RESOLVED, that shareholders of AmerisourceBergen Corporation (“ABC”) urge the board of directors (“Board”) to adopt a policy (the “Policy”) that ABC will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award (each, a “clawback”) as a result of applying the Policy. (emphasis added)

The use of the key defined term “Policy” results in the Proposal being vague and indefinite because the defined term is the disclosure policy being requested in the resolved clause, which results in the resolved clause being circular. The requested disclosure policy does not contain any triggering events or other similar provisions that would require the Company to recoup any incentive compensation from a senior executive or would cause a senior executive to forfeit an incentive compensation award. Thus, there would be nothing to disclose “as a result of applying the Policy.” While the Proponents may have intended to refer to an existing clawback policy rather than to the requested disclosure policy, the Proponents do not do so. Moreover, the Proponents do not reference the recoupment and forfeiture provisions in the Company’s Omnibus Incentive Plan (the “Omnibus Plan”) (attached as Exhibit B hereto), although the Company describes them in its proxy statement for the 2017 Annual Meeting of Stockholders (the “2017 Proxy Statement”). (The relevant provisions of the 2017 Proxy Statement are attached as Exhibit C hereto.)

The Omnibus Plan governs incentive compensation and provides for the recoupment and forfeiture of incentive awards (i) upon a “Triggering Event,” as that term is defined in the Omnibus Plan, and (ii) pursuant to any clawback policy adopted by the Company’s Board of Directors (the “Board”). The Company does not have a separate clawback policy other than the recoupment and forfeiture provisions in the Omnibus Plan, as disclosed in the 2017 Proxy Statement. Accordingly, any recoupments or forfeitures of cash or equity awards are only triggered by the events listed in the provisions of the Omnibus Plan, which is filed publicly with

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the SEC and available on the Company's website.¹ Even if the Proponents intended to refer to the recoupment and forfeiture provisions of the Omnibus Plan, stockholders would be unable to make an informed voting decision because it is unclear whether the Proponents meant to refer to the recoupment and forfeiture provisions in the Omnibus Plan or to the disclosure policy itself, as suggested by the use of the defined term "Policy." (Since the Proponents defined each recoupment or forfeiture as a "clawback," we use that term generally in describing the Proposal and the Proponents' intent.)

The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "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." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"); see also Dyer v. SEC, 287 F.2d 773, 781 (8th Cir. 1961) ("[i]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail").

When applying Rule 14a-8(i)(3), the Staff has concurred with the exclusion of a variety of stockholder proposals with vague terms or references that are key to understanding the proposal, including proposals addressing executive compensation policies and procedures. For example, in International Paper Co. (Feb. 3, 2011), the proposal urged the company to adopt a policy requiring that senior executives retain a significant percentage of stock acquired through equity pay programs until two years following the termination of their employment and to report to stockholders regarding the policy. The proposal stated that its implementation required the company to negotiate with and encourage senior executives to relinquish their "executive pay rights" to the fullest extent possible. The company argued that the phrase "executive pay rights" was vague and undefined, and that the company's compensation program in fact consisted of numerous "executive pay rights." The Staff concurred that the proposal was excludable under Rule 14a-8(i)(3), noting in particular that "the proposal does not sufficiently explain the meaning of 'executive pay rights' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Similarly, in General Electric Co. (Freedra) (Jan. 21, 2011), the proposal sought certain enumerated changes to all incentive compensation awards to senior executives whose performance measurement period was one year or shorter. The company argued that the proposal

¹ See Exhibit 10.1 to Form 8-K filed on March 10, 2014, available at: <https://www.sec.gov/Archives/edgar/data/1140859/000110465914018004/0001104659-14-018004-index.htm>. All of the Company's SEC filings, including the Form 8-K to which the Omnibus Plan is filed as an exhibit, are available on the Company's website at www.amerisourcebergen.com under the "Investors" heading.

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was excludable as vague and indefinite because, in the context of the company's specific compensation programs, neither the company nor its stockholders could understand the meaning of critical terms in the proposal and therefore could not determine what compensation programs would be subject to the proposal. The Staff concurred in the exclusion of the proposal, noting that, "in applying this particular proposal to GE, neither the stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires."²

In a related line of precedent, the Staff has concurred with the exclusion under Rule 14a-8(i)(3) of stockholder proposals that, like the Proposal, contain a central concept that relies upon a reference to an external standard that is key to implementing the proposal but fail to sufficiently explain that external standard. See, e.g., Dell Inc. (Mar. 30, 2012) (concurring with the exclusion of a proposal to include certain stockholder-named director nominees in company proxy statements, including any nominee named by "[a]ny party of shareholders of whom one hundred or more satisfy SEC Rule 14a-8(b) eligibility requirements"); MEMC Electronic Materials, Inc. (Mar. 7, 2012) (same); Chiquita Brands International, Inc. (Mar. 7, 2012) (same); Sprint Nextel Corp. (Mar. 7, 2012) (same); see also Exxon Mobil Corp. (Naylor) (Mar. 21, 2011) (concurring with the exclusion of a proposal requesting the use of, but failing to sufficiently explain, "guidelines from the Global Reporting Initiative"); AT&T Inc. (Feb. 16, 2010, recon. denied Mar. 2, 2010) (concurring with the exclusion of a proposal seeking a report on, among other things, "grassroots lobbying communications as defined in 26 C.P.R. § 56.4911-2"); Johnson & Johnson (United Methodist Church) (Feb. 7, 2003) (concurring with the exclusion of a proposal requesting the adoption of the "Glass Ceiling Commission's business recommendations" without describing the recommendations). Explaining these precedents, the Staff stated in Staff Legal Bulletin 14G (Oct. 16, 2012) that, "[i]n evaluating whether a proposal may be excluded [under Rule 14a-8(i)(3)], we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks" (emphases added). See also Chevron Corp. (Mar. 15, 2013) (concurring with exclusion because the proposal's reference to the New York Stock Exchange listing standards' definition of "independent director" was a central aspect of the proposal and necessary to determine with any reasonable certainty exactly what actions or measures the proposal required, but was not defined or explained in the proposal).

² See also Woodward Governor Co. (Nov. 26, 2003) (concurring in the exclusion of a proposal that called for a policy for compensating the "executives in the upper management ... based on stock growth" because the proposal was vague and indefinite as to what executives and time periods were referenced); General Electric Co. (Feb. 5, 2003) (concurring in the exclusion of a proposal seeking "shareholder approval for all compensation for Senior Executives and Board members" exceeding certain thresholds, because stockholders would not be able to determine what the critical terms "compensation" and "average wage" referred to and thus would not be able to understand which types of compensation the proposal would have affected).

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Here, the Company believes the Proposal is excludable under Rule 14a-8(i)(3) because its reference to the key defined term “Policy” in the last phrase of the first sentence of the Proposal is vague and indefinite in that neither the Company’s stockholders nor the Company could understand how the application of the requested disclosure policy could lead to any clawback that would then be required by the “Policy” to be disclosed. If the Proponents meant to refer to an existing Company clawback policy, the Proposal would still be vague and indefinite because nothing in the Proposal or the Supporting Statement references the recoupment and forfeiture provisions of the Omnibus Plan or describes the triggering events for recoupments and forfeitures of cash bonuses or equity awards set forth therein.

As with the proposal in Chevron Corp., an understanding of the key term “Policy” is crucial to understanding the Proposal, but the term is not adequately described or defined therein. Likewise, the Proposal is comparable to International Paper Co., where a reference to “executive pay rights” was vague in the context of the numerous executive pay rights under the company’s compensation programs, and General Electric Co. (2011), where a description of proposed changes to the company’s executive compensation arrangements was vague in the context of the existing compensation programs maintained by the company. Here, neither the Company nor its stockholders would be able to determine what is meant when the Proposal refers to the “Policy,” and thus neither the Company nor its stockholders can determine what implementation of the Proposal would entail.

We note that one of the Proponents, the UAW Retiree Medical Benefits Trust, has submitted nearly identical proposals to three other companies: Bank of America Corporation (“BAC”), The Goldman Sachs Group, Inc. (“Goldman”), and SunTrust Banks, Inc. (“SunTrust”), and none of these proposals used the phrase “applying the Policy.”³ Instead, these proposals referred to “BAC’s recoupment policy,” “Goldman’s recoupment policy,” and “SunTrust’s recoupment policy,” respectively. Despite the defined term “Policy” in the last phrase of the first sentence of the Proposal clearly referring to the disclosure policy, and the Proposal and Supporting Statement making no reference to the Omnibus Plan or its recoupment and forfeiture provisions as disclosed in the 2017 Proxy Statement, it is plausible that a stockholder familiar with the Company’s Omnibus Plan and/or the disclosures in the 2017 Proxy Statement might think that the “Policy” refers to the recoupment and forfeiture provisions in the Omnibus Plan. Even assuming that this is a plausible interpretation of the Proposal, neither the Board nor management would have discretion to implement it because the two arguably plausible interpretations—that the “Policy” is the policy required by the Proposal or that the “Policy” is actually the Omnibus Plan—are conflicting. Since stockholders can interpret the Proposal in both of these ways and the Supporting Statement does not clarify the Proponents’ intent, the

³ Bank of America Corporation (Mar. 6, 2015); The Goldman Sachs Group, Inc. (Feb. 11, 2015); and SunTrust Banks, Inc. (Jan. 6, 2015).

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Proposal lacks reasonable certainty as to exactly what actions or measures it requires and is therefore excludable pursuant to Rule 14a-8(i)(3).

In sum, the Proposal, “as drafted and submitted to the [C]ompany, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail,”⁴ and may properly be excluded under Rule 14a-8(i)(3).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company’s Ordinary Business Operations

If the Proposal contemplates the application of the recoupment and forfeiture provisions of the Omnibus Plan,⁵ it may be excluded under Rule 14a-8(i)(7) as a matter relating to the Company’s ordinary business operations for several reasons: first, the Proposal relates to ordinary business matters involving the Company’s administration of its compliance program and discipline of employees and does not raise a significant policy issue; second, there is not a sufficient nexus between the Proposal and the Company’s business operations; and third, the scope of the disclosure requested under the Proposal encompasses ordinary business matters that raise no significant policy issues.

The Proposal urges the Board to adopt a policy that the Company will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit any incentive compensation award as a result of applying the “Policy” and the general circumstances of each such clawback. In addition, the Proposal requests disclosure that no clawback occurred in the previous fiscal year, if that was the case.

According to the Commission release adopting 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.” Rather, the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission stated that the underlying policy of this exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” The Commission stated that one of the central considerations underlying this policy

⁴ Dyer v. SEC, 287 F.2d at 781.

⁵ If this was not the Proponent’s intent, it is not possible to determine what the Proposal means and, thus, impossible to assess whether it relates to the Company’s ordinary business operations.

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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.”

A. The Proposal Relates to the Company’s Administration of Its Compliance Policies and Discipline of Employees.

The Proposal requests the Board to adopt a disclosure policy requiring it to (i) disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award, (ii) describe the general circumstances of the clawback, and (iii) provide disclosure that no clawback occurred in the previous fiscal year, if that was the case. Neither the Proposal nor the Supporting Statement reference the existing provisions in the Company’s Omnibus Plan that set forth triggering events requiring the recoupment or forfeiture of incentive compensation or suggest that the Board should modify those provisions. Instead, the Proposal relates to the administrative task of reporting after-the-fact ordinary business matters. Specifically, the Proposal relates only to disclosure of whether or not the Company has clawed back any incentive compensation from any senior executive in the past year (beyond any disclosure required under the SEC’s executive compensation disclosure rules) as a result of applying the “Policy.”

As discussed above, the application of the requested disclosure policy could not result in any clawbacks. In contrast, the Omnibus Plan provides for the recoupment or forfeiture of incentive awards based on a wide range of triggering events, including those relating to termination for Cause (as defined in the Omnibus Plan); breach of work product, confidentiality or other restrictive covenants; intentional misconduct adversely affecting the business of the Company; restatement of the Company’s financial statements; breach of a certificate of compliance or similar attestation/certification; violation of a material term of an employment agreement or similar agreement; disparagement of the Company; discovery of events that would give rise to a “for Cause” termination after termination of employment; and failure to cooperate with the Company in an investigation. Given the nature of these triggering events, if the Proposal intended to require disclosure of clawbacks under the Omnibus Plan, the Proposal would relate to the Company’s administration of its compliance program, and would be seeking to enable stockholders to second-guess the Company’s determination of whether and when to take disciplinary actions against its employees. The focus of the Proposal on discipline is evident from the Supporting Statement, in which the Proponents state: “[w]e believe disclosure can be a powerful deterrent of misconduct and can signal a ‘tone at the top.’”

The Staff has long recognized that proposals attempting to govern disclosure of a company’s administration of internal compliance and ethics programs and policies may be excluded from proxy materials pursuant to Rule 14a-8(i)(7). For example, in Walt Disney Co. (Dec. 12, 2011), a stockholder proposal requested that the board report on board compliance with Disney’s Code

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of Business Conduct and Ethics for Directors. The company argued that, by requiring disclosure of what were inherently complex and fact-specific assessments of compliance with the company's code of ethics, the proposal intruded on matters that, as described in the 1998 Release, are "so fundamental to the board's ability to run a company on a day-to-day basis that it cannot reasonably be subject to direct shareholder oversight." The Staff concurred that the proposal could be excluded, noting that "[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under Rule 14a-8(i)(7)." Likewise, in Sprint Nextel Corp. (Mar. 16, 2010, recon. denied Apr. 20, 2010), a stockholder proposal requested a report to explain why the company had purportedly failed to adopt an ethics code that was reasonably designed to deter wrongdoing by the company's chief executive officer and to promote ethical conduct, securities law compliance, and accountability for adherence to the ethics code. The company argued that stockholder intervention in the conduct of its internal investigations and on the operation of its compliance programs, through the stockholder proposal process, "would create disruptions in the company's ability to conduct its business operations" and impede the company's ability to "decide on the need to conduct internal investigations." The Staff concurred that the proposal was properly excludable, noting that "[p]roposals that concern adherence to ethical business practices and the conduct of legal compliance programs are generally excludable under rule 14a-8(i)(7)."⁶

Similarly, the Staff has long concurred that proposals addressing disciplinary actions by a company against its employees, including its senior executives, are excludable under Rule 14a-8(i)(7). In the 1998 Release, the Commission stated that ordinary business matters include "the management of the workforce, such as the hiring, promotion and termination of employees" In The Southern Co. (Mar. 10, 2006), the Staff concurred that a proposal requiring the company to terminate the employment of any employee who in the course of his or her employment has committed fraud could be excluded under Rule 14a-8(i)(7). Likewise, in Sprint Nextel Corp. (Feb. 15, 2006), the proposal requested the board to prepare a report addressing the company's alleged failure to disclose certain transactions with executive officers. The Staff concurred with exclusion of the proposal under Rule 14a-8(i)(7), noting that it involved the company's "general legal compliance program and discipline of employees."⁷

⁶ See also JPMorgan Chase & Co. (Mar. 13, 2014) (concurring in the exclusion of a proposal seeking a report on board and officer fiduciary, moral, and legal obligations because "[p]roposals that concern a company's legal compliance program are generally excludable" as ordinary business matters); Lehman Brothers Holdings Inc. (Jan. 11, 2007) (concurring in the exclusion of a proposal seeking a report on the costs, benefits and impacts of the Sarbanes-Oxley Act on the company because it concerned the company's "ordinary business operations (i.e., general legal compliance program)"); Merrill Lynch & Co. (Jan. 11, 2007) (same); Morgan Stanley (Jan. 8, 2007) (same).

⁷ See also Merrill Lynch & Co. (Feb. 8, 2002) (concurring in the exclusion of a proposal requesting that the chief executive officer resign, where the Staff stated, "[t]here appears to be some basis for your view that Merrill Lynch

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Similar to the proposal considered in the Sprint Nextel Corp. letter and the other precedents cited above, if the Proposal relates to the Omnibus Plan's recoupment and forfeiture provisions, it relates to the Company's administration and enforcement of these provisions and disciplinary actions involving employees. The fact that the issue to be addressed in the annual disclosure requested under the Proposal relates to the clawback of incentive compensation paid to senior executives does not alter the fact that the principle thrust of the Proposal is disclosure of the Company's administration of one aspect of its legal compliance policy and discipline of employees. The precedents discussed above demonstrate that the Staff consistently has concurred with the exclusion of proposals relating to ordinary business matters, even where the proposals relate to an aspect of a company's executive compensation. See also Walt Disney Co. (Dec. 15, 2004) (concurring in the exclusion of a proposal because, "although the proposal mentions executive compensation [a significant policy issue], the thrust and focus of the proposal is on the ordinary business matter of the nature, presentation and content of programming and film production").⁸

Consistent with the foregoing precedent proposals, the Proposal is not focused on a significant policy issue because it does not request a modification to the recoupment and forfeiture provisions of the Company's Omnibus Plan or the adoption of a new clawback policy and thus does not relate to executive compensation. Instead, the Proposal addresses two ordinary business matters: the administration of a portion of the Company's compliance program and related disciplinary actions involving employees. Decisions about how best to deter and address misconduct (when any such disciplinary action or its results are not required to be disclosed under the SEC's rules) are inherently part of the day-to-day administration of how best to conduct the Company's operations. Therefore, consistent with the foregoing precedent, the Proposal relates to the Company's ordinary business operations and is properly excludable under Rule 14a-8(i)(7).

may exclude the proposal under Rule 14a-8(i)(7), as relating to Merrill Lynch's ordinary business operations (i.e., the termination, hiring, or promotion of employees)").

⁸ See also Wal-Mart Stores, Inc. (Mar. 17, 2003) (concurring with the exclusion of a proposal requesting the company to factor the percentage of employees covered by health insurance into senior executive compensation because the thrust and focus of the proposal is on the ordinary business matter of general employee benefits); General Electric Co. (Feb. 10, 2000) (concurring in the exclusion of a proposal relating to the discontinuation of an accounting method and use of funds related to an executive compensation program as dealing with both the significant policy issue of senior executive compensation and the ordinary business matter of choice of accounting method).

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B. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because There Is not a Sufficient Nexus between the Proposal and the Company's Business Operations.

Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”) states that, “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company” (emphasis added). SLB 14E further states that, “[i]n determining whether the subject matter raises significant policy issues and has a sufficient nexus to the company ... we will apply the same standards that we apply to other types of proposals under Rule 14a-8(i)(7).” The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), which cites SLB 14E and explains that, “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.”

The thrust of the Supporting Statement suggests that the Proponents are concerned primarily with the abuse of opioids by individuals and the Company’s business practices related to the distribution of opioid products. In this regard, at least half of the Supporting Statement is dedicated to discussing matters relating to opioids. The Proponents argue that having a disclosure policy in place would act as “a powerful deterrent to misconduct” by the Company’s senior executive officers. However, the distribution of a particular type of product by the Company is an ordinary business operation. For example, in Cardinal Health, Inc. (Aug. 4, 2017), the Staff granted relief for a proposal requesting that the company issue a report describing the controlled distribution systems it implements on behalf of manufacturers to prevent the diversion of restricted medicines to prisons for use in executions, and its process for monitoring and auditing these systems to check for and safeguard against failure, noting that the proposal related “to the sale or distribution of particular products to its customers.” See also McKesson Corp. (Jun. 1, 2017) (same).⁹

Even if the Proposal is considered to implicate a significant policy issue because it refers to opioid abuse by individuals, there is not a sufficient nexus between that abuse and the Company’s distribution of opioid products to hospitals, pharmacies, and other customers. The Staff has previously concluded that a proposal submitted to a **manufacturing company** relating to its sale of a particular product may not be excluded because of the nexus between the manufacturer’s operations and the proposal. However, the Staff has indicated repeatedly that no such nexus exists between a retailer’s or distributor’s operations and a proposal relating to the retailer’s or distributor’s sale of a particular product. Compare Philip Morris

⁹ As disclosed in the Company’s Form 10-K for the fiscal year ended September 30, 2016, Cardinal Health, Inc. and McKesson Corporation are the Company’s largest competitors.

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Companies, Inc. (Feb. 22, 1990) (denying relief for a proposal requesting a tobacco manufacturer to amend its charter to prohibit it from conducting any business in tobacco or tobacco products) and Sturm, Ruger & Co. (Mar. 5, 2001) (proposal asking the board of a gun manufacturer to provide a report on company policies and procedures focused on reducing gun violence in the U.S.) with Rite Aid Corporation (Mar. 24, 2015) (granting relief for a proposal requesting additional oversight by a retailer concerning the sale of certain products, in particular tobacco products) and Wal-Mart Stores, Inc. (Mar. 20, 2014) (granting relief for a proposal requesting additional oversight by a retailer concerning the sale of certain products, in particular firearms). The stockholder proposals in both Philip Morris and Sturm, Ruger & Co. related to the manufacture of products by the manufacturer of those products, whereas the Staff noted that both the Rite Aid and Wal-Mart proposals related to the “sale of particular products and services.” The lack of a sufficient nexus in Rite Aid and Wal-Mart is similar to the lack of a sufficient nexus in the Proposal, if the Staff were to consider the Proponents’ concern about the abuse of opioids by individuals to be a significant policy issue. Thus, the Proposal should be evaluated in a manner consistent with the Staff’s evaluation of the proposals in Rite Aid and Wal-Mart. There, notwithstanding the proponents’ concerns about tobacco harm and gun violence, the Staff agreed with the exclusion of their proposals because those companies sold tobacco products and guns as well as many other products. Similarly, notwithstanding the Proponents’ concern about the abuse of opioids by individuals, the Company believes that it may exclude the Proposal because it distributes opioid products as well as many other over-the-counter and non-opioid products to hospitals, pharmacies, and other customers.

In Walgreens Boots Alliance, Inc. (Nov. 7, 2016, recon. denied Nov. 22, 2016), the Staff granted relief for a proposal requesting a report assessing the risks of continued sales of tobacco products in the company’s stores despite the lengthy discussion of the harm of tobacco in the proposal’s supporting statement. The Staff’s concurrence with excluding the proposal was consistent with its views in Rite Aid and Wal-Mart since Walgreens is also a seller and not a manufacturer of tobacco products. Similarly, even though the Supporting Statement here references the Company’s public disclosures related to its *distribution* of opioids, the Staff’s precedent in Walgreens, Rite Aid, and Wal-Mart supports the Company’s request for exclusion because there is not a sufficient nexus between the Proposal’s concern about opioid abuse and the Company’s core operation as a distributor of pharmaceutical products rather than the manufacturer of such products.

In this regard, the Supporting Statement refers to AmerisourceBergen’s distributions to pharmacies, but those are just one set of customers to which the Company distributes pharmaceutical products or provides services. Other customers include acute care hospitals and health systems as well as medical clinics. In addition, the Supporting Statement provides data from the Centers for Disease Control and Prevention (the “CDC”) about the number of

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deaths in the U.S. from opioid abuse. Although the CDC's website reports that "as many as one in four patients receiving long-term opioid therapy in a primary care setting struggles with opioid addiction,"¹⁰ it also states that research has identified the following specific risk factors that make people particularly vulnerable to prescription opioid abuse and overdose: "[o]btaining overlapping prescriptions from multiple providers and pharmacies;" "[t]aking high daily dosages of prescription pain relievers;" "[h]aving mental illness or a history of alcohol or other substance abuse," and "[l]iving in rural areas and having low income."¹¹ None of these risk factors relate to the Company's business of providing services for and distributing pharmaceutical products to acute care hospitals and health systems as well as medical clinics. As such, there is not a sufficient nexus between the Company's business of providing services and distributing pharmaceutical products on the one hand and opioid abuse on the other.

Although the Staff has recognized executive compensation as a significant policy issue, the Company does not believe the Proposal focuses on that issue. Only two of the five paragraphs in the Supporting Statement address the clawing back of executive compensation. Despite referencing senior executive compensation, the third paragraph makes clear the Proponents' goal: "We believe disclosure can be a powerful deterrent of misconduct and can signal a 'tone at the top.'" The Proponents' focus is on affecting officers' actions rather than addressing the significant policy issue of senior executive compensation. Indeed, the Proponents admit they "are concerned about risks associated with these business practices and attendant social, economic and public health issues."

The Proposal differs from the one in SunTrust, cited above, for which the Staff denied relief upon concluding it focused on the significant policy issue of senior executive compensation. While both proposals' resolved clauses are nearly identical, the SunTrust proposal's supporting statement focused almost exclusively on senior executive compensation and recoupment. It discussed SunTrust's existing mechanisms to recoup incentive compensation and the compensation committee's ability to recoup incentive awards, shares, or compensation. That is not the case here, with the Proponents dedicating multiple paragraphs to business practices related to the distribution of opioids and opioid abuse. Also, even though both proposals note legal actions—SunTrust's settlements related to abuses in making home loans and charging improper fees for home refinance loans and the Company's settlement with the Attorney General of West Virginia—the SunTrust supporting statement discussed compensation policies and did not express any concern over SunTrust's business practices that led to the settlements. In contrast, the Proponents assert that they "are concerned about

¹⁰ Centers for Disease Control and Prevention, "Opioid Overdose – Addiction and Overdose" (last updated Aug. 29, 2017), available at: <https://www.cdc.gov/drugoverdose/opioids/prescribed.html#tabs-2-4>.

¹¹ Centers for Disease Control and Prevention, "Opioid Overdose – Risk Factors" (last updated Aug. 29, 2017), available at: <https://www.cdc.gov/drugoverdose/opioids/prescribed.html#tabs-2-3>.

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risks associated with these business practices and attendant social, economic and public health issues,” as noted above. This difference between the two proposals is crucial because the quoted language demonstrates that the Proponents’ primary concern is with the Company’s distribution of opioid products, which is an ordinary business activity. Accordingly, the Company believes the Proposal does not focus on the significant policy issue of senior executive compensation and thus warrants relief under Rule 14a-8(i)(7).

C. The Proposal’s Requirement to Disclose whether During the Previous Year there Were No Events Triggering Clawbacks of the Kind Described in the Proposal also Implicates Ordinary Business Considerations.

Even if some aspect of the Proposal were deemed to touch upon a significant policy issue, the Proposal also implicates ordinary business matters because it provides “that if no clawback of the kind described above occurred in the previous fiscal year, a statement to that effect will be made.” Thus, the Proposal would require disclosure not only in situations when, for example, the Company determined that conduct or a loss did not warrant seeking recoupment or forfeiture of compensation, but also would require disclosure if there had been no events causing the Company to consider whether to clawback compensation. This “business as usual” disclosure clearly relates to ordinary business matters. There is simply no significant policy issue implicated by requiring disclosure that there had been no clawback of incentive compensation involving any senior executives in the prior year, either because there were no relevant disciplinary actions or the Company decided that the particular triggering event in the Omnibus Plan did not require any recoupment or forfeiture. As a result, the Proposal relates to routine Company operations.

The Staff consistently has concurred that a proposal may be excluded under Rule 14a-8(i)(7) when the proposal requests certain disclosures and at least one of the requested disclosures addresses ordinary business matters. See, e.g., Exxon Mobil Corp. (Mar. 6, 2012) (concurring in the exclusion of a proposal requesting a report on possible short and long term risks to the company’s finances and operations posed by the environmental, social and economic challenges associated with the oil sands, since the proposal addresses the “economic challenges” associated with oil sands, which the Staff did not view as a significant policy issue). In General Electric Co. (Feb. 10, 2000), the Staff concurred that General Electric could exclude a proposal requesting that it (i) discontinue an accounting technique, (ii) not use funds from the General Electric Pension Trust to determine executive compensation, and (iii) use funds from the trust only as intended. The Staff concurred that the entire proposal was excludable because a portion of the proposal related to ordinary business matters, namely the choice of accounting methods. Similarly, in Union Pacific Corp. (Feb. 21, 2007), a proposal requesting information on the company’s efforts to minimize financial risk arising from a terrorist attack or other homeland security incidents was found excludable in its entirety because a portion of it related to the

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evaluation of risks arising in the ordinary course of a railroad's operation, regardless of whether a portion of the proposal raised significant policy concerns.¹²

Similar to the proposals discussed above, even if parts of the Proposal are deemed to implicate a significant policy issue, one prong of the disclosure contemplated by the Proposal clearly does not. The fact that there have been no incidents or decisions that resulted in a recoupment or forfeiture of compensation during a year relates to ordinary business matters, *i.e.*, that it is business as usual, and does not implicate a significant policy issue. Therefore, the Company believes the Proposal is excludable under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analyses, the Company believes that the Proposal and the Supporting Statement may be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(3) and Rule 14a-8(i)(7). The Company respectfully requests the Staff's concurrence in the Company's view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal and the Supporting Statement from the 2018 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (202) 739-5658. If the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to this letter by email to sean.donahue@morganlewis.com.

Very truly yours,



Sean M. Donahue

Enclosures

cc: Hyung J. Bak, AmerisourceBergen Corporation
Meredith Miller, UAW Retiree Medical Benefits Trust
Christine Shaw, Connecticut State Treasurer

¹² See also Wal-Mart Stores, Inc. (Mar. 15, 1999) (proposal requesting a report to ensure that the company did not purchase goods from suppliers using, among other things, forced labor, convict labor and child labor was excludable in its entirety because the proposal also requested that the report address ordinary business matters).

Morgan Lewis

EXHIBIT A

PROPOSAL AND
RELATED CORRESPONDENCE



September 11, 2017

Hyung J. Bak
Vice President, Group General Counsel and Secretary
AmerisourceBergen Corporation
Corporate Headquarters
1300 Morris Drive
Chesterbrook, PA 19087

Dear Mr. Hyung J. Bak,

The purpose of this letter is to submit the attached shareholder resolution sponsored by the UAW Retiree Medical Benefits Trust ("Trust") for inclusion in AmerisourceBergen Corporation (the "Company") proxy statement for the Annual Meeting of Stockholders in 2018.

The Trust is the beneficial owner of more than \$2,000 in market value of the Company's stock and has held such stock continuously for over one year. Furthermore, the Trust intends to continue to hold the requisite number of shares through the date of the annual meeting in 2018. Proof of ownership will be sent by the Trust's custodian, State Street Bank and Trust Company, under separate cover.

We welcome a dialogue with the Company to discuss the issues raised by the proposal. Please contact me at (734) 887-4964 or via email at mamiller@rhac.com at any time if you have any questions or would like to further discuss these issues.

Sincerely,

A handwritten signature in cursive script that reads "Meredith Miller".

Meredith Miller
Chief Corporate Governance Officer
UAW Retiree Medical Benefits Trust

Enclosure

RESOLVED, that shareholders of AmerisourceBergen Corporation (“ABC”) urge the board of directors (“Board”) to adopt a policy (the “Policy”) that ABC will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award (each, a “clawback”) as a result of applying the Policy. “Senior executive” includes a former senior executive.

The Policy should provide that the general circumstances of the clawback will be described. The Policy should also provide that if no clawback of the kind described above occurred in the previous fiscal year, a statement to that effect will be made. The disclosure requested in this proposal is intended to supplement, not supplant, any clawback disclosure required by law or regulation.

SUPPORTING STATEMENT

ABC recently disclosed in its 10-K that its business practices related to its distribution of opioids in West Virginia and other states are under the subject of multiple government investigations. In its January 2017 10-Q, ABC reported a \$16 million settlement with the Attorney General of the state of West Virginia over claims the company acted negligently by distributing controlled substances to pharmacies that serve individuals who abuse controlled substances, and failed to report suspicious orders of uncontrolled substances in accordance with state regulations.

As institutional investors, we are concerned about risks associated with these business practices and attendant social, economic and public health issues. The U.S. Centers for Disease Control and Prevention reported that in 2015, opioid abuse caused 33,000 deaths or 91 people per day. Goldman Sachs cites opioid use as a key factor in why many men of prime working age in the U.S. are unable or unwilling to find work, lowering worker productivity and increasing healthcare and criminal justice costs nearly \$80 billion in 2013.

ABC has mechanisms in place to claw back incentive compensation as a result of intentional misconduct not limited to the financial restatement context. Without disclosure, investors cannot determine if the Policy is being used. We believe disclosure can be a powerful deterrent of misconduct and can signal a “tone at the top.” Clawback disclosure policies have been adopted by the two other major opioid distributors, McKesson and Cardinal Health.

Clawback disclosure from senior executives below the named executive officer level, recoupment from whom is already required to be disclosed under SEC rules, would be useful for shareholders because these executives may have business unit responsibilities or otherwise be in a position to take on substantial risk or affect key company policies.

We are sensitive to privacy concerns and urge ABC’s Policy to provide for disclosure that does not violate privacy expectations (subject to laws requiring fuller disclosure).

We urge shareholders to vote FOR this proposal.



DENISE L. NAPIER
TREASURER

State of Connecticut
Office of the Treasurer

September 21, 2017

Mr. Hyung J. Bak
Vice President, Group General Counsel and Secretary
AmerisourceBergen Corporation
Corporate Headquarters
1300 Morris Drive
Chesterbrook, PA 19087

Dear Mr. Bak,

The purpose of this letter is to inform you that the Connecticut Retirement Plans and Trust Funds ("CRPTF") is co-filing the resolution submitted by the UAW Retiree Medical Benefits Trust, a copy which is attached.

As the principal fiduciary of the CRPTF, I hereby certify that the CRPTF has held the mandatory minimum number of AmerisourceBergen Corporation shares for the past year. Furthermore, as of September 19, 2017, the CRPTF held 28,386 shares of AmerisourceBergen Corporation stock valued at approximately \$2,250,442. The CRPTF will continue to hold the requisite number of shares of AmerisourceBergen through the date of the 2018 annual meeting.

If you have any questions or comments concerning this resolution, please contact Christine Shaw, Chief Compliance Officer and Assistant Treasurer for Policy, at 860-702-3211 or Christine.Shaw@ct.gov.

Sincerely,

A handwritten signature in cursive script that reads "Denise Nappier".

Denise L. Nappier
State Treasurer

cc: Meredith Miller, Chief Corporate Governance Officer, UAW retiree Medical Benefits Trust



Connecticut Retirement Plans and Trust Funds ("CRPTF") co-filer

RESOLVED, that shareholders of AmerisourceBergen Corporation ("ABC") urge the board of directors ("Board") to adopt a policy (the "Policy") that ABC will disclose annually whether it, in the previous fiscal year, recouped any incentive compensation from any senior executive or caused a senior executive to forfeit an incentive compensation award (each, a "clawback") as a result of applying the Policy. "Senior executive" includes a former senior executive.

The Policy should provide that the general circumstances of the clawback will be described. The Policy should also provide that if no clawback of the kind described above occurred in the previous fiscal year, a statement to that effect will be made. The disclosure requested in this proposal is intended to supplement, not supplant, any clawback disclosure required by law or regulation.

SUPPORTING STATEMENT

ABC recently disclosed in its 10-K that its business practices related to its distribution of opioids in West Virginia and other states are the subject of multiple government investigations. In its January 2017 10-Q, ABC reported a \$16 million settlement with the Attorney General of the state of West Virginia over claims the company acted negligently by distributing controlled substances to pharmacies that serve individuals who abuse controlled substances and failed to report suspicious orders of uncontrolled substances in accordance with state regulations.

As institutional investors, we are concerned about risks associated with these business practices and attendant social, economic and public health issues. The U.S. Centers for Disease Control and Prevention reported that in 2015, opioid abuse caused 33,000 deaths or 91 people per day. Goldman Sachs cites opioid use as a key factor in why many men of prime working age in the U.S. are unable or unwilling to find work, lowering worker productivity and increasing healthcare and criminal justice costs nearly \$80 billion in 2013.

ABC has mechanisms in place to claw back incentive compensation as a result of intentional misconduct not limited to the financial restatement context. Without disclosure, investors cannot determine if the Policy is being used. We believe disclosure can be a powerful deterrent of misconduct and can signal a "tone at the top." Clawback disclosure policies have been adopted by the two other major opioid distributors, McKesson and Cardinal Health.

Clawback disclosure from senior executives below the named executive officer level, recoupment from whom is already required to be disclosed under SEC rules, would be useful for shareholders because these executives may have business unit responsibilities or otherwise be in a position to take on substantial risk or affect key company policies.

We are sensitive to privacy concerns and urge ABC's Policy to provide for disclosure that does not violate privacy expectations (subject to laws requiring fuller disclosure).

We urge shareholders to vote FOR this proposal.



BNY MELLON

500 Grant Street
26th Floor
Pittsburgh, PA 15259

September 21, 2017

Mr. Hyung J. Bak
Vice President, Group General Counsel and Secretary
AmerisourceBergen Corporation
Corporate Headquarters
1300 Morris Drive
Chesterbrook, PA 19087

Re: Connecticut Retirement Plans and Trust Funds

CUSIP # 03073E105

Dear Mr. Hyung:

BNY Mellon is the record owner of common stock ("Shares") of AmerisourceBergen Corporation, beneficially owned by The State of Connecticut Acting through its Treasurer. The shares held by BNY Mellon are held in the Depository Trust Company, in the participant code 901. The Client has held shares of AmerisourceBergen Corporation, (CUSIP # 03073E105) with a market value greater than \$2,000.00 continuously for more than a one year period as of September 21, 2017.

Please do not hesitate to contact me should you have any specific concerns or questions.

Sincerely,

Joseph J. Smerecky - Proxy Supervisor
Global Corporate Events - BNY Mellon Asset Servicing
(P) 412-234-0995
Joe.Smerecky@BNYMellon.com

Morgan Lewis

EXHIBIT B

AMERISOURCEBERGEN CORPORATION
OMNIBUS INCENTIVE PLAN

AMERISOURCEBERGEN CORPORATION

OMNIBUS INCENTIVE PLAN

1. Purpose. This AmerisourceBergen Corporation Omnibus Incentive Plan (the “Plan”) is adopted by the Board of Directors of AmerisourceBergen Corporation (the “Company”) subject to stockholder approval of the Plan at the 2014 Annual Meeting of Stockholders and shall become effective upon such approval. The purpose of the Plan is to provide designated employees, non-employee directors, independent contractors and consultants of the Company and its parent and subsidiaries with the opportunity to receive grants of stock-based awards or cash incentive compensation as provided in the Plan. The Company believes that the Plan will encourage the participants to contribute materially to the growth of the Company, thereby benefiting the Company’s stockholders, and will align the economic interests of the participants with those of the stockholders.

2. Definitions. For purposes of the Plan, the following terms shall be defined as follows:

“*Administrator*” means the particular entity, whether the Compensation Committee, the Board or the Secondary Board Committee, which is authorized to administer the Plan with respect to one or more classes of Eligible Individuals, to the extent such entity is carrying out its administrative functions under the Plan with respect to the persons under its jurisdiction.

“*Award*” means an award made pursuant to the terms of the Plan to an Eligible Individual in the form of Stock Options, Stock Appreciation Rights, Stock Awards, Restricted Stock Unit Awards, Performance Share Awards, Section 162(m) Awards, Dividend Equivalent Awards, Cash Incentive Awards or other awards determined by the Administrator.

“*Award Agreement*” means a written agreement or certificate granting an Award.

“*Board*” means the Board of Directors of the Company.

“*Cash Incentive Award*” means a cash incentive award granted to an Eligible Individual pursuant to Section 16 hereof.

“*Cause*” means a determination by the Administrator that any of the following has occurred: (A) commission of any act of fraud, embezzlement (B) a material breach of any provision of Attachment A, (C) a material breach of any provision of Attachment B, (D) any unauthorized use or disclosure of confidential information or trade secrets of the Company (or any of its affiliated corporations) or (E) any other willful misconduct adversely affecting the business or affairs of the Company (or any its affiliated corporations); provided, however, if “Cause” is defined in an employment or other written agreement between the Company (or any Parent or Subsidiary) and the Participant, then Cause shall have the meaning assigned to such term in such employment or other agreement.

“*Change in Control*” shall be deemed to have occurred if:

- (i) Any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes a “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 35% of the voting power of the then outstanding securities of the Company, and such person owns more aggregate voting power of the Company’s then outstanding securities entitled to vote generally in the election of directors than any other person;
-

- (ii) The consummation of (x) a merger or consolidation of the Company with another corporation where the stockholders of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, shares entitling such stockholders to 50% or more of all votes to which all stockholders of the surviving corporation would be entitled in the election of directors (without consideration of the rights of any class of stock to elect directors by a separate class vote), (y) a sale or other disposition of all or substantially all of the assets of the Company, or (z) a liquidation or dissolution of the Company; or
- (iii) A change in the composition of the Board over a period of twelve (12) consecutive months or less such that a majority of the Board members ceases to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period ("Incumbent Directors") or (B) have been elected or nominated for election as Board members during such period by at least two-thirds of the Incumbent Directors who were still in office at the time the Board approved such election or nomination; provided that any individual who becomes a Board member subsequent to the beginning of such period and whose election or nomination was approved by two-thirds of the Board members then comprising the Incumbent Directors will be considered an Incumbent Director.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable rulings and regulations thereunder.

"Common Stock" means the common stock of the Company.

"Compensation Committee" means the Compensation and Succession Planning Committee of the Board which shall at all relevant times be comprised solely of two (2) or more non-employee Board members, each of whom is intended to qualify as a "non-employee director" (as defined in Rule 16b-3 under the Exchange Act), an "outside director" for purposes of Section 162(m) of the Code and an "independent director" under the rules of any securities exchange or automated quotation system on which the Common Stock is then listed, quoted or traded; provided that any action taken by the Compensation Committee shall be valid and effective, whether or not one or more members of the Compensation Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this definition or otherwise provided in the charter of the Compensation Committee.

"Dividend Equivalent Award" means an Award to receive dividend equivalents granted to an Eligible Individual pursuant to Section 14 hereof.

"Eligible Individuals" means the individuals described in Section 6 who are eligible for Awards under the Plan.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the applicable rulings and regulations thereunder.

"Fair Market Value" shall be determined as follows:

- (i) If the Common Stock is publicly traded, then the Fair Market Value per share of Common Stock shall be determined as follows: (x) if the principal trading market for the Common Stock is a national securities exchange, the closing selling price per share at the close of regular hours of trading on the relevant date (or, if the relevant date is not a day in which the Common Stock is being traded, then the last such date before the relevant date), or (y) if the Common Stock is not principally traded on such exchange, the mean between the last reported "bid" and "asked" prices of shares of Common Stock on the relevant date (or, if the relevant date is not a date upon which a sale was reported, then the last such date before the relevant date).

- (ii) If the Common Stock is not publicly traded or, if publicly traded, is not subject to reported transactions or “bid” or “asked” quotations as set forth above, the Fair Market Value per share shall be as determined by the Administrator.

“Family Member” means, with respect to a particular Participant, any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships.

“Full Value Award” means an Award other than a Stock Option, Stock Appreciation Right or other Award for which the Participant pays the intrinsic value (whether directly or by forgoing a right to receive a payment from the Company).

“Incentive Stock Option” means a Stock Option that is an “incentive stock option” within the meaning of Section 422 of the Code and designated by the Administrator as an Incentive Stock Option in an Award Agreement.

“Nonqualified Stock Option” means a Stock Option that is not an Incentive Stock Option.

“Parent” means any corporation that is a “parent corporation” within the meaning of Section 424(e) of the Code with respect to the Company.

“Participant” means an Eligible Individual to whom an Award has been granted under the Plan.

“Performance Period” means a fiscal year of the Company or such other period that may be specified by the Compensation Committee in connection with the grant of a Section 162(m) Award.

“Performance Share Award” means a conditional Award of shares of Common Stock granted to an Eligible Individual pursuant to Section 12 hereof.

“Restricted Stock Unit” means a Common Stock-equivalent unit granted to an Eligible Individual pursuant to Section 11 hereof.

“Section 162(m) Award” means an Award described in Section 13 hereof.

“Section 162(m) Participant” means any Participant who is, or could reasonably be expected to become, a “covered employee” within the meaning of Section 162(m) of the Code.

“Secondary Board Committee” shall mean a committee of one or more Board members appointed by the Board to administer the Plan with respect to Eligible Individuals who are not subject to the reporting rules under Section 16(a) of the Exchange Act or Section 162(m) Participants.

“Securities Act” means the Securities Act of 1933, as amended, and the applicable rulings and regulations thereunder.

“Service” means the performance of services for the Company (or any Parent or Subsidiary, whether now existing or subsequently established) by a person in the capacity of an employee, a non-employee member of the Board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the Award Agreement. For purposes of the Plan, a Participant shall be deemed to cease Service immediately upon the occurrence of either of the following events: (i) the Participant no longer performs services in any of the foregoing capacities for the Company or any Parent or Subsidiary or (ii) the entity for which the Participant is performing such services ceases to remain a Parent or Subsidiary of the Company, even though the Participant may subsequently continue to perform services for that entity. Service shall not be deemed to cease during a period of military leave, sick leave or other personal leave approved by the Company; provided, however, that should such leave of absence exceed three (3) months, then for purposes of determining the period within which an Incentive Stock Option may be exercised as such under the federal tax laws, the Participant’s Service shall be deemed to cease on the first day immediately following the expiration of such three (3)-month period, unless the Participant is provided with the

right to return to Service following such leave either by statute or by written contract. Except to the extent otherwise required by law or expressly authorized by the Administrator or by the Company's written policy on leaves of absence, no Service credit shall be given for vesting purposes for any period the Participant is on a leave of absence.

"Stock Appreciation Right" means an Award to receive all or some portion of the appreciation on shares of Common Stock granted to an Eligible Individual pursuant to Section 9 hereof.

"Stock Award" means an Award of shares of Common Stock granted to an Eligible Individual pursuant to Section 10 hereof.

"Stock Option" means an Award to purchase shares of Common Stock granted to an Eligible Individual pursuant to Section 8 hereof.

"Subsidiary" means (i) any Subsidiary Corporation or (ii) any other corporation or other entity in which the Company, directly or indirectly, has an equity or similar interest and which the Administrator designates as a Subsidiary for the purposes of the Plan.

"Subsidiary Corporation" means any corporation which is a "subsidiary corporation" within the meaning of Section 424(f) of the Code with respect to the Company.

"Substitute Award" means an Award granted upon assumption of, or in substitution for, outstanding awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock.

"10% Stockholder" means the owner of stock (as determined under Section 424(d) of the Code) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company (or any Parent or Subsidiary Corporation).

"Voluntary Retirement" means any voluntary termination of employment by a Participant (i) after reaching age sixty-two (62) and completing sixty (60) full months of continuous employment with the Company and/or its Parent or Subsidiaries or (ii) after reaching age fifty-five (55), where the Participant's age plus years of continuous employment with the Company and/or its Parent or Subsidiaries equals at least seventy (70).

3. Administration of the Plan.

(a) *Administration.* The Compensation Committee (whether acting directly or through a subcommittee of two (2) or more members thereof) shall have sole and exclusive authority to administer the Plan with respect to (i) Eligible Individuals who are subject to the reporting rules under Section 16(a) of the Exchange Act and (ii) awards that are Section 162(m) Awards. Administration of the Plan with respect to all other Eligible Individuals and other Awards may, at the Board's discretion, be vested in the Compensation Committee or a Secondary Board Committee, or the Board may retain the power to administer those programs with respect to such persons and awards.

(b) *Power and Authority of the Administrator.* Each Administrator shall, within the scope of its administrative functions under Plan, have full power and authority, subject to the express provisions hereof, (i) to select Participants from the Eligible Individuals, (ii) to make Awards in accordance with the Plan, (iii) to determine the number of shares of Common Stock subject to each Award and the cash amount (if any) payable in connection with an Award, (iv) to determine the terms and conditions of each Award, including, without limitation, those related to vesting, forfeiture, payment and exercisability, and the effect, if any, of a Participant's termination of Service or, subject to Section 21, of a Change in Control on the outstanding Awards granted to such Participant, (v) amend the terms and conditions of an Award after the granting thereof to a Participant (including accelerating the exercisability, vesting or payment of an Award and/or extending the period of time for which a Stock Option or Stock Appreciation Right is to remain exercisable following the Participant's cessation of Service, (vi) to provide in an Award Agreement for forfeiture of all or part of an Award, whether or not such Award has become exercisable, nonforfeitable or earned or has previously been exercised, as the case may be, and to determine the terms and

conditions of such forfeiture, which terms and conditions may include, but are not limited to, non-competition and non-solicitation requirements and/or conditions requiring the repayment to the Company of the vested and/or previously exercised portion of any Award; (vii) to determine whether a Participant has experienced a Triggering Event as defined in Section 17; (viii) to specify and approve the provisions of the Award Agreements delivered to Participants in connection with their Awards, (ix) to interpret any Award Agreement delivered under the Plan, (x) to prescribe, amend and rescind such rules and procedures as it deems necessary or advisable for the proper administration of the Plan, including adopting subplans to the Plan or special terms for Awards granted to Eligible Individuals in countries outside the United States, (xi) to vary the terms of Awards to take account of tax, securities law and other regulatory requirements of various states or foreign jurisdictions, (xi) subject to Section 3(e), delegate to one or more officers of the Company some or all of its authority under the Plan, and (xii) to make all other determinations and to formulate such procedures as may be necessary or advisable for the administration of the Plan.

(c) *Plan Construction and Interpretation.* The Administrator shall have full power and authority, subject to the express provisions hereof, to construe and interpret the Plan.

(d) *Determinations of Administrator Final and Binding.* All determinations made by the Administrator in carrying out and administering the Plan and in construing and interpreting the Plan shall be final, binding and conclusive for all purposes and upon all persons interested herein.

(e) *Delegation of Authority.* To the maximum extent permitted by law, the Board or the Compensation Committee may from time to time delegate some or all of its authority under the Plan (including its authority to determine whether a Triggering Event has occurred and the extent to which the consequences of Section 17(a) shall apply) to one or more officers of the Company; provided, however, that in no event shall such officer or officers be delegated any authority to grant Awards to, or amend or make determinations with respect to Awards held by, Eligible Individuals who, at such time, are (A) subject to the reporting rules under Section 16(a) of the Exchange Act, (B) Section 162(m) Participants or (C) officers of the Company who are delegated authority pursuant to this Section 3(e). Any delegation hereunder shall be subject to the restrictions and limits that the Board or the Compensation Committee specifies at the time of such delegation or thereafter. The Board or the Compensation Committee may at any time rescind the authority delegated to a delegatee appointed hereunder or appoint a new delegatee. At all times, a delegatee appointed under this Section 3(e) shall serve in such capacity at the pleasure of the body that appointed such delegatee. Any action undertaken by the delegatee in accordance with the Board's or the Compensation Committee's delegation of authority shall have the same force and effect as if undertaken directly by the Board or the Compensation Committee, respectively, and any reference in the Plan to the Board or the Compensation Committee shall, to the extent consistent with the terms and limitations of such delegation, be deemed to include a reference to the delegatee.

(f) *Indemnification.* To the extent allowable pursuant to applicable law, each member of the Board and each officer to whom authority is delegated under Section 3(e) shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such individual in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; provided that he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

4. Duration of Plan. The Plan shall remain in effect until terminated by the Board and thereafter until all Awards granted under the Plan are satisfied by the issuance of shares of Common Stock or the payment of cash or are terminated under the terms of the Plan or under the Award Agreement entered into in connection with the grant thereof. Notwithstanding the foregoing, no Awards may be granted under the Plan after March 5, 2024.

5. Shares of Stock Subject to the Plan and Award Limitations .

(a) *Share Reserve.* Subject to adjustment as provided in Section 20(b), the number of shares of Common Stock that may be issued under the Plan pursuant to Awards shall not exceed, in the aggregate, Twenty-Eight Million (28,000,000) shares (the "Section 5 Limit"). Such shares may be either authorized but unissued shares, treasury shares or any combination thereof.

For purposes of determining the number of shares that remain available for issuance under the Plan and subject to adjustment as provided in Section 20(b), the following rules shall apply:

- (i) the Section 5 Limit shall be reduced on a one-for-one basis for each share of Common Stock subject to an Award other than a Full Value Award and by a fixed ratio of 3.25 shares of Common Stock for each share of Common Stock subject to a Full Value Award;
- (ii) the Section 5 Limit shall be increased by one share for each share of Common Stock subject to an Award other than a Full Value Award that expires or is forfeited or otherwise terminated without the issuance of such shares or is settled by the delivery of consideration other than shares of Common Stock and by 3.25 shares for each share of Common Stock subject to a Full Value Award that expires or is forfeited or otherwise terminated without the issuance of such shares or is settled by the delivery of consideration other than shares of Common Stock;
- (iii) the Section 5 Limit shall be increased by 3.25 shares for each unvested share of Common Stock repurchased or forfeited under a Stock Award; and
- (iv) the Section 5 Limit shall not be increased by:
 - (A) the number of shares of Common Stock tendered to pay the exercise price of, or to satisfy a Participant's tax withholding obligations with respect to, a Stock Option or other Award,
 - (B) the number of shares of Common Stock withheld from any Award to satisfy a Participant's tax withholding obligations or, if applicable, to pay the exercise price of a Stock Option or other Award,
 - (C) the number of shares of Common Stock subject to a Stock Appreciation Right that are not issued in connection with the settlement of the Stock Appreciation Right on exercise thereof, and
 - (D) shares of Common Stock purchased on the open market with the cash proceeds from the exercise of Stock Options.

In addition, any shares of Common Stock underlying Substitute Awards shall not be counted against the Section 5 Limit set forth in the first sentence of this Section 5(a).

(b) *Limitation on Awards.* Subject to adjustment as provided in Section 20(b),

- (i) in the case of Stock Options and stand-alone Stock Appreciation Rights that are settled in shares, the maximum aggregate number of shares of Common Stock with respect to which such Stock Options and Stock Appreciation Rights may be granted to any Participant in any fiscal year of the Company under the Plan shall be Three Million (3,000,000);

- (ii) in the case of Awards other than Stock Options and Stock Appreciation Rights that are settled in shares, the maximum aggregate number of shares of Common Stock with respect to which such Awards may be granted to any Participant in any fiscal year of the Company under the Plan shall be One Million (1,000,000);
- (iii) in the case of Awards that are settled in cash based on the Fair Market Value of a share of Common Stock, the maximum aggregate amount of cash that may be paid pursuant to Awards granted to any Participant in any fiscal year of the Company under the Plan shall be equal to the Fair Market Value per share of Common Stock on the relevant vesting, payment or settlement date multiplied by the number of shares described (A) in the preceding clause (i), in the case of cash-settled Stock Appreciation Rights, or (B) in the preceding clause (ii), in the case of such Awards other than cash-settled Stock Appreciation Rights;
- (iv) in the case of all other Awards, the maximum aggregate amount of cash and other property (valued at its Fair Market Value) other than shares that may be paid or delivered pursuant to Awards under the Plan to any Participant in any fiscal year of the Company shall be equal to Ten Million Dollars (\$10,000,000);
- (v) the maximum aggregate number of shares that may be issued pursuant to Incentive Stock Options granted under the Plan shall be Twenty-Eight Million (28,000,000); and
- (vi) a non-employee director may not receive stock-based awards under the Plan, whether in the form of stock options, stock appreciation rights, stock, restricted stock units, performance shares, or other stock-based awards, with an aggregate grant date value in excess of \$500,000 in any fiscal year. Such limitation does not apply to any cash retainer fees converted into equity awards at the election of the non-employee director.

For purposes of this Section 5(b), each share of Common Stock subject to an Award (including a Full Value Award) shall be counted as one share against the Award limits set forth above.

6. Eligible Individuals. Awards may be granted by the Administrator to individuals ("Eligible Individuals") who are officers or other employees, non-employee directors, independent contractors or consultants of the Company (or a Parent or Subsidiary) with the potential to contribute to the future success of the Company or its Parents or Subsidiaries. An individual's status as a member of the Board, the Compensation Committee or any Secondary Board Committee or an officer to whom authority is delegated under Section 3(e) shall not affect his or her eligibility to participate in the Plan.

7. Awards Generally. Awards under the Plan may consist of Stock Options, Stock Appreciation Rights, Stock Awards, Restricted Stock Unit Awards, Performance Share Awards, Section 162(m) Awards, Dividend Equivalent Awards, Cash Incentive Awards or other awards determined by the Administrator. The terms and provisions of an Award shall be set forth in a written Award Agreement approved by the Administrator.

8. Stock Options.

(a) *Terms of Stock Options Generally.* Subject to the terms of the Plan and the applicable Award Agreement, each Stock Option shall entitle the Participant to whom such Stock Option was granted to purchase the number of shares of Common Stock specified in the applicable Award Agreement and shall be subject to the terms and conditions established by the Administrator in connection with the Award and specified in the applicable Award Agreement. Upon satisfaction of the conditions to exercisability specified in the applicable Award Agreement, a Participant shall be entitled to exercise the Stock Option in whole or in part and to receive, upon satisfaction or payment of the exercise price or an irrevocable notice of exercise in the manner contemplated by Section 8(e) below, the number of shares of Common Stock in respect of which the Stock Option shall have been exercised. Stock Options may be either Nonqualified Stock Options or Incentive Stock Options.

(b) *Exercise Price.* The exercise price per share of Common Stock purchasable under a Stock Option shall be determined by the Administrator at the time of grant and set forth in the Award Agreement; provided, however, that the exercise price per share shall be no less than 100% of the Fair Market Value per share on the date of grant. Notwithstanding the foregoing, the exercise price per share of a Stock Option that is a Substitute Award may be less than the Fair Market Value per share on the date of award, provided the requirements of Treas. Reg. § 1.409A-1(b)(5)(v)(D) are met.

(c) *Option Term.* The term of each Stock Option shall be fixed by the Administrator and set forth in the Award Agreement; provided, however, that a Stock Option shall not be exercisable after the expiration of ten (10) years from the date the Stock Option is granted .

(d) *Effect of Termination of Service.* The following provisions shall govern the exercise of any Stock Options that are outstanding at the time of the Participant's cessation of Service:

- (i) Any Stock Option outstanding at the time of the Participant's cessation of Service for any reason shall remain exercisable for such period of time thereafter as shall be determined by the Administrator and set forth in the Award Agreement, but no such option shall be exercisable after the expiration of the option term.
- (ii) Any Stock Option held by the Participant at the time of the Participant's death and exercisable in whole or in part at that time may be subsequently exercised by the personal representative of the Participant's estate or by the person or persons to whom the option is transferred pursuant to the Participant's will or the laws of inheritance or by the Participant's designated beneficiary or beneficiaries of that option.
- (iii) Should the Participant's Service be terminated for Cause or should the Participant otherwise engage in conduct constituting grounds for a termination for Cause while holding one or more outstanding Stock Options, then all of those Stock Options shall terminate immediately and cease to be outstanding.
- (iv) During the applicable post-service exercise period, the Stock Option may not be exercised in the aggregate for more than the number of vested shares of Common Stock for which the Stock Option is at the time exercisable. No additional shares shall vest under the Stock Option following the Participant's cessation of Service, except to the extent (if any) specifically authorized by the Administrator in its sole discretion pursuant to an express written agreement with the Participant. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the Stock Option shall terminate and cease to be outstanding for any shares for which the Stock Option has not been exercised.

The Administrator shall have complete discretion, exercisable either at the time a Stock Option is granted or at any time while the Stock Option remains outstanding, to:

- (i) extend the period of time for which the Stock Option is to remain exercisable following the Participant's cessation of Service from the limited exercise period otherwise in effect for that Stock Option to such greater period of time as the Administrator shall deem appropriate, but in no event beyond the expiration of the option term,
- (ii) include an automatic extension provision whereby the specified post-service exercise period in effect for any Stock Option shall automatically be extended by an additional period of time equal in duration to any interval within the specified post-service exercise period during which the exercise of that Stock Option or the immediate sale of the shares acquired under such Stock Option could not be effected in compliance with the applicable registration requirements of federal and state securities laws, but in no event

shall such an extension result in the continuation of such Stock Option beyond the expiration date of the term of that option, and/or

- (iii) permit the Stock Option to be exercised, during the applicable post-service exercise period, not only with respect to the number of vested shares of Common Stock for which such Stock Option is exercisable at the time of the Participant's cessation of Service but also with respect to one or more additional installments in which the Participant would have vested had the Participant continued in Service.

(e) *Payment of Exercise Price.* Subject to the provisions of the applicable Award Agreement, the exercise price of a Stock Option may be paid in one or more of the following forms:

- (i) cash or check made payable to the Company;
- (ii) previously owned shares of Common Stock (whether delivered in the form of actual stock certificates or through attestation of ownership) held for the requisite period (if any) necessary to avoid any resulting charge to the Company's earnings for financial reporting purposes and valued at Fair Market Value on the exercise date;
- (iii) through the withholding of shares subject to the Stock Option with a Fair Market Value on the date of exercise equal to the aggregate exercise price; or
- (iv) through a "cashless exercise" procedure which is approved by the Company involving a brokerage firm (reasonably satisfactory to the Company for purposes of administering such procedure in compliance with the Company's pre-clearance/pre-notification policies) thereby affording Participants the opportunity to sell immediately some or all of the shares underlying the exercised portion of the Stock Option in order to generate sufficient cash to pay the Stock Option exercise price and to satisfy withholding tax obligations related to the Stock Option.

(f) *Incentive Stock Options.* Incentive Stock Options shall be granted only to employees of the Company or any then existing Parent or Subsidiary Corporation and the terms of each Incentive Stock Option shall, in addition to the other requirements of this Section 8, comply with the following provisions:

- (i) the aggregate Fair Market Value of the shares of Common Stock (determined as of the respective date or dates of grant) for which one or more options granted to any employee under the Plan (or any other option plan of the Company or any Parent or Subsidiary Corporation) may for the first time become exercisable as Incentive Stock Options during any one (1) calendar year shall not exceed the sum of One Hundred Thousand Dollars (\$100,000). To the extent the employee holds two (2) or more such options that become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Stock Options shall be applied on the basis of the order in which such options are granted, except to the extent otherwise provided under applicable law or regulation;
- (ii) if the Participant to whom the Incentive Stock Option is granted is a 10% Stockholder, then the option term shall not exceed five (5) years measured from the option grant date, and the exercise price per share shall not be less than one hundred ten percent (110%) of the Fair Market Value per share of Common Stock on the option grant date; and
- (iii) during the Participant's lifetime, the Incentive Stock Option may be exercised only by the Participant and the Incentive Stock Option, together with the shares of Common Stock subject to that option during the period prior to exercise, shall not be assignable or transferable other than by will or by the laws of inheritance following the Participant's death.

Any Stock Option (or portion thereof) that, for any reason, fails to meet the requirements of Section 422 of the Code or any successor provision shall be a Nonqualified Stock Option. Any Stock Option that is specifically designated as Nonqualified Stock Option shall not be subject to the terms of this Section 8(f).

9. Stock Appreciation Rights. Stock Appreciation Rights shall be subject to the terms and conditions established by the Administrator in connection with the award thereof and specified in the applicable Award Agreement; provided, however, that the exercise price per share of Common Stock subject to a Stock Appreciation Right shall be no less than 100% of the Fair Market Value per share on the date of grant and the Stock Appreciation Right shall not be exercisable after the expiration of ten (10) years measured from the grant date. Subject to the provisions of Section 17, the exercise of a Stock Appreciation Right shall entitle a Participant to an amount, if any, equal to the Fair Market Value of a share of Common Stock on the date of exercise over the Stock Appreciation Right exercise price specified in the applicable Award Agreement. At the discretion of the Administrator, payments to a Participant upon exercise of a Stock Appreciation Right may be made in shares of Common Stock, cash or a combination thereof. A Stock Appreciation Right may be granted alone or in addition to other Awards, or in tandem with a Stock Option. If granted in tandem with a Stock Option, a Stock Appreciation Right shall cover the same number of shares of Common Stock as covered by the Stock Option (or such lesser number of shares as the Administrator may determine) and shall be exercisable only at such time or times and to the extent the related Stock Option shall be exercisable, and shall have the same term and exercise price as the related Stock Option. Upon exercise of a Stock Appreciation Right granted in tandem with a Stock Option, the related Stock Option shall be canceled automatically to the extent of the number of shares covered by such exercise; conversely, if the related Stock Option is exercised as to some or all of the shares covered by the tandem grant, the tandem Stock Appreciation Right shall be canceled automatically to the extent of the number of shares covered by the Stock Option exercised. The provisions governing the exercise of Stock Appreciation Rights following the cessation of the Participant's Service shall be substantially the same as set forth in Section 8(d) for Stock Options granted under the Plan.

10. Stock Awards. Stock Awards shall consist of one or more shares of Common Stock granted to an Eligible Individual, and shall be subject to the terms and conditions established by the Administrator in connection with the Award and specified in the applicable Award Agreement. Stock Awards may be issued for cash or no cash consideration and as fully vested shares or subject to vesting conditions as determined by the Administrator; provided, however, that each Stock Award shall be subject to at least one of the following minimum vesting requirements: (a) a performance-based vesting requirement that expires not less than one (1) year following the date of grant or (b) a time-based vesting requirement that expires based on the Eligible Individual remaining in Service for not less than three (3) years from the date of grant of the Stock Award. Notwithstanding anything to the contrary however, the Administrator shall be permitted to waive any vesting conditions applicable to any Stock Award. Except as otherwise provided in the applicable Award Agreement, a Participant shall have all the rights of a stockholder with respect to any shares of Common Stock issued to the Participant under a Stock Award, whether or not the Participant's interest in those shares is vested.

11. Restricted Stock Units. The Administrator may from time to time grant Awards to Eligible Individuals denominated in Common Stock-equivalent units in such amounts and upon such terms and conditions (including vesting conditions) as the Administrator shall determine and as set forth in an applicable Award Agreement; provided, however, that each Restricted Stock Unit Award shall be subject to at least one of the following minimum vesting requirements: (a) a performance-based vesting requirement that expires not less than one (1) year following the date of grant or (b) a time-based vesting requirement that expires based on the Eligible Individual remaining in Service for not less than three (3) years from the date of grant of the Stock Award. Notwithstanding anything to the contrary however, the Administrator shall be permitted to waive any vesting conditions applicable to any Restricted Stock Unit Award. Restricted Stock Units granted to a Participant shall be credited to a bookkeeping reserve account solely for accounting purposes and shall not require a segregation of any of the Company's assets. An Award of Restricted Stock Units may be settled in shares of Common Stock, cash, or in any combination of Common Stock and cash as the Administrator shall determine. Except as otherwise provided in the applicable Award Agreement, the Participant shall not have the rights of a stockholder with respect to any Common Stock represented by a Restricted Stock Unit. However, Dividend Equivalents may be paid or credited, either in cash or in actual or phantom shares of Common Stock, on outstanding Restricted Stock Units, subject to such terms and conditions as the Administrator may deem appropriate.

12. Performance Share Awards. Performance Share Awards shall be evidenced by an Award Agreement in such form and containing such terms and conditions as the Administrator deems appropriate. Each Award Agreement shall set forth the number of shares of Common Stock to be earned by a Participant upon satisfaction of certain specified performance criteria and subject to such other terms and conditions as the Administrator deems appropriate. Payment in settlement of a Performance Share Award shall be made as soon as practicable following the conclusion of the applicable performance period, or at such other time as the Administrator shall determine, in shares of Common Stock, cash or in a combination of Common Stock and cash, as the Administrator shall determine.

13. Section 162(m) Awards.

(a) *Terms of Section 162(m) Awards Generally.* In addition to any other Awards under the Plan, the Compensation Committee shall have the authority to grant Awards that are intended to qualify as “qualified performance-based compensation” for purposes of Section 162(m) of the Code (“Section 162(m) Awards”). Section 162(m) Awards may consist of Stock Options, Stock Appreciation Rights, Stock Awards, Restricted Stock Unit Awards, Performance Share Awards, Dividend Equivalent Awards, Cash Incentive Awards or other awards the vesting, exercisability and/or payment of which is conditioned upon the attainment for the applicable Performance Period of specified performance targets related to designated performance goals for such period selected by the Compensation Committee from among the performance goals specified in Section 13(b) below. Section 162(m) Awards will be made in accordance with the procedures specified in applicable Treasury regulations for compensation intended to be “qualified performance-based compensation.”

(b) *Performance Goals.* Performance Goals shall mean any of the following performance criteria upon which the vesting of one or more Awards under the Plan may be based: (i) cash flow (including net cash flow, cash flow from operations, free cash flow (i.e. cash flow from operations less capital expenditures), cash flow from investing activities and cash flow from financing activities); (ii) earnings (including total earnings, earnings from operations, gross profit, gross margin, earnings before interest and taxes, earnings before taxes, earnings before interest, taxes, depreciation, amortization and charges for stock-based compensation, earnings before interest, taxes, depreciation and amortization, and net earnings); (iii) income from continuing operations, income from continuing operations before taxes, income from continuing operations before taxes and interest, income from continuing operations before taxes, interest, depreciation and amortization, income from continuing operations before special items (including warrant expense, LIFO charges, employee severance, litigation expenses, deal amortization and other expenses, all net of taxes); (iv) earnings per share and earnings per share from continuing operations, diluted or basic; (v) growth in earnings or earnings per share, diluted or basic; (vi) stock price; (vii) return on equity or average stockholder equity; (viii) total stockholder return or growth in total stockholder return either directly or in relation to a comparative group; (ix) return on capital; (x) return on assets or net assets; (xi) net asset turnover or change in assets; (xii) capital expenditures; (xiii) invested capital, return on capital or return on committed or invested capital; (xiv) revenue, growth in revenue or return on sales; (xv) income or net income; (xvi) operating income, net operating income or net operating income after tax; (xvii) operating profit or net operating profit; (xviii) gross or operating margin; (xix) profitability by product or program line, business unit, or segment; (xx) return on operating revenue or return on operating profit; (xxi) distribution, selling, general and/or administrative expenses; (xxii) operating expenses; (xxiii) operating expenses as a percentage of revenue; (xxiv) overhead or other expense reduction; (xxv) dividend payment yield or dividend payout ratio; (xxvi) net or gross sales; (xxvii) days sales outstanding; (xxviii) days inventory on hand; (xxix) inventory turnover; (xxx) economic value added; (xxxi) cost of capital; (xxxii) litigation and regulatory resolution goals; (xxxiii) budget comparisons; (xxxiv) productivity; (xxxv) growth in stockholder value relative to the growth of the S&P 500 or S&P 500 Index, the S&P Global Industry Classification Standards (“GICS”) or GICS Index, or another peer group or peer group index; (xxxvi) debt or debt reduction; (xxxvii) credit rating; (xxxviii) development and implementation of key projects, strategic plans and/or organizational restructuring goals; (xxxix) performance achievements on certain designated projects or objectives; (xl) development and implementation of risk and crisis management programs; improvement in workforce diversity; (xli) productivity goals; (xlii) workforce management and succession planning goals; (xliii) measures of customer satisfaction, employee satisfaction, employee retention or staff development; (xliv) development or marketing collaborations, formations of joint ventures or partnerships or the completion of other similar transactions intended to enhance the Company’s revenue or profitability or enhance its customer base; (xlv) merger and acquisitions; (xlvi) measures of market share; (xlvii) maintenance of an investment grade rating; (xlviii) buy-side margin or other

specific financial criteria related to inventory purchasing; (xlix) regulatory compliance, (l) specific diversity and/or succession goals or implementation; and (li) other similar criteria consistent with the foregoing.

In addition, such performance criteria may be based upon the attainment of specified levels of the Company's performance under one or more of the measures described above relative to the performance of other entities and may also be based on the performance of any of the Company's business units or divisions or any Parent or Subsidiary. Each applicable Performance Goal may include a minimum threshold level of performance below which no Award will be earned, levels of performance at which specified portions of an Award will be earned and a maximum level of performance at which an Award will be fully earned. Each applicable performance goal may be appropriately adjusted for one or more of the following items: (A) asset impairments or write-downs; (B) litigation judgments or claim settlements; (C) the effect of changes in tax law, accounting principles or other such laws, regulations or provisions affecting reported results; (D) accruals for reorganization and restructuring programs; (E) any extraordinary, unusual or nonrecurring items; (F) the operations of any business acquired by the Company; (G) severance, contract termination and other costs related to exiting certain business activities, discontinued operations or the divestiture of one or more business operations; (H) currency fluctuations; (I) non-cash items, such as amortization, depreciation or reserves; (J) recapitalization, merger, consolidation, spin-off, split-up, combination, liquidation, dissolution, sale of assets or other similar corporate transaction; (K) gains or losses from the early extinguishment of debt; (L) stock dividend or stock split; (M) items relating to major licensing or partnership arrangements; and (N) any other adjustment consistent with the operation of the Plan.

(c) *Other Performance-Based Compensation.* The Compensation Committee's decision to make, or not to make, Section 162(m) Awards within the meaning of this Section 13 shall not in any way prejudice the qualification of any other Awards as performance based compensation under Section 162(m). In particular, Awards of Stock Options and Stock Appreciation Rights may, pursuant to applicable regulations promulgated under Section 162(m), be qualified as performance-based compensation for Section 162(m) purposes without regard to this Section 13.

14. Dividend Equivalent Awards.

(a) The Administrator may grant Dividend Equivalents to any Eligible Individual based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date an Award is granted to a Participant and the date such Award vests, is exercised, is distributed or expires, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional shares of Common stock by such formula and at such time and subject to such limitations as may be determined by the Administrator. In addition, Dividend Equivalents with respect to an Award with performance-based vesting that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Participant to the extent that the performance-based vesting conditions are subsequently satisfied and the Award vests.

(b) Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Stock Options or Stock Appreciation Rights.

15. Cash Incentive Awards. The Administrator shall have the authority to grant Cash Incentive Awards which are to vest in one or more installments over the Participant's continued Service or upon the attainment of specified performance goals. The vesting schedule and other terms applicable to each Cash Incentive Award shall be determined by the Administrator and incorporated into the Award Agreement. The Compensation Committee shall also have the authority, consistent with Section 162(m) of the Code, to structure one or more Cash Incentive Awards so that those Awards qualify as Section 162(m) Awards pursuant to Section 13.

16. Other Awards. The Administrator shall have the authority to specify the terms and provisions of other forms of equity-based or equity-related Awards not described above which the Administrator determines to be consistent with the purpose of the Plan and the interests of the Company, which Awards may provide for cash payments based in whole or in part on the value or future value of Common Stock, for the acquisition or future acquisition of Common Stock, or any combination thereof. Other Awards shall also include cash payments under the Plan which may be based on one or more criteria determined by the Administrator which are unrelated to the value of Common Stock and which may be granted in tandem with, or independent of, other Awards under the Plan.

17. Special Forfeiture and Repayment Rules.

(a) In the event the Administrator determines in its sole discretion that a Triggering Event (as defined in Section 17(b) below) has occurred with respect to a Participant and unless otherwise set forth in the applicable Award Agreement, then:

(i) Provided the application of this Section 17(a)(i) has not been waived by the Administrator, any (A) outstanding Stock Option and/or Stock Appreciation Right then held by the Participant (or his permitted transferee), whether or not vested and exercisable, (B) outstanding Stock Awards and/or Restricted Stock Unit Awards granted to the Participant as to which the restrictions have not lapsed (or, with respect to Restricted Stock Unit Awards, restrictions have lapsed but the shares of Common Stock or cash have not been delivered), (C) Performance Share Awards and/or Section 162(m) Awards as to which the applicable performance period has not expired or the applicable performance period has expired but such Award has not yet been paid and/or (D) Cash Incentive Awards granted to the Participant that have not vested (or that have vested but such Award has not yet been paid), will immediately and automatically be forfeited and such Participant (or his permitted transferee) will have no further rights with respect to that Award; and

(ii) Provided the application of this Section 17(a)(ii) has not been waived by the Administrator, if the Participant (or his permitted transferee) exercised a Stock Option or Stock Appreciation Right within the 12-month period immediately prior to the date of the acts or omissions that gave rise to such Triggering Event or anytime thereafter, within 10 days of receiving written notice from the Company that a Triggering Event has occurred, the applicable Participant shall pay to the Company an amount equal to the product of the number of shares of Common Stock as to which the Stock Option or Stock Appreciation Right was exercised, multiplied by the excess, if any, of the Fair Market Value per share of Common Stock on the date of exercise over the per share exercise price of that Stock Option or Stock Appreciation Right.

(iii) Provided the application of this Section 17(a)(iii) has not been waived by the Administrator, if restrictions imposed on Stock Awards and/or Restricted Stock Unit Awards have lapsed (and, with respect to Restricted Stock Unit Awards, the shares of Common Stock or cash have been delivered to the Participant) within the 12-month period immediately prior to the date of the acts or omissions that gave rise to such Triggering Event or anytime thereafter, within 10 days of receiving written notice from the Company that a Triggering Event has occurred, the applicable Participant shall deliver to the Company a number of unrestricted shares of Common Stock equal to the number of shares of Common Stock (or Common Stock-equivalent units in the case of Restricted Stock Unit Awards) as to which restrictions have so lapsed during such period and any cash received in settlement of such Award; provided that if, at the time delivery of the shares of Common Stock by the Participant is required, such Participant cannot deliver a number of unrestricted shares of Common Stock equal to the number of shares of Common Stock (or Common Stock-equivalent units in the case of Restricted Stock Unit Awards) as to which restrictions have so lapsed during such period, in addition to the delivery of the number of unrestricted shares of Common Stock by such Participant at such time, such Participant shall be required to pay to the Company an amount equal to the product of the number of such shares of Common Stock (or Common Stock-equivalent units in the case of Restricted Stock Unit Awards) as to which restrictions have so lapsed during such period (less the number of shares of Common Stock contemporaneously delivered by the Participant to the Company), multiplied by the excess, if any, of the Fair Market Value of one share of Common Stock as of the date such restrictions lapsed over the per share purchase price paid by the Participant for such shares (or Common Stock-equivalent units), if any.

(iv) Provided the application of this Section 17(a)(iv) has not been waived by the Administrator, if, with respect to Performance Share Awards with an applicable performance period which ended within the 12-month period immediately prior to the date of the acts or omissions that gave rise to such Triggering Event or anytime thereafter, the specified performance targets for such performance period have been attained and such Performance Share Award was paid to the Participant, within 10 days of receiving written notice from the Company that a Triggering Event has occurred, the applicable Participant shall deliver to the Company the number of shares of Common Stock or cash paid to the Participant with respect to such Performance Share Award; provided that if, at the time delivery of the shares of Common Stock by the Participant is required, such Participant cannot deliver the shares of Common Stock, such Participant shall be required to pay to the Company an amount equal to the product of the number of such shares of Common Stock delivered to the Participant, multiplied by the excess, if

any, of the Fair Market Value of one share of Common Stock as of the date such delivery over the per share purchase price paid by the Participant for such shares, if any.

(v) Provided the application of this Section 17(a)(v) has not been waived by the Administrator, if a Cash Incentive Award was paid to the Participant within the 12-month period immediately prior to the date of the acts or omissions that gave rise to such Triggering Event or anytime thereafter, within 10 days of receiving written notice from the Company that a Triggering Event has occurred, the Participant shall pay to the Company the amount paid to the Participant with respect to such Cash Incentive Award.

(vi) Provided the application of this Section 17(a)(vi) has not been waived by the Administrator, if, with respect to a Section 162(m) Award with an applicable Performance Period which ended within the 12-month period immediately prior to the date of the acts or omissions that gave rise to such Triggering Event or anytime thereafter, the specified performance targets for such Performance Period have been attained and such Section 162(m) Award was paid to the Participant, within 10 days of receiving written notice from the Company that a Triggering Event has occurred, the Participant shall pay to the Company an amount equal to: (A) in the case of a Section 162(m) Award that is a Stock Option, Stock Appreciation Right, Stock Award, Restricted Stock Unit Award, Performance Share Award or Cash Incentive Award, the amount to be paid by the Participant to the Company determined pursuant to the provisions of Sections 17(a)(ii)-(v) as applicable, or (B) otherwise, the amount paid to the Participant with respect to such Section 162(m) Award.

(vii) Provided the application of this Section 17(a)(vii) has not been waived by the Administrator, if any cash or shares of Common Stock have been paid to the Participant under a Dividend Equivalent Award within the 12-month period immediately prior to the date of the acts or omissions that gave rise to such Triggering Event or anytime thereafter, within 10 days of receiving written notice from the Company that a Triggering Event has occurred, the applicable Participant shall pay to the Company the amount of cash or the number of shares of Common Stock paid to the Participant with respect to such Dividend Equivalent Award; provided that if, at the time delivery of the shares of Common Stock by the Participant is required, such Participant cannot deliver the shares of Common Stock, such Participant shall be required to pay to the Company an amount equal to the product of the number of such shares of Common Stock delivered to the Participant multiplied by the Fair Market Value of one share of Common Stock as of the date of such delivery.

(b) Except as otherwise set forth in an applicable Award Agreement, “*Triggering Event*” means, unless waived in writing by the Administrator, the occurrence of any of the following:

(i) the date during the Repayment Period (as defined below in Section 17(c)) that the Participant’s Service was involuntarily terminated by the Company (or any Parent or Subsidiary) for Cause;

(ii) the date during the Repayment Period that the Participant (A) breaches any provisions of Attachment B, (B) without authorization uses or discloses confidential information or trade secrets of the Company (or any of its affiliated corporations) or (C) commits any other intentional misconduct adversely affecting the business or affairs of the Company (or any its affiliated corporations);

(iii) the date during the Repayment Period that the Participant breaches any provision of Attachment A;

(iv) the date during the Repayment Period that the Administrator determines that the Participant either (i) engaged in conduct that directly or indirectly resulted in the Company having to restate all or a portion of its financial statements or (ii) engaged in conduct which would constitute a breach of any certificate of compliance or similar attestation/certification signed by the Participant;

(v) the date during the Repayment Period that the Participant has violated any material term of an employment agreement, independent contractor agreement, consulting agreement or other similar agreement that the Participant has entered into with the Company (or any Parent or Subsidiary);

(vi) the date during the Repayment Period that the Participant disparages or subverts the Company, or makes any statement reflecting negatively on the Company, its affiliated corporations or entities, or any of their officers, directors, employees, agents or representatives, including, but not limited to, any matters relating to the operation or management of the Company, the Participant's Service and the termination thereof, irrespective of the truthfulness or falsity of such statement;

(vii) the date during the Repayment Period that the Administrator determines that the Participant committed an act or omission while an employee or other service provider of the Company (or Parent or Subsidiary) that was not discovered by the Company (or any Parent or Subsidiary) until after the termination of such Participant's Service that would, if such Participant were an active employee or other service provider of the Company (or Parent or Subsidiary) at the time such act or omission is discovered, be reason for termination of such Participant's Service for Cause; or

(viii) the date during the Repayment Period that the Participant fails to cooperate with the Company (or any Parent or Subsidiary) in all investigations of any kind, in assisting and cooperating in the preparation and review of documents and meeting with Company counsel, and in providing truthful testimony as a witness in connection with any present or future court, administrative, agency or arbitration proceeding involving the Company (or any Parent or Subsidiary).

(c) Except as set forth in an applicable Award Agreement, "*Repayment Period*" means:

(i) with respect to Triggering Events described in Sections 17(b)(i), (ii), (v), (vii) and (viii), anytime;

(ii) with respect to Triggering Event described in Sections 17(b)(iii) and (vi), the period that the Participant is employed by, or otherwise provides services to, the Company (or any Parent or Subsidiary), plus the 24-month period immediately following the termination such Service; and

(iii) with respect to Triggering Event described in Sections 17(b)(iv), the period that the Participant is employed by, or otherwise provides services to, the Company (or any Parent or Subsidiary), plus the 36-month period immediately following the termination such Service.

(d) The Participant shall also be subject to any clawback, recoupment or other similar policy adopted by the Board as in effect from time to time and Awards and any cash, shares of Common Stock or other property or amounts due, paid or issued to a Participant shall be subject to cancellation, recoupment, rescission, payback or other action in accordance with the terms of such policy.

(e) Unless otherwise set forth in the applicable Award Agreement, by accepting an Award under the Plan, the Participant thereby: (i) agrees to be bound by the terms and conditions of Attachment A and Attachment B and this Section 17, including, without limitation, the required payment provisions of Sections 17(a)(ii)-(v), (ii) acknowledges and agrees that the Company would have not granted such Award in the absence such terms and conditions, (iii) represents and warrants that he will remain in full compliance with such terms and conditions, (iv) agrees to make or cause to be made the required payments set forth in Sections 17(a)(ii)-(v), as applicable, and (v) without limiting the generality of Section 17(e)(iv) above, agrees that the Company may deduct from, and set-off against, any amounts owed to the Participant by the Company or any Parent or Subsidiary (including, without limitation, amounts owed as wages, bonuses, severance, or other fringe benefits) to the extent of the amount owed by the Participant to the Company pursuant to this Section 17.

(f) An Award Agreement evidencing an Award under the Plan as to which this Section 17 applies shall provide the applicable Participant with a reasonable period of time following the date of such Participant's receipt of such Award Agreement to refuse acceptance of such Award if he disagrees with any of the terms and conditions of this Section 17. If a Participant refuses acceptance of an Award, the Award will be immediately forfeited, the Participant will have no further rights with respect to such Award, and the shares of Common Stock underlying such Award shall again be available for grant under the Plan.

18. Non-transferability. No Award granted under the Plan or any rights or interests therein shall be sold, transferred, assigned, pledged or otherwise encumbered or disposed of except by will or by the laws of descent and distribution or as may otherwise be required by law; provided, however, that the Administrator may, subject to such terms and conditions as the Administrator shall specify, permit the transfer of an Award to a Participant's Family Members or to one or more trusts established in whole or in part for the benefit of the Participant or one or more of the Participant's Family Members; provided further, that the restrictions in this sentence shall not apply to the shares received in connection with an Award after the date that the restrictions on transferability of such shares set forth in the applicable Award Agreement have lapsed. During the lifetime of a Participant, a Stock Option or Stock Appreciation Right shall be exercisable only by, and payments in settlement of Awards shall be payable only to the Participant, or, if applicable, the Family Member or trust to whom such Stock Option, Stock Appreciation Right or other Award has been transferred in accordance with the preceding sentence. Notwithstanding the foregoing, a Participant also may, to the extent permitted by the Administrator, designate one or more beneficiaries of his or her outstanding Awards, and those Awards shall, in accordance with such designation, automatically be transferred to such beneficiary or beneficiaries upon the Participant's death while holding those Awards. Such beneficiary or beneficiaries shall take the transferred Awards subject to all the terms and conditions of the Plan and the applicable Award Agreement(s) evidencing each such transferred Award.

19. Deferred Compensation

(a) *Deferrals Permitted.* The Administrator may, in its sole discretion, structure one or more Awards (other than Stock Options or Stock Appreciation Rights) so that Participants may be provided with an election to defer the compensation associated with those Awards for federal income tax purposes. Any such deferral opportunity shall comply with all applicable requirements of Section 409A of the Code.

(b) *Retainer Fee Deferral Program.* The Administrator may implement a non-employee directors retainer fee deferral program under the Plan so as to allow the non-employee directors the opportunity to elect to convert the Board and Board committee retainer fees to be earned for a year into Restricted Stock Units that will defer the issuance of the shares of Common Stock that vest under those Restricted Stock Units until a permissible date or event under Section 409A of the Code. If such program is implemented, the Administrator shall have the authority to establish such rules and procedures as it deems appropriate for the filing of such deferral elections and the designation of the permissible distribution events under Section 409A of the Code.

20. Recapitalization or Reorganization.

(a) *Authority of the Company and Stockholders.* The existence of the Plan, the Award Agreements and the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(b) *Change in Capitalization.* Notwithstanding any provision of the Plan or any Award Agreement, in the event of any change in the outstanding Common Stock by reason of a stock dividend, recapitalization, reorganization, merger, consolidation, stock split, combination or exchange of shares, spin-off transaction or any other corporate event affecting the Common Stock as a class without the Company's receipt of consideration, or should the value of outstanding shares of Common Stock be substantially reduced as a result of a spin-off transaction or an extraordinary dividend or distribution, the Administrator, shall make such equitable adjustments it considers appropriate (in the form determined by the Administrator in its sole discretion) to prevent diminution or enlargement of the rights of Participants under the Plan with respect to (i) the aggregate number, class and/or issuer of securities for which Awards in respect thereof may be granted under the Plan, (ii) the aggregate number, class and/or issuer of securities that may be issued pursuant to Incentive Stock Options granted under the Plan, (iii) the maximum number, class and/or issuer of securities for which any one person may be granted Stock Options or stand-alone Stock Appreciation Rights or other Awards denominated in Common Stock under the Plan per fiscal

year, (iv) the number, class and/or issuer of securities and the exercise price (or other cash consideration, if any) per share in effect under each outstanding Award under the Plan, (v) the number, class and/or issuer of securities subject to the Company's outstanding repurchase rights under the Plan and the repurchase price payable per share, and (vi) such other adjustments as it deems appropriate. The Administrator's determination as to what, if any, adjustments shall be made shall be final and binding on the Company and all Participants.

(c) *Limitations.* Notwithstanding the foregoing: (i) any adjustments made pursuant to Section 20(b) to Awards that are considered "deferred compensation" within the meaning of Section 409A of the Code shall be made in compliance with the requirements of Section 409A of the Code; (ii) any adjustments made pursuant to Section 20(b) to Awards that are not considered "deferred compensation" subject to Section 409A of the Code shall be made in such manner as to ensure that after such adjustment, the Awards either continue not to be subject to Section 409A of the Code or comply with the requirements of Section 409A of the Code; and (iii) the Administrator shall not have the authority to make any adjustments pursuant to Section 20(b) to the extent that the existence of such authority would cause an Award that is not intended to be subject to Section 409A of the Code to be subject thereto.

21. Change in Control.

(a) Except as otherwise provided in an Award Agreement and except for Awards made to non-employee directors and Cash Incentive Awards, if, within two (2) years following a Change in Control which occurs after the Effective Date, a Participant's Service as an employee is involuntarily terminated by the Company (or successor thereto) or a Parent or Subsidiary, whether or not for Cause: (i) all Stock Options or Stock Appreciation Rights of such Participant then outstanding shall become fully exercisable as of the date of such termination, whether or not exercisable, (ii) all restrictions and conditions on all Stock Awards of such Participant then outstanding shall lapse as of the date of such termination, (iii) all Restricted Stock Units of such Participant shall become nonforfeitable as of the date of such termination, and (iv) all Performance Share Awards of such Participant shall be deemed to have been fully earned as of the date of such termination.

(b) In addition, in the event of a Change in Control, the Administrator may, in its sole discretion, make any or all of the following adjustments: (A) by written notice to each holder of an outstanding Stock Option or Stock Appreciation Right provide that such holder's Stock Options or Stock Appreciation Rights shall be cancelled unless exercised within such period as the Administrator shall determine after the date of such notice; (B) provide for the payment upon termination or cancellation of a Stock Option or Stock Appreciation Right (whether or not such Stock Option or Stock Appreciation Right is otherwise exercisable) of an amount in cash, securities and/or other property (or a combination thereof) with an aggregate value equal to: (x) the excess, if any, of the aggregate Fair Market Value as of the date of such Change in Control of the Common Stock then subject to the Stock Option or Stock Appreciation Right over the product of the number of shares of Common Stock then subject to the Stock Option multiplied by the per share exercise price, less (y) an amount equal to the federal, state, local and foreign taxes, if any, required to be withheld, collected, accounted for or paid as a result of such payment; (C) provide for the cancellation of outstanding Stock Awards, Restricted Stock Unit Awards, Performance Share Awards, Section 162(m) Awards or other Awards in exchange for payments of cash, securities and/or other property (or a combination thereof) having an aggregate value equal to the value of such Award, as determined by the Administrator, in its sole discretion; (D) provide for the payment of a Participant's Cash Incentive Award at target level and/or based upon performance for the abbreviated performance period ending with the Change in Control; (E) substitute other property (including, without limitation, cash or other securities of the Company and securities of an entity other than the Company); and/or (F) make any other adjustments, or take other reasonable action, as the Administrator deems appropriate provided that no such other action impairs any rights that a Participant has under the Plan without such Participant's consent.

22. Amendment of the Plan; Amendment of Outstanding Awards. The Board or Compensation Committee may at any time and from time to time terminate, modify, suspend or amend the Plan in whole or in part; provided, however, that no such termination, modification, suspension or amendment shall be effective without stockholder approval if such approval is required to comply with any applicable law or stock exchange rule. Except as otherwise provided in the next sentence or Section 24(e) below, no termination, modification, suspension or amendment of the Plan shall, without the consent of a Participant to whom any Awards shall previously have been granted, adversely affect his or her rights under such Awards. Furthermore, notwithstanding any provision herein to the contrary, the

Board or Compensation Committee shall have broad authority to amend the Plan or any Award to take into account changes in applicable tax laws (including, without limitation, Section 409A of the Code), securities laws, accounting rules and other applicable state, federal and foreign laws and/or to amend any Award to ensure that the Award is in compliance with the limitations, terms and conditions of the Plan.

23. No Repricing of Stock Options or Stock Appreciation Rights. Notwithstanding any provision in the Plan to the contrary, the Administrator shall not (i) implement any cancellation/regrant program pursuant to which outstanding Stock Options or Stock Appreciation Rights are cancelled and new Stock Options or Stock Appreciation Rights are granted in replacement with a lower exercise price per share, (ii) cancel outstanding Stock Options or Stock Appreciation Rights with exercise prices per share in excess of the then current Fair Market Value per share of Common Stock for consideration payable in cash, equity securities of the Company or in the form of any other Award under the Plan, except in connection with a Change in Control transaction, or (iii) except as otherwise provided in Section 20(b), otherwise directly reduce the exercise price in effect for outstanding Stock Options or Stock Appreciation Rights under the Plan, without in each instance first obtaining stockholder approval.

24. Miscellaneous.

(a) *Tax Withholding.* The Company's obligation to deliver shares of Common Stock upon the exercise of any Stock Options or Stock Appreciation Rights or upon the issuance or vesting of any shares issued under the Plan shall be subject to the satisfaction of all applicable federal, state, local and foreign taxes and other amounts required to be withheld, collected or accounted for. The Company shall, to the extent permitted by law, have the right to deduct any such taxes or other amounts from any payment of any kind otherwise due to the Participant. The Administrator may, in its sole discretion, withhold (or allow the holder of an Award to elect to have the Company withhold) shares of Common Stock otherwise issuable under an Award in satisfaction of all or a portion of such taxes or amounts with respect to any taxable event relating to such Award. The number of shares of Common Stock that may be withheld pursuant to this Section 24 shall be limited to the number of shares that have a Fair Market Value on the date of withholding not exceeding the aggregate amount of such taxes or amounts, as determined based on the minimum statutory withholding rates (or such other withholding rates that have been determined by the Administrator to avoid adverse accounting consequences).

(b) *No Right to Grants or Employment or Service.* No Eligible Individual or Participant shall have any claim or right to receive grants of Awards under the Plan. Nothing in the Plan or in any Award or Award Agreement shall confer upon any employee or service provider of the Company (or any Parent or Subsidiary) any right to continued Service with the Company (or any Parent or Subsidiary) or interfere in any way with the right of the Company (or a Parent or Subsidiary) to terminate the Service of any of its employees or service providers at any time, with or without cause.

(c) *Unfunded Plan.* The Plan is intended to constitute an unfunded plan for incentive compensation. Nothing contained herein shall give any Participant any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Common Stock or payments in lieu thereof with respect to awards hereunder.

(d) *Other Employee Benefit Plans.* Payments received by a Participant under any Award made pursuant to the provisions of the Plan shall not be included in, and shall not affect the determination of benefits under any other employee benefit plan or similar arrangement provided by the Company (or any Parent or Subsidiary).

(e) *Section 409A.* Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Administrator determines that any Award granted hereunder is subject to the requirements of Section 409A of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. Notwithstanding any provision of the Plan to the contrary (including the provisions of Section 22), in the event that the Administrator determines that any Award may be subject to Section 409A of the Code, the Administrator may adopt such

ATTACHMENT A

Restrictive Covenants

1. The Participant acknowledges that the Company is generally engaged in business throughout the United States and other foreign jurisdictions . During the two-year period following the Participant's termination of employment for any reason other than a termination by the Company without Cause or, if the Participant terminates employment as a result of Voluntary Retirement, during the period which is the greater of (i) the two-year period following such Voluntary Retirement or (ii) the period beginning on the effective date of such Voluntary Retirement and ending on the date on which any Award granted to such Participant will vest in full, the Participant agrees that he will not, unless acting with the prior written consent of the Company, directly or indirectly, own, manage, control, or participate in the ownership, management or control of, or be employed or engaged by, or otherwise affiliated or associated with, as an officer, director, employee, consultant, independent contractor or otherwise, any other corporation, partnership, proprietorship, firm, association or other business entity, which is engaged in any business, including the wholesale distribution of pharmaceutical products, that, or otherwise engage in any business that, as of the date on which the Participant's employment with the Company terminates, is engaged in by the Company, has been reviewed with the Board for development to be owned or managed by the Company, and/or has been divested by the Company but as to which the Company has an obligation to refrain from involvement, but only for so long as such restriction applies to the Company; provided, however, that the ownership of not more than 5% of the equity of a publicly traded entity shall not be deemed to be a violation of this paragraph.
2. The Participant also agrees that he will not, directly or indirectly, during the Participant's employment by the Company and for two (2) years following the termination of such employment for any reason other than a termination by the Company without Cause, induce any person who is an employee, officer, director, or agent of the Company, to terminate such relationship, or employ, assist in employing or otherwise be associated in business with any present or former employee or officer of the Company, including without limitation those who commence such positions with the Company after the date that such Participant's employment by the Company terminates.
3. The Participant also agrees to return, immediately following the Participant's termination of employment, any records and business documents, whether on computer or hard copy, and other materials (including but not limited to computer disks and tapes, computer programs and software, office keys, correspondence, files, customer lists, technical information, customer information, pricing information, business strategies and plans, sales records and all copies thereof) (collectively, the "Corporate Records") provided by the Company and/or its predecessors, subsidiaries or affiliates or obtained as a result of the Participant's prior employment with the Company and/or its predecessors, subsidiaries or affiliates, or created by the Participant while employed by or rendering services to the Company and/or its predecessors, subsidiaries or affiliates . The Participant acknowledges that all such Corporate Records are the property of the Company . In addition, the Participant shall promptly return in good condition any and all beepers, credit cards, cellular telephone equipment, business cards and computers.
4. The Participant acknowledges and agrees that the restrictions contained in this Attachment A are reasonable and necessary to protect and preserve the legitimate interests, properties, goodwill and business of the Company and that the Company would not have granted an Award to the Participant in the absence of such restrictions. In the event that the provisions of this Attachment A should ever be adjudicated to exceed the limitations permitted by applicable law in any jurisdiction, it is the intention of the parties that the provision shall be amended such that those provisions are made consistent with the maximum limitations permitted by applicable law, that such amendment shall apply only within the jurisdiction of the court that made such adjudication and that those provisions otherwise be enforced to the maximum extent permitted by law . If a Participant has entered into an agreement pursuant to which such Participant is subject to restrictive covenants with respect to the Company that are similar in nature to the covenants of this Attachment A, the provisions of this Attachment A shall be deemed to be in addition to, not in lieu of, the provisions of such agreement.

For purposes of this Attachment A, the term "Company" shall be deemed to include parents, subsidiaries and affiliates of the Company.

ATTACHMENT B

Works For Hire Acknowledgment; Assignment

The Participant acknowledges that all of the Participant's work on and contributions to the products of the Company or any Parent or Subsidiary (collectively, the "Products"), including, without limitation, any and all patterns, designs, artworks and other expressions in any tangible medium (collectively, the "Works") are within the scope of the Participant's Service and are a part of the services, duties and responsibilities of the Participant. All of the Participant's work on and contributions to the Works will be rendered and made by the Participant for, at the instigation of, and under the overall direction of the Company (or Parent or Subsidiary, as applicable), and all of the Participant's said work and contributions, as well as the Works, are and at all times shall be regarded as "work made for hire" as that term is used in the United States Copyright Laws. Without curtailing or limiting this acknowledgment, the Participant hereby assigns, grants, and delivers exclusively to the Company, as to work on and contribution to the Products pursuant hereto all rights, titles, and interests in and to any such Works, and all copies and versions, including all copyrights and renewals. The Participant will execute and deliver to the Company, or its successors and assigns, such other and further assignments, instruments and documents as it from time to time reasonably may request for the purpose of establishing, evidencing, and enforcing or defending its complete, exclusive perpetual, and worldwide ownership of all rights, titles, and interests of every kind and nature whatsoever, including all copyrights in and to the Works. The Participant hereby constitutes and appoints the Company as its agent and attorney-in-fact, with full power of substitution, to execute and deliver said assignments, instruments or documents as the Participant may fail or refuse to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

EXHIBIT C

EXCERPT FROM THE **AMERISOURCEBERGEN CORPORATION** **2017 PROXY STATEMENT**

Clawback Policy

All cash and equity awards granted under the Omnibus Incentive Plan are subject to binding, contractual obligations to comply with clawback provisions. Our executives receive their annual cash bonus and equity awards under our Omnibus Incentive Plan. The forfeiture or clawback of shares or other amounts received would apply if the executive is terminated for cause, breaches restrictive covenants (during the employment period or two years thereafter), or engages in any conduct (during the employment period or three years thereafter) that results in AmerisourceBergen having to restate its financial statements or engages in certain other misconduct. Our clawback policy also applies to any outstanding equity awards held by executives. Further, we intend to comply with the clawback regulations ultimately finalized by the SEC and the NYSE, and intend to modify our clawback provisions in accordance with the final regulations.

All of our employees who are eligible for equity awards receive those awards pursuant to the Omnibus Incentive Plan. As such, clawback provisions apply to all employees who receive equity awards from us.
