



DIVISION OF
CORPORATION FINANCE

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

February 28, 2019

Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP
marc.gerber@skadden.com

Re: Johnson & Johnson
Incoming letter dated December 13, 2018

Dear Mr. Gerber:

This letter is in response to your correspondence dated December 13, 2018 and January 23, 2019 concerning the shareholder proposal (the "Proposal") submitted to Johnson & Johnson (the "Company") by Oxfam America, Inc. and Boston Common Asset Management (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 January 14, 2019 and February 11, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Nicholas J. Lusiani
Oxfam America, Inc.
nicholas.lusiani@oxfam.org

February 28, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Johnson & Johnson
Incoming letter dated December 13, 2018

The Proposal urges the compensation and benefits committee to report annually on the extent to which risks related to public concern over drug pricing strategies are integrated into the Company's incentive compensation policies, plans and programs for senior executives.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal, which seeks disclosure on the extent to which certain risks are integrated into senior executive compensation decisions, transcends ordinary business matters because it focuses on the performance measures used to determine awards for senior executives and on the Company's drug pricing strategy, which appear to be significant issues for the Company. We are also unable to conclude that the Proposal micromanages the Company to such a degree that exclusion of the Proposal would be appropriate. 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,

Courtney Haseley
Special Counsel

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.



February 11, 2019

BY EMAIL (shareholderproposals@sec.gov)

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

RE: Request by Johnson & Johnson to omit proposal submitted by Oxfam America, Inc. and Boston Common Asset Management

Ladies and Gentlemen,

In a letter to the Division dated December 13, 2018 (the "No-Action Request"), Johnson & Johnson ("J&J") stated that it intends to omit a proposal (the "Proposal") submitted by Oxfam America Inc. and Boston Common Asset Management (the Proponents") from its proxy materials to be distributed to shareholders in connection with the Company's 2019 annual meeting of shareholders. J&J argued that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with J&J's ordinary business operations. The Proponents responded by letter dated January 14, 2019 (the "Response"), to which J&J replied (the "Reply") on January 23, 2019. This letter briefly responds to the Reply.

Staff Legal Bulletin ("SLB") 14J,¹ invoked by J&J, left several key concepts undefined: It allows exclusion of a proposal:

- That "addresses" senior executive compensation
- If the "primary aspect" of the "targeted compensation"

¹ Staff Legal Bulletin 14J (Oct. 23, 2018).

- Is “broadly available or applicable to a company’s general workforce” and
- The company demonstrates that the executives’ or directors’ eligibility to receive the compensation “does not implicate significant compensation matters.”

It is important to make clear up front that almost no aspect of compensation applies or is available only to senior executives. Senior executives and other employees tend to receive compensation under the same incentive plans or programs, which are authorizing in nature and support awards with different criteria, terms and decision makers.

In the No-Action Request, J&J insisted that the Proposal, which addresses “senior incentive compensation arrangements,” is excludable because non-senior executives also receive the same type of incentive pay, i.e., “annual performance bonuses” and (to a much lesser extent) performance share units. Although J&J did not say so explicitly, the clear implication of its arguments was that the “primary aspect” of compensation targeted by the Proposal, within the meaning of SLB 14J, is the form.

The Response highlighted the many differences between bonuses paid to senior executives and those paid to other employees to make the case that the primary aspect of the compensation targeted in the Proposal should not be its form. The Response recounted the origins of the widespread public debate that led senior executive pay to be deemed a significant policy issue; that debate did not focus on form but rather on the amount of pay and the specific arrangements that shape senior executive behavior, which is the subject of the Proposal. The Response explained why senior executive compensation stands on a different footing from compensation paid to other employees, even when there are superficial similarities such as both groups receiving an annual cash bonus.

In the Reply, J&J now disclaims reliance on the form of compensation and stakes out an even more extreme position. J&J asserts that the relevant

overlap, the primary aspect, is “incentive programs generally,”² in which both senior executives and other employees participate. Under J&J’s logic, any proposal whose focus is senior executive incentive pay arrangements would be excludable on ordinary business grounds if non-senior executives also receive incentive pay of any kind. Accepting this broad interpretation of SLB 14J would eliminate nearly all shareholder proposals on senior executive compensation, given the extreme rarity of senior-executive-only pay programs. To avoid that outcome, which would be inconsistent with the Commission’s and Division’s longstanding approach to the ordinary business exclusion, the Proponents urge the Division to construe SLB 14J more narrowly.

Finally, J&J takes the view that SLB 14J does not accord separate significance to the requirement that executives’ eligibility to receive the compensation that is the subject of the Proposal must not “implicate significant compensation matters.” SLB 14J is ambiguous on this point. The language cited by J&J, “the availability of certain forms of compensation to senior executives and/or directors that are also broadly available or applicable to the general workforce does not generally raise significant compensation issues that transcend ordinary business matters” supports J&J’s interpretation. However, SLB 14J’s statement that a proposal “may be excludable under Rule 14a-8(i)(7) if a primary aspect of the targeted compensation is broadly available or applicable to a company’s general workforce and the company demonstrates that the executives’ or directors’ eligibility to receive the compensation does not implicate significant compensation matters (emphasis added)” suggests two distinct elements. The Proponents are reluctant to read the second part of the sentence out of SLB 14J.

For the reasons set forth above, J&J has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7).

² Reply, at 2.

The Proponents thus respectfully request that J&J's request for relief be denied.

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 (917) 703-4963.

Sincerely,



Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America, Inc.

cc: Marc S. Gerber, Esq.
Partner
Skadden, Arps, Slate, Meagher & Flom LLP

Thomas J. Spellman III
Assistant General Counsel and Corporate Secretary
Johnson & Johnson, Inc.

Lauren Compere
Managing Director
Boston Common Asset Management

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
202-371-7233
DIRECT FAX
202-661-8280
EMAIL ADDRESS
MARC.GERBER@SKADDEN.COM

BY EMAIL (shareholderproposals@sec.gov)

January 23, 2019

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

RE: Johnson & Johnson – 2019 Annual Meeting
Supplement to Letter dated December 13, 2018
Relating to Shareholder Proposal of
Oxfam of America, Inc. and
Boston Common Asset Management, as co-filer

Ladies and Gentlemen:

We refer to our letter dated December 13, 2018 (the “No-Action Request”), submitted on behalf of our client, Johnson & Johnson, a New Jersey corporation, pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Johnson & Johnson’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by Oxfam of America, Inc. (“Oxfam”), and co-filed by Boston Common Asset Management (“Boston Common”), may be excluded from the proxy materials to be distributed by Johnson & Johnson in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”). Oxfam and Boston Common are sometimes referred to collectively as the “Proponents.”

This letter is in response to the letter to the Staff, dated January 14, 2019, submitted by Oxfam on behalf of the Proponents (the “Proponents’ Letter”), and

supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponents.

I. The Proposal Deals with Matters Relating to the Company's Ordinary Business Operations.

The Proponents' Letter seeks to recharacterize the Proposal and the arguments set forth in the No-Action Request and misconstrues the Staff's guidance set forth in Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("SLB 14J"). As described below and in the No-Action Request, because the Proposal deals with matters relating to Johnson & Johnson's ordinary business operations, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

The premise of the Proponents' Letter is that the No-Action Request places undue emphasis on the "form" of incentive compensation in articulating why the Proposal focuses on an aspect of compensation available to Johnson & Johnson's general workforce. The Proponents' Letter spends many pages recounting passages from Johnson & Johnson's proxy statement describing aspects of compensation arrangements and policies with respect to named executive officers, and many additional pages recounting the academic and public debate regarding incentive compensation. The pertinent question, however, is not whether there are elements or processes relating to executive compensation that vary from elements or processes applicable to compensation for the general workforce – of course there are. Rather, as described in SLB 14J, the pertinent inquiry is whether the Proposal focuses on aspects of compensation available to a wide swath of the employee population rather than focusing on aspects of compensation available only to senior executives (and directors). As described in the No-Action Request, the incentive compensation arrangements that are the focus of the Proposal include arrangements in which over 96,000 Johnson & Johnson employees participate. In addition, despite the Proponents' contention, the No-Action Request does not elevate any particular form of compensation (*e.g.*, annual bonuses) over substance. Instead, the No-Action Request focuses on incentive compensation programs generally, and the incentive compensation targeted by the Proposal applies to a wide swath of the employee population.

The Proponents' Letter also argues that the No-Action Request fails to address whether the eligibility of senior executives to receive the incentive compensation at issue in the Proposal otherwise implicates significant compensation matters. The No-Action Request already addresses this by describing the fact that the compensation targeted by the Proposal is broadly available to a significant portion of Johnson & Johnson's workforce and, therefore, does not implicate

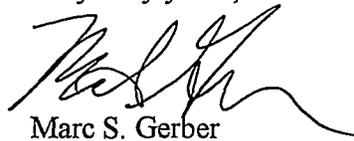
significant compensation matters. This aligns with the Staff's guidance in SLB 14J, which states that "the availability of certain forms of compensation to senior executives [...] that are also broadly available or applicable to the general workforce does not generally raise significant compensation issues that transcend ordinary business matters" and, further, that "it is difficult to conclude that a proposal does not relate to a company's ordinary business when it addresses aspects of compensation that are broadly available or applicable to a company's general workforce, even when the proposal is framed in terms of the senior executives and/or directors." Accordingly, as demonstrated in the No-Action Request, the Proposal is excludable under Rule 14a-8(i)(7).

II. Conclusion

For the reasons stated above and in the No-Action Request, Johnson & Johnson respectfully requests that the Staff concur that it will take no action if Johnson & Johnson excludes the Proposal from the 2019 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Johnson & Johnson's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

cc: Thomas J. Spellman III
Assistant General Counsel and Corporate Secretary
Johnson & Johnson

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam of America, Inc.

Lauren Compere
Managing Director
Boston Common Asset Management



January 14, 2019

BY EMAIL (shareholderproposals@sec.gov)

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

RE: Request by Johnson & Johnson to omit proposal submitted by
Oxfam America, Inc. and Boston Common Asset Management

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Oxfam America, Inc. and Boston Common Asset Management (the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Johnson & Johnson (“J&J” or the “Company”). The Proposal asks J&J’s board to report to shareholders on the extent to which risks related to public concerns over drug pricing strategies are reflected in senior executive incentive compensation arrangements.

In a letter to the Division dated December 13, 2018 (the “No-Action Request”), J&J stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2019 annual meeting of shareholders. J&J argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with J&J’s ordinary business operations. As discussed more fully below, J&J has not met its burden of proving its entitlement to exclude the Proposal on that basis, and the Proponents respectfully urge that J&J’s request for relief should be denied.

The Proposal

The Proposal states:

RESOLVED, that shareholders of Johnson & Johnson (“JNJ”) urge the Compensation and Benefits Committee (the “Committee”) to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into JNJ’s incentive compensation policies, plans and programs (together, “arrangements”) for senior executives. The report should include, but need not be limited to, discussion of whether (i) incentive compensation arrangements reward, or not penalize, senior executives for adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding the level or rate of increase in prescription drug prices; and (ii) external pricing pressures are taken into account when setting targets for financial metrics.

Rule 14a-8(i)(7) permits a company to omit a proposal that “deals with a matter relating to the company’s ordinary business operations.” Last season, several companies challenged proposals substantially similar to the Proposal on ordinary business grounds. The companies argued that the “thrust and focus” of the proposal was drug pricing or disclosure regarding pricing strategies rather than senior executive compensation and that the proposal sought to micromanage the companies by seeking detailed pricing-related disclosure. The Staff declined to allow exclusion.¹

In October 2018, the Division clarified its views regarding certain shareholder proposals on senior executive compensation in Staff Legal Bulletin 14J (“SLB 14J”).² SLB 14J states that “[t]he Division believes that a proposal that addresses senior executive and/or director compensation may be excludable under Rule 14a-8(i)(7) if a primary aspect of the targeted

¹ Eli Lilly and Company (Mar. 2, 2018); Bristol-Myers Squibb Company (Mar. 16, 2018); Biogen, Inc. (Mar. 16, 2018).

² Staff Legal Bulletin 14J (Oct. 23, 2018).

compensation is broadly available or applicable to a company’s general workforce and the company demonstrates that the executives’ or directors’ eligibility to receive the compensation does not implicate significant compensation matters” (emphasis added). SLB 14J also extended the micro-management doctrine to proposals on senior executive and/or director compensation if they “seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies.”

J&J invokes SLB 14J, claiming that the Proposal addresses “aspects of senior executive compensation that are also available or applicable to the general workforce” because the same forms of compensation are awarded to both senior executives and other employees. Both J&J-specific and broader policy considerations weaken the case for J&J’s interpretation. J&J’s argument that the Proposal would micromanage the Company is based on an inaccurate characterization of the Proposal. Accordingly, J&J has not met its burden of proving that the Proposal is excludable on ordinary business grounds and we respectfully request that its request for relief be denied.

The General Form of Compensation Is Not the “Primary Aspect” of the Senior Executive Incentive Compensation Arrangements That Are the Proposal’s Subject

J&J’s argument assumes that the “primary aspect of compensation”³ addressed by the Proposal, within the meaning of SLB 14J, is the form senior executive incentive compensation takes--the annual bonus, for example--and that the availability of this form to non-senior executives justifies exclusion. This claim falls short for four reasons:

³ J&J omitted the word “primary” from its argument, perhaps recognizing that the form of compensation might not be considered its “primary” aspect. We discuss below why the form of pay should not be considered the primary aspect of the senior executive incentive arrangements that are the Proposal’s subject.

1. Many aspects of the incentive compensation arrangements for J&J's senior executives differ significantly from those available to other employees, even when they come in the same general form or are governed by the same compensation plan.
2. J&J's interpretation ignores the larger context of the academic and public debate on senior executive incentive pay, which, like the Proposal, focuses on designing compensation to reward value-maximizing and responsible behavior.
3. J&J fails to address the second prong of SLB 14J's test, which requires J&J to demonstrate that senior executives' eligibility to receive incentive compensation "does not implicate significant compensation matters."
4. Adopting J&J's view would allow the majority of shareholder proposals on senior executive pay to be excluded, impairing the dialogue process that has yielded tangible improvements in pay practices.

Each of those reasons is discussed below.

Incentive Compensation Arrangements Applicable to J&J's Senior Executives Differ Materially From Those Applicable to Other Employees

The Proponents submitted the Proposal to J&J because we believe shareholders would benefit from a fuller understanding of whether senior executive incentive compensation arrangements reward price hikes, or discourage policies of price restraint, both of which can boost short-term performance, even though long-term success likely depends on pricing moderation.⁴ These arrangements can be individually significant, but they

⁴ See Juan F. Rivera & Caitlyn Macdonald, "Pricing Turning Point: The Case for Innovating Pharma's Model," Pharmaceutical Executive, Mar. 6, 2018 (In no other industry has the bifurcation of public perception of price and value been more acute than in the biopharmaceutical industry over the last decade. The perceived imbalance between price and value for drugs has led to negative publicity for the industry in the US, market access delays in Europe and other industrialized countries, and suboptimal penetration in many markets."). Seventy percent of Americans now support single-payer healthcare ([https://www.cnbc.com/2018/08/28/most-americans-now-support-medicare-for-all-and-free-](https://www.cnbc.com/2018/08/28/most-americans-now-support-medicare-for-all-and-free)

also interact with each other; as well, policies like clawbacks can apply across incentive pay programs. The Proposal therefore focuses not on a particular form of compensation but rather on the arrangements—metrics, targets, and policies, individually and in combination—used to determine incentive awards⁵ for senior executives.

J&J cites the fact that “[o]ver 96,000 employees⁶ are paid an annual performance bonus based, in part, on overall corporate performance” as evidence that the primary aspect of compensation addressed by the Proposal is available to the general workforce.⁷ J&J provides no other information, however, about the metrics, targets and process used for non-senior executive bonuses. Nor does J&J make a case for why the same form of compensation, without more, should be viewed as sufficient commonality between the senior executive incentive pay arrangements that are the Proposal’s subject and incentive pay available to other workers.

[college-tuition.html](#)), and over 80% of respondents to a recent national poll favored allowing Medicare to negotiate with pharmaceutical firms on price. (<http://www.norc.org/Research/Projects/Pages/what-should-be-done-about-the-high-cost-of-prescription-drugs.aspx>)

⁵ Awards of stock options may be referred to as “grants,” but for the sake of simplicity, this response refers throughout to incentive compensation “awards.” In the case of certain long-term incentive compensation programs, an award may not translate directly into a payout of the same value because additional performance targets must be achieved after an award is made but before it is paid out to the executive.

⁶ It is not clear that senior executive bonuses are paid under the same plan that authorizes bonuses for the rest of the workforce, and J&J provides no information on this point in the No-Action Request. J&J discloses an Executive Incentive Plan as exhibit 10(c) to its most recent 10-K, though no specific plan governing bonuses is referenced in J&J’s proxy statement, and no other bonus or short-term incentive plan. The Executive Incentive Plan authorizes the Committee to pay bonuses only to “Executive Officers” of J&J, who are defined as the “Chairman and any Vice Chairman of the Board of Directors and any other officer of the Corporation who has been designated a part of the Office of the Chairman or elected a Member of the Executive Committee of the Corporation.” (Executive Incentive Plan, section II.i.) Potential award ranges for NEO bonuses are reported in the proxy statement table entitled “Grants of Plan-Based Awards,” in the columns headed “Estimated Future Payouts Under Non-Equity Incentive Plan Awards.” (2018 Proxy Statement, at 73) It therefore seems likely that annual bonuses for J&J’s NEOs are awarded pursuant to the Executive Incentive Plan. By definition, the “general workforce” is not eligible to receive bonuses under this plan.

⁷ No-Action Request, at 5.

The information available in J&J's proxy statement supports a conclusion that the process for setting senior executive bonuses differs substantially from the process used for other employees. The process by which the board and Compensation Committee (the "Committee") set targets, evaluate performance and determine named executive officers' ("NEOs") incentive pay award amounts is highly individualized. The amounts of the annual bonuses awarded to NEOs depend on performance, both company-wide and individual. The company-wide financial performance metrics for 2017 were operational sales growth, adjusted operational earnings per share and free cash flow. Targets were established for each financial and strategic goal based on "long-term strategic objectives, [J&J's] product portfolio and pipeline, and competitive benchmarking."⁸

Each NEO has different individual objectives tailored to his or her responsibilities. For example, Mr. Gorsky's individual achievements for 2017 included "manag[ing] [J&J's] business portfolio with key acquisitions and divestitures," while Joachin Duato, Worldwide Chairman of Pharmaceuticals, "increased the value of [J&J's] product pipeline."⁹

For each NEO, company-wide and individual performance are combined to produce a multiplier that is applied to the target bonus amount to arrive at the actual bonus awarded. J&J's proxy statement is silent on the weighting assigned to corporate performance versus individual performance in determining each NEO's multiplier, but it would be consistent with other companies' practice if J&J emphasized company-wide performance metrics more for executives who are higher in the organization.¹⁰ NEOs' multipliers ranged from 95 to 150% for 2017 and target bonuses ranged from \$901,300 to

⁸ 2018 Proxy Statement, at 44.

⁹ 2018 Proxy Statement, at 48.

¹⁰ E.g., Bruce R. Ellig, The Complete Guide to Compensation, at 309 (2002) ("The organizational level of the individual significantly affects the determination of what to measure" in incentive compensation programs); John E. Core et al., "Executive Equity Compensation and Incentives: A Survey," FRBNY Economic Policy Review 27, 30 (Apr. 2003) ("[L]ocal measures of performance such as division profits are more relevant and useful for providing incentives" to lower-level managers).

\$2,800,000.¹¹ The target amount is different for each NEO because it is based on the NEO's salary.¹²

J&J makes a similar, though even less compelling argument about long-term incentive ("LTI") compensation. As an initial matter, the Proponents dispute J&J's claim that the availability of performance stock units ("PSUs"¹³) to "over 400" of J&J's 134,000 employees should be considered availability to the "general workforce." The number of PSU recipients is less than 1% of J&J's total workforce, which shouldn't qualify as the "general workforce" under even a generous reading of that phrase.

The process for determining LTI compensation awards is similar to that for bonuses in that a performance multiplier is determined for each NEO, and that multiplier is applied to a target LTI compensation award amount to produce the actual award amount. For 2017, each NEO was awarded a total amount of LTI compensation "based on their 2017 performance, impact on the company's long-term results, competitive market data, and long-term potential within the organization." Award amounts are the product of applying the performance multiplier, which ranged from 105 to 160% for 2017, to individual NEOs' targets.¹⁴ That NEOs had different multipliers suggests that their individual performance assessments varied and/or that the factors listed above were weighted differently among NEOs. Thus, LTI compensation arrangements vary even between NEOs.

As is evident from the foregoing discussion, J&J's board and the Committee have significant involvement in senior executive incentive pay arrangements. Independent members of the board approve the decisions that determine Chair/CEO Alex Gorsky's compensation, including incentive pay arrangements and awards, while the Committee reviews and approves Mr.

¹¹ 2018 Proxy Statement, at 50, 73.

¹² 2018 Proxy Statement, at 57.

¹³ The Proponents note that PSUs are only one type of incentive compensation J&J awards to NEOs; they also receive stock options and restricted stock units ("RSUs"), which vest over time without performance conditions but whose award-date values are determined by the NEOs' performance..

¹⁴ 2018 Proxy Statement, at 50, 73.

Gorsky's recommendations regarding all other NEOs' pay.¹⁵ The Committee compares "compensation levels and practices," including NEO bonus and LTI compensation amounts, to those of companies in an Executive Peer Group in order to assess the competitiveness of J&J's NEO compensation.¹⁶

J&J asks the Staff to conclude that the "primary aspect" of the Company's senior executive incentive pay arrangements is the bonus and PSU form and that the availability of those forms to non-senior executives makes exclusion of the Proposal appropriate. As discussed above, however, J&J's NEO incentive pay arrangements involve many other salient features: multi-faceted company performance metrics, individual performance evaluations, competitive benchmarking, and board and Committee involvement in setting and administering the arrangements.

J&J has not shown that non-NEO incentive pay arrangements share those features. The No-Action Request supplies no information about the incentive arrangements applicable to non-NEOs, other than to assert that a portion of non-NEO bonuses is determined by company performance (though no information is provided about how company performance is measured). Competitive market data on compensation like that used by the Committee to benchmark NEO bonuses and total LTI compensation are not likely available for lower-level employees, which would prevent J&J from benchmarking non-CEO incentive pay in the same way. As well, the absence of evidence that the board is involved in establishing and administering incentive arrangements for non-NEOs weakens J&J's claim. J&J has thus failed to meet its burden of proving that the primary aspect of the Proposal's subject, "senior executive incentive arrangements," is also available to J&J's general workforce.

The Academic and Policy Debate Over Top Executive Incentives, Like the Proposal, Has Focused on Promoting Value-Enhancing Behavior and Deterring Misconduct, Across All Forms of Compensation

¹⁵ 2018 Proxy Statement, at 64.

¹⁶ 2018 Proxy Statement, at 61.

The societal debate over top executive pay, which focuses on amount and design considerations rather than simply the form in which pay is delivered, also undermines J&J’s suggested interpretation of SLB 14J. Senior executive compensation has been widely studied and has been the subject of intense interest from investors, regulators and the general public for decades. In 1992, the Staff changed its longstanding position that shareholder proposals on executive compensation dealt with ordinary business, citing “widespread public debate concerning compensation policies and practices relating to senior executive officers and directors, and an increasing recognition that these matters raise significant policy issues.”¹⁷

Since then, interest has not abated. Public outrage has increased as the gap between top executive pay and average worker pay has widened,¹⁸ and executive compensation has been the subject of voluminous media coverage. In the case of pharmaceutical company CEOs, criticism has linked high drug prices and lavish CEO pay.¹⁹ Investor interest has also grown, with higher votes on executive pay shareholder proposals: Proxy solicitor Georgeson reported average support of 25.3% of shares voted on the 34 executive compensation-related proposals that came to a vote in 2018,²⁰ whereas the eight proposals in Georgeson’s executive compensation category in 1997 garnered average support of just 7.3%.²¹

¹⁷ See Kevin W. Waite, “The Ordinary Business Operations Exception to the Shareholder Proposal Rule: A Return to Predictability,” *Fordham L. Rev.*, Vol. 64, Issue 3, 1253, 1270 fn. 107 (1995).

¹⁸ See “Americans and CEO Pay: 2016 Public Perception Survey on CEO Compensation,” Stanford Graduate School of Business (available at <https://www.gsb.stanford.edu/faculty-research/publications/americans-ceo-pay-2016-public-perception-survey-ceo-compensation>) (“CEOs are vastly overpaid, according to most Americans,” and “Most support drastic reductions.”)

¹⁹ See Matt Krantz, “Drug Prices Are High. So Are the CEOs’ Pay,” *USA Today*, Aug. 26, 2016; Beth Mole, “Pfizer CEO Gets 61% Pay Raise—to \$27.9 Million—as Drug Prices Continue to Climb,” *Ars Technica*, Mar. 16, 2018.

²⁰ Georgeson, 2018 Annual Corporate Governance Review, at 10.

²¹ Georgeson, 1997 Annual Corporate Governance Review, at 10.

Attention sometimes focuses on the absolute amount of pay, especially in the general media, and popular coverage of pay tends to cite the total compensation amount for an NEO that appears in the proxy statement's summary compensation table.²² But in the main, senior executive compensation, and senior executive incentive compensation in particular, draws academic, investor and regulator interest because the way it is designed can significantly affect corporate performance and behavior.

Top executives' control over the business makes it especially important to design their incentive compensation in a way that promotes value-maximizing and responsible behavior over the long term.²³ A company's CEO and other senior executives, with oversight from the board, establish the business strategy and make key decisions affecting the business. Top executives in the pharmaceutical industry decide whether to buy another company, sell a product, enter a new market, shift pricing strategies, forge a strategic partnership or re-domicile to another country, all of which can affect a company's financial results and long-term prospects.

Incentive pay arrangements for senior executives are often viewed, explicitly or implicitly, through the lens of agency theory. Agency theory posits that inefficiencies or costs are introduced when principals give agents control over the principals' resources. In the corporate context, the principals are shareholders who are not involved in running the business and the agents are corporate management.²⁴

With that control, managers may make decisions or take actions that benefit themselves but are harmful to the interests of shareholders. Managers can engage in empire building—acquisitions made to increase

²² E.g., <https://www.bizjournals.com/charlotte/news/2018/03/09/duke-energy-ceo-earned-her-highest-compensation.html>; As You Sow, "The 100 Most Overpaid CEOs 2018" (available at <https://www.asyousow.org/report/the-100-most-overpaid-ceos-2018/#appendix-a>).

²³ See Alex Edmans et al., "Executive Compensation: A Survey of Theory and Evidence," at 6 (2017) ("CEOs can have a much larger impact on firm value than rank-and-file employees, which can fundamentally change the nature of the optimal contract.").

²⁴ Olivier Weinstein, "Ownership and the Business Firm: Implications for Corporate Governance and Social Responsibility," *Accounting, Economics and Law*, Vol. 2, Issue 2, at 41 (2012).

company size (and executive prestige) that don't maximize value for shareholders²⁵—or hoard cash rather than investing it or returning it to shareholders. They can self-deal or entrench themselves.²⁶

As a result, academics, compensation experts and investors often advocate that senior executive compensation be designed in a way that helps minimize agency costs, usually by aligning executives more closely with shareholders.²⁷ To that end, top executives tend to have a higher proportion of incentive or “at-risk” pay, as opposed to fixed pay, than others in the organization. Boards may impose stock ownership requirements on senior executives, and may require shares to be held until retirement. Equity compensation vesting periods and performance metrics may be designed to promote a long-term perspective and reward achievement of shareholder return goals.

Absent appropriate incentives, senior executives may make short-sighted capital allocation decisions. Public attention has focused on whether companies are repurchasing too much stock and underinvesting in their businesses; that debate has intensified since 2017's tax reforms.²⁸ Some have noted that two aspects of top executive pay design—the use of EPS as a metric and the proportion of total pay made up of options and stock—may encourage executives to buy back stock.²⁹ Studies show that the amount of equity (option or stock) vesting in a given quarter is positively associated

²⁵ Clara Xiaoling Chen, “The Agency Problem, Corporate Governance, and the Asymmetrical Behavior of Selling, General and Administrative Costs,” Contemporary Accounting Research, Vol. 29, Issue 1, 252-53 (2011).

²⁶ Lucian Bebchuk & Jesse Fried, “Executive Compensation as an Agency Problem,” NBE Working Paper 9813, at 1 (Apr. 2003).

²⁷ Michael C. Jensen & William J. Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,” J. Fin. Econ., Vol. 3, No. 4, 305-360 (1976).

²⁸ E.g., Sayyajit Das, “Here's How Share Buybacks Can Come Back to Bite Shareholders,” Marketwatch, Jan. 19, 2016 (available at <https://www.marketwatch.com/story/heres-how-share-buybacks-can-come-back-to-bite-shareholders-2016-01-19>); Jesse M. Fried & Charles C.Y. Wang, “Are Buybacks Really Shortchanging Investment?” Harvard Business Review, Mar.-Apr. 2018; James MacKintosh, “Who's Right: Warren Buffett or Larry Fink?” The Wall Street Journal, Mar. 2, 2017.

²⁹ E.g., Eleanor Bloxham, “Here's Why You Should Care About How CEOs Get Paid,” Fortune, Oct. 20, 2015.

with lower combined growth in research and development and capital expenditures, controlling for investment opportunities and other aspects of CEO pay.³⁰

Senior executive compensation arrangements can encourage irresponsible or unlawful conduct, with adverse societal consequences. The most high-profile example comes from the 2008-2009 financial crisis, which led Congress, regulators and academics to scrutinize top executive incentive pay practices at financial institutions.³¹ Certain practices, such as large cash bonuses driven by short-term operational results, were viewed as contributing to excessive risk-taking, which, in turn, led to the financial crisis.³² As well, earnings management has been associated with larger amounts of equity incentives (stock-based pay plus stock ownership).³³

The negative effects of poorly-designed incentives for top executives do not stem from the use of a particular form of compensation but rather from the pay mix, vesting and holding rules, executive share/option ownership profile and specific performance metrics and targets used to determine compensation amounts. The behavior of two senior executives receiving the same forms of pay—bonus, stock options, and restricted stock, for instance—can be influenced very differently by these factors.

³⁰ Alex Edmans et al., “Equity Vesting and Investment,” Review of Financial Studies, Vol. 30, Issue 7, 2229-2271 (July 2017).

³¹ E.g., Hearing Before the Subcommittee on Financial Institutions and Consumer Protection of the Senate Committee on Banking, Housing and Urban Affairs, “Pay for Performance: Incentive Compensation at Large Financial Institutions,” Feb. 15, 2012; Speech of Chairman Ben. S. Bernanke, “Lessons of the Financial Crisis for Banking Supervision,” Federal Reserve Bank of Chicago Conference on Bank Structure and Competition, May 7, 2009 (“Certainly, an important lesson of the [financial] crisis is that the structure of compensation and its effect on incentives for risk-taking is a safety-and-soundness issue.”).

³² See, e.g., Lucian Bebchuk & Jesse Fried, “Paying for Long-Term Performance,” 158 U. Penn. L. Rev. 1915, 1917 (2010) (“The crisis of 2008–2009 has led to widespread recognition that pay arrangements that reward executives for short-term results can produce incentives to take excessive risks.”).

³³ Qiang Cheng & Terry Warfield, “Equity Incentives and Earnings Management,” The Accounting Review, Vol. 80, Issue 2 441-476 (2005).

Michael Jensen and Kevin Murphy illustrate the impact of small design changes in “CEO Bonus Plans and How to Fix Them.” Murphy and Jensen explain how a CEO bonus arrangement with a \$100,000,000 profit hurdle--an amount below which no bonus is paid--can encourage gamesmanship and impair firm performance if profits consistently come in just below the hurdle. The same arrangement without the hurdle, though, would not spur destructive behavior.³⁴

Similarly, using stock options to compensate senior executives can enhance or destroy shareholder value, depending on how the options are designed and on company- and executive-specific factors.

- Studies have found that a company with many growth opportunities and a risk-averse CEO can use options to align the CEO’s risk tolerance with those of shareholders.³⁵
- Firms with longer investment time horizons, as measured by more growth opportunities, long-lived assets and greater R&D intensity, tend to have longer pay duration, a weighted average of vesting periods for all components of executive pay.³⁶
- Research has shown that the likelihood of financial statement fraud is positively related to the amount of in-the-money stock options held by the CEO,³⁷ suggesting that the same option award could have varying incentive effects depending on the executive’s existing holdings.

Allowing J&J to exclude a proposal explicitly limited to senior executive incentive compensation because that compensation is paid in a form that is also used to pay other J&J employees would paint with too broad a brush. Shareholders should be able to communicate with one another and

³⁴ Kevin J. Murphy & Michael C. Jensen, “CEO Bonus Plans and How to Fix Them,” Harvard Business School NOM Unit Working Paper No. 12-022, at 8 (2011)

³⁵ *E.g.*, Ingolf Dittman et al., “How Important Are Risk-Taking Incentives in Executive Compensation?” *Rev. of Fin.*, Vol. 21, Issue 5, 1805-1846 (Aug. 2017).

³⁶ Radhakrishnan Gopalan et al., “Duration of Executive Compensation,” *J. Finance*, Vol. 69, 2777 (Dec. 2014).

³⁷ Jap Efendi et al., “Why Do Corporate Managers Misstate Financial Statements? The Role of Option Compensation and Other Factors,” at 2 (2005) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=547922).

with company boards about whether top executive pay, whatever the form, is appropriately tailored to foster long-term value creation. The Proposal does just that; it asks for disclosure on whether and how incentive pay arrangements encourage senior executives to adopt a long-term perspective on revenue generation and pricing. J&J should therefore not be permitted to omit the Proposal on ordinary business grounds.

J&J Does Not Address the Second Prong of the SLB 14J Test, Whether its Senior Executives' Eligibility to Receive the Compensation Targeted by the Proposal "Implicate[s] Significant Compensation Matters"

SLB 14J permits exclusion only if the company meets its burden of showing that both:

- A primary aspect of the targeted compensation is broadly available or applicable to a company's general workforce, and
- The executives' or directors' eligibility to receive the compensation does not implicate significant compensation matters.

J&J has made no argument on the second part of the test. It would be logical to conclude that senior executives' eligibility to receive incentive pay implicates significant compensation matters, given that incentive compensation accounts for a substantial proportion of total pay. For example, 70.5% of Mr. Gorsky's 2017 total compensation, as disclosed in the summary compensation table, consisted of stock awards, stock option awards and non-equity incentive plan compensation.³⁸ The target pay mix for Mr. Gorsky for 2017--74% LTI compensation, 17% annual bonus and 9% salary--emphasized variable pay even more.³⁹

³⁸ 2018 Proxy Statement, at 68.

³⁹ 2018 Proxy Statement, at 60.

What's more, equity-based compensation can significantly dilute shareholders' ownership stakes. The Division recognized that such dilution qualifies as a significant social policy issue in Staff Legal Bulletin 14A,⁴⁰ which reversed an earlier position and stated that a proposal regarding shareholder approval of equity plans that may be used to compensate senior executives and the general workforce and that could result in material to dilution to shareholders is not excludable on ordinary business grounds.

Adopting J&J's Broad Interpretation of SLB 14J Would Result in Exclusion of a Large Proportion of Proposals on Senior Executive Compensation

Allowing omission if a proposal addresses a form of compensation available beyond the senior executive ranks, even if the proposal itself is explicitly limited to senior executives, would result in exclusion of a substantial proportion of proposals on senior executive pay. Most types of executive pay proposals shareholders submit address or implicate forms of compensation that are not exclusive to senior executives. The U.S. Proxy Voting Guidelines of Institutional Shareholder Services ("ISS"), the largest proxy advisory firm, describe 21 types of shareholder proposals on executive pay.⁴¹ Ten of those proposal types involve annual bonuses, by themselves or in combination with equity-based compensation; four additional types request reforms to equity-based compensation; and one type deals with supplemental executive retirement plans ("SERPs"), for a total of 15 of the 21 proposal types.

Those forms of compensation--bonuses, equity-based pay and SERPs--are often available to employees below the senior executive level.

- A 2013 survey by World at Work and Deloitte Consulting found that 97% of responding public companies included exempt

⁴⁰ Staff Legal Bulletin 14A (July 12, 2002),

⁴¹ ISS 2018 United States Proxy Voting Guidelines, at 48-52 (Jan. 4, 2018) (available at <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf>).

salaried employees in their annual incentive or bonus plans. Over half of respondents included non-exempt salaried and non-exempt unionized employees.⁴²

- Of respondents to the world at Work/Deloitte Consulting Survey whose LTI compensation programs awarded restricted stock, 61% extended eligibility to exempt salaried employees, and exempt salaried employees were eligible to receive stock options at 47% of companies whose LTI compensation programs awarded stock options.⁴³
- A 2017 Prudential Retirement survey found that 38% of respondents offered non-qualified executive retirement benefits (a category that includes both defined contribution and defined benefit SERPs as well as voluntary non-qualified defined contribution plans) to employees making \$115,000 to \$124,999 annually, and 29% offered those benefits to employees making between \$125,000 and \$175,000 per year, far below the compensation of senior executives.⁴⁴

Considering both the proportion of executive compensation proposals that deal explicitly or implicitly with common forms of pay, and the availability of those forms to employees below the senior executive level, it is clear that a large number of shareholder proposals on executive pay would be excludable under J&J's suggested approach. That outcome would be inefficient and undesirable as a matter of public policy.

Shareholder proposals have led to better tailoring of senior executive pay to promote value maximization and responsible behavior, including

⁴² World at Work and Deloitte Consulting LLP, "Incentive Pay Practices Survey: Publicly Traded Companies," at 15 (Feb. 2014) (available at <https://www.worldatwork.org/docs/research-and-surveys/survey-brief-incentive-pay-practices-survey-publicly-traded-companies.pdf>).

⁴³ World at Work and Deloitte Consulting LLP, "Incentive Pay Practices Survey: Publicly Traded Companies," at 31 (Feb. 2014) (available at <https://www.worldatwork.org/docs/research-and-surveys/survey-brief-incentive-pay-practices-survey-publicly-traded-companies.pdf>).

⁴⁴ Prudential/PLANSponsor, "2017 Executive Benefit Survey," at 5 (available at <https://www.prudential.com/media/managed/documents/rp/Executive-Benefit-Survey-Results-Report.pdf>).

adoption of indexed/performance vesting options, clawbacks and limits on severance benefits. Several executive pay reforms incorporated into legislation or regulation, such as compensation consultant independence disclosure and “say on pay,” were originally suggested in shareholder proposals.⁴⁵

Research suggests that shareholder input on top executive pay can be value-enhancing. A 2016 study analyzed companies where shareholder proposals asking for shareholder say on pay passed from 2006-2010, before say on pay become mandatory via the 2010 Dodd-Frank law. They found that market value, profitability and productivity improved by 5% in companies where say on pay proposals passed.⁴⁶ In another study, companies that simply received a shareholder proposal on executive pay increased CEO pay by, on average, only 2% the following year, whereas similarly sized firms in the same industry raised total compensation by over 22% in that year.⁴⁷

J&J’s interpretation of SLB 14J would impair shareholders’ ability to communicate with each other and with companies about many senior executive incentive pay matters, due to the rarity of incentive programs in which only senior executives are eligible to participate. That outcome would be inconsistent with the Division’s longstanding administration of the shareholder proposal rule and would be inefficient; shareholder pressure and voting have played an important role in reining in excessive senior executive pay that is structured in ways that can endanger shareholder returns and

⁴⁵ See Randall S. Thomas et al., “Dodd-Frank’s Say on Pay: Will It Lead to a Greater Role for Shareholders in Corporate Governance?” *Cornell Law Review*, Vol. 97, 1213, 1217-18 (2013); see also <https://www.sec.gov/news/press-release/2012-2012-115htm> (news release regarding Commission’s adoption of rule directing exchanges to require disclosure regarding compensation consultant independence); <https://www.ott.ct.gov/pressreleases/press2008/pr04162008.pdf> (news release from Connecticut Treasurer announcing settlements of shareholder proposals seeking greater disclosure on compensation consultant independence).

⁴⁶ Vicente Cunat et al., “Say Pays! Shareholder Voice and Firm Performance,” *Review of Finance*, Vol. 20, Issue 5, 1799-1834 (2016).

⁴⁷ Randall S. Thomas & Kenneth J. Martin, “The Effect of Shareholder Proposals on Executive Compensation,” at 87 (1999) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=160188&download=yes).

promoting more responsible practices that are geared toward sustaining the long-term growth that investors seek.

As Shareholders Are Capable of Understanding Compensation Disclosure and the Proposal Does Not Involve Intricate Detail or Ask J&J to Implement a Complex Policy, the Proposal Would Not Micromanage J&J

In SLB 14J, the Division stated that “proposals addressing senior executive and/or director compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies can be excluded under Rule 14a-8(i)(7) on the basis of micromanagement.” J&J claims that the Proposal would micromanage the Company, but its arguments seem to be aimed at a different proposal, one that requests information on drug pricing or changes in J&J’s incentive compensation programs for the general workforce.

The proposal’s request for reports on the relationship between incentive compensation and pharmaceutical pricing risks would delve into product pricing decisions, which are highly complex and involve intricate details. . . The factors underlying pricing can vary by product, region and country. . . Moreover, the substance of the Proposal’s request relates to board level risk management and implicates compensation decisions for thousands of employees.⁴⁸

A report on pricing decisions, however, would not implement the Proposal, nor would disclosure regarding non-senior executive compensation. Accurately characterized, the Proposal cannot be said to seek “intricate

⁴⁸ No-Action Request, at 5-6.

detail.” By focusing on disclosure rather than a specific reform, the Proposal does not try to “implement[] complex policies,” in the words of SLB 14J, much less impose a specific timeframe or method.

Underlying the micromanagement basis is the Division’s belief that companies should not be required to disclose “matters of a complex nature upon which shareholders, as a group, [are] not in . . . a position to make an informed judgment.”⁴⁹ The ways in which senior executive compensation arrangements take into account a particular business challenge are not foreign to shareholders. Shareholders regularly consider proxy statement disclosure explaining the link between strategic objectives or aspects of the business environment and executive compensation arrangements when casting votes on ballot items. That disclosure may describe factors related to external pressures or risks. For instance, in its statement in opposition to a 2017 shareholder proposal on reserve-related compensation metrics, ConocoPhillips explained how climate change scenario planning and progress on low-carbon objectives were reflected in senior executive compensation arrangements.⁵⁰

* * *

In sum, J&J’s claim that the Proposal is excludable because it involves forms of senior executive incentive pay also available to lower-level employees should be rejected. What’s most important about senior executive incentive pay, both to shareholders and in the broader public debate, is how effectively it encourages behavior that creates the most long-term value. That question is not answered simply by reference to the form in which the pay is delivered. Finally, shareholder proposals on senior executive pay have made valuable contributions by allowing shareholder to express their views and engage with companies; allowing exclusion of a substantial majority of such proposals would thus be undesirable from a public policy standpoint.

⁴⁹ Exchange Act Release No. 40018, “Amendments to Rules on Shareholder Proposals” (May 21, 1998).

⁵⁰ See Proxy Statement filed on April 3, 2017, at 86.

For the reasons set forth above, J&J has not satisfied 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 J&J's request for relief be denied.

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 (917) 703-4963.

Sincerely,

A handwritten signature in blue ink, appearing to read "N. Lusiani".

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America, Inc.

cc: Marc S. Gerber, Esq.
Partner
Skadden, Arps, Slate, Meagher & Flom LLP

Thomas J. Spellman III
Assistant General Counsel and Corporate Secretary
Johnson & Johnson, Inc.

Lauren Compere
Managing Director
Boston Common Asset Management

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
202-371-7233
DIRECT FAX
202-661-8280
EMAIL ADDRESS
MARC.GERBER@SKADDEN.COM

BY EMAIL (shareholderproposals@sec.gov)

December 13, 2018

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

RE: Johnson & Johnson – 2019 Annual Meeting
Omission of Shareholder Proposal of
Oxfam of America, Inc. and
Boston Common Asset Management, as co-filer

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Johnson & Johnson, a New Jersey corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Oxfam of America, Inc. (“Oxfam”), and co-filed by Boston Common Asset Management (“Boston Common”), from the proxy materials to be distributed by the Company in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”). Oxfam and Boston Common are sometimes referred to collectively as the “Proponents.”

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at

shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents as notice of the Company's intent to omit the Proposal from the 2019 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponents that if they submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

RESOLVED, that shareholders of Johnson & Johnson ("JNJ") urge the Compensation and Benefits Committee (the "Committee") to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into JNJ's incentive compensation policies, plans and programs (together, "arrangements") for senior executives. The report should include, but need not be limited to, discussion of whether (i) incentive compensation arrangements reward, or not penalize, senior executives for adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding the level or rate of increase in prescription drug prices; and (ii) external pricing pressures are taken into account when setting targets for financial metrics.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur with the Company's view that the Proposal may be excluded from the 2019 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

III. Background

The Company received the Proposal, accompanied by a cover letter from Oxfam, on November 9, 2018. On November 13, 2018, the Company received a copy of the Proposal from Boston Common and a letter from U.S. Bank verifying Boston Common's stock ownership for at least one year as of November 13, 2018. On November 14, 2018, the Company sent a letter via FedEx to Oxfam requesting a written statement verifying that Oxfam owned the requisite number of shares of Company common stock for at least one year as of November 9, 2018, the date the Proposal was

submitted to the Company (the “Deficiency Letter”). On November 20, 2018, the Company received a letter from Fidelity Investments verifying Oxfam’s stock ownership in the Company (the “Broker Letter”). Copies of the Proposal, cover letter, Deficiency Letter, Broker Letter and related correspondence are attached hereto as Exhibit A.

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

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company’s proxy materials if the proposal “deals with matters relating to the company’s ordinary business operations.” In Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *See* 1998 Release.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”). *See also, e.g., Sempra Energy* (Jan. 12, 2012, *recon. denied* Jan. 23, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that asked the board “to conduct an independent oversight review” of the company’s management of risks posed by the company’s operations in certain countries, noting that the proposal related to the company’s ordinary business matters).

In accordance with these principles, the Staff consistently has permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) primarily relating to employee compensation and benefits, even when the proposal was couched in terms of executive compensation. *See, e.g., Delta Air Lines, Inc.* (Mar. 27, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board prohibit payment of incentive compensation to executive officers unless the company first adopts a process to fund the retirement accounts of its pilots, noting that “although the proposal mentions executive compensation, the thrust and focus of the proposal is on

the ordinary business matter of employee benefits”); *Exelon Corp.* (Feb. 21, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to prohibit bonus payments to executives to the extent performance goals were achieved through a reduction in retiree benefits, noting that “although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of general employee benefits”); *Wal-Mart Stores, Inc.* (Mar. 17, 2003) (permitting exclusion under Rule 14a-8(i)(7) of a proposal urging the board to account for increases in the percentage of the company’s employees covered by health insurance in determining executive compensation, noting that “while the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of general employee benefits”).

A. The Proposal addresses aspects of senior executive compensation that are also applicable to the general workforce.

We are aware that previously the Staff declined to permit exclusion under Rule 14a-8(i)(7) of proposals similar to the Proposal. *See, e.g., AbbVie Inc.* (Mar. 14, 2018); *Eli Lilly and Co.* (Mar. 2, 2018). In those letters, the companies argued that the proposals could be excluded under Rule 14a-8(i)(7) as relating to ordinary business operations, such as product pricing decisions and the companies’ responses to regulatory, legislative and public pressures relating to pricing policies or price increases, and that the proposals focused on these ordinary business matters despite implicating executive compensation matters. In each instance, the Staff’s no-action response stated that the Staff was unable to conclude that the company met its burden of demonstrating that the proposal could be excluded under Rule 14a-8(i)(7) as relating to the company’s ordinary business operations, suggesting that the Staff viewed the proposals as potentially excludable – but not based on the company’s specific articulation of the argument. We believe those arguments are compelling and that similar arguments apply to this Proposal because it focuses on the Company’s product pricing decisions and its response to risks from regulatory and public pressures relating to its pricing policies, despite implicating executive compensation matters. *See, e.g., Johnson & Johnson* (Feb. 10, 2017). Nevertheless, those no-action requests can be distinguished because they did not address the fact that the proposals address aspects of senior executive compensation that are also available or applicable to the general workforce.

Recently, in Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB 14J”), the Staff stated that proposals that address senior executive compensation may be excludable under Rule 14a-8(i)(7) if the compensation targeted by the proposal is broadly available or applicable to a company’s general workforce. Specifically, the Staff stated that “[c]ompanies may generally rely on Rule 14a-8(i)(7) to omit . . . proposal[s] from their proxy materials” that “focus . . . on aspects of compensation that are available or apply to senior executive officers . . . and the general workforce.”

In this instance, the incentive compensation targeted by the Proposal is broadly available to a significant portion of the Company's employees. Over 96,000 employees are paid an annual performance bonus based, in part, on overall corporate performance. Assessment of corporate performance includes a review of Johnson & Johnson's earnings. In addition, over 400 employees receive performance share units (PSUs) each year as part of their long-term incentive awards. The number of PSUs earned is based, in part, on three-year cumulative adjusted operational earnings per share (EPS). Therefore, while the Proposal's request for the Company to report on the extent to which pharmaceutical pricing decisions relate to incentive compensation is framed in terms of executive compensation, the incentive compensation that is the subject of the request is broadly applicable to the Company's workforce and, as such, does not raise a significant policy issue. Accordingly, consistent with SLB 14J and the other precedent described above, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

B. The Proposal seeks to micromanage the Company's senior executive compensation practices.

In addition, the Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* the 1998 Release, *see also JPMorgan Chase & Co.* (Mar. 30, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing on tar sands projects); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested open market share repurchase programs or stock buybacks subsequently adopted by the board not become effective until approved by shareholders). Recently, in SLB 14J, the Staff also articulated that proposals addressing executive compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies can be excluded under Rule 14a-8(i)(7) on the basis of micromanagement and that, more generally, proposals calling for intricately detailed reports may be excluded under micromanagement grounds.

In this case, the Proposal seeks to micromanage the Company by involving intricate detail. The Company has carefully designed its executive compensation program to attract, motivate and retain the executives who lead its business, to ensure that those individuals' compensation is aligned with the Company's short- and long-term performance and to attract, motivate and retain a broad segment of the Company's workforce. The Proposal's request for reports on the relationship between incentive compensation and pharmaceutical pricing risks would delve into product pricing decisions, which are highly complex and involve intricate details. The Company is a

global biopharmaceutical company, with more than 260 operating companies located in more than 60 countries, which sell products in virtually all countries throughout the world. The factors underlying pricing of the Company's products can vary by product, region and country. Moreover, the substance of the Proposal's request relates to board level risk management and implicates compensation decisions for thousands of employees. By requesting such intricate detail, annually, in a report on the factors behind compensation decisions, the Proposal seeks to micromanage the Company's business. Therefore, the Proposal attempts to micromanage The Company and is precisely the type of effort that Rule 14a-8(i)(7) is intended to prevent.

Accordingly, for the reasons discussed above, the Company believes that the Proposal may be excluded from its 2019 proxy materials pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

V. Conclusion

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Thomas J. Spellman III
Assistant General Counsel and Corporate Secretary
Johnson & Johnson

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam of America, Inc.

Lauren Compere
Managing Director
Boston Common Asset Management

EXHIBIT A

(see attached)



November 9th, 2018

BY EMAIL AND OVERNIGHT DELIVERY

Johnson & Johnson, Inc.
Attn: Assistant General Counsel and Corporate Secretary Thomas J. "Tom" Spellman, III
1 Johnson & Johnson Plaza
New Brunswick, NJ 08933
Email: tspellma@its.jnj.com

Re: Shareholder proposal for 2019 Annual Shareholder Meeting

Dear Mr. Spellman,

Enclosed please find a proposal of Oxfam America, Inc. ("Oxfam America") to be included in the proxy statement of Johnson & Johnson, Inc. (the "Company") for its 2019 annual meeting of shareholders.

Oxfam America has continuously held, for at least one year as of the date hereof, sufficient shares **of the Company's common stock** to meet the requirements of Rule 14a-8 under the Securities Exchange Act of 1934, as amended. Verification of this ownership will be forthcoming. Oxfam America intends to continue to hold such shares through the **date of the Company's 2019 annual meeting of shareholders.**

Oxfam America is the lead filer for this proposal and expects to be joined by other shareholders as co-filers. Oxfam America as lead filer is authorized to negotiate on behalf of each co-filer any potential withdrawal of this proposal.

Oxfam America welcomes the opportunity to discuss the proposal with representatives of the Company. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "N. Lusiani".

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America

[Enclosure]

**SHAREHOLDER PROPOSAL REGARDING
EXECUTIVE COMPENSATION AND DRUG PRICING RISKS**

RESOLVED, that shareholders of Johnson & Johnson (“JNJ”) urge the Compensation and Benefits Committee (the “Committee”) to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into JNJ’s incentive compensation policies, plans and programs (together, “arrangements”) for senior executives. The report should include, but need not be limited to, discussion of whether (i) incentive compensation arrangements reward, or not penalize, senior executives for adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding the level or rate of increase in prescription drug prices; and (ii) external pricing pressures are taken into account when setting targets for financial metrics.

SUPPORTING STATEMENT

As long-term investors, we believe that senior executive incentive compensation arrangements should reward the creation of sustainable long-term value. To that end, it is important that those arrangements align with company strategy and encourage responsible risk management.

A key risk facing pharmaceutical companies is potential backlash against high drug prices. Public outrage over high prices and their impact on patient access may force price rollbacks and harm corporate reputation. Legislative or regulatory investigations regarding pricing of prescription medicines may bring about broader changes. In May 2018, the White House released a ‘Blueprint to Lower Drug Prices’ that included promoting generics and biosimilars, as well as a different system for buying Medicare Part B drugs, such as JNJ’s Remicade.

We applaud JNJ for improving transparency on drug pricing and supporting alternative pricing approaches. We are concerned, however, that the incentive compensation arrangements applicable to JNJ’s senior executives may not encourage senior executives to take actions that result

in lower short-term financial performance even when those actions may be in JNJ's best long-term financial interests.

JNJ uses sales growth and earnings per share (EPS) as metrics for the annual bonus and EPS as a metric for performance share awards. (2018 Proxy Statement, at 43) Increasing revenues, either by increasing volumes or raising prices (or some combination), can boost both sales growth and earnings. A recent Credit Suisse analyst report identified JNJ as at significant risk from certain proposals in the Blueprint and ranked it in the bottom third on "overall resistance to emerging pressures."

In our view, excessive dependence on drug price increases is a risky and unsustainable strategy, especially when price hikes drive large senior executive payouts. For example, media coverage of the skyrocketing cost of Mylan's EpiPen noted that a 600% rise in Mylan's CEO's total compensation accompanied the 400% EpiPen price increase.

The disclosure we request would allow shareholders to better assess the extent to which compensation arrangements encourage senior executives to responsibly manage risks relating to drug pricing and contribute to long-term value creation in line with the company's stated credo to "maintain reasonable prices," "bear our fair share of taxes," and "put the needs and well-being of the people we serve first." We urge shareholders to vote for this Proposal.



84 State Street, Suite 940 | Boston, MA 02109

November 13, 2018

Mr. Thomas Spellman
Assistant General Counsel and Corporate Secretary
Johnson & Johnson
1 Johnson & Johnson Plaza
New Brunswick, NJ 08933

Re: Shareholder Proposal for 2019 Annual Shareholder Meeting

Dear Tom:

We were delighted to engage with you earlier this fall on tax transparency and commend the company for improving its transparency on drug pricing and supporting alternative pricing approaches.

Boston Common Asset Management is a global investment manager that specializes in sustainable and responsible global equity strategies. We seek long-term capital appreciation by investing in diversified portfolios of high quality stocks. Boston Common currently manages over \$2.7 billion as of September 30, 2018, with clients that are shareholders in Johnson & Johnson. We currently hold 5,610 shares of Johnson & Johnson common stock in the Boston Common ESG Impact U.S. Equity Fund (BCAMX).

As long-term investors, we believe that senior executive incentive compensation arrangements should reward the creation of sustainable long-term value. To that end, it is important that those arrangements align with company strategy and encourage responsible risk management. The disclosure we request in the enclosed shareholder proposal would allow shareholders to better assess the extent to which compensation arrangements encourage senior executives to responsibly manage risks relating to drug pricing and contribute to long-term value creation.

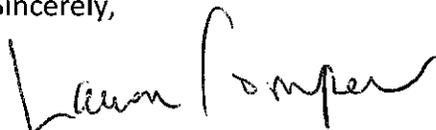
Therefore, Boston Common Asset Management, LLC (Boston Common) hereby submits the enclosed shareholder proposal (Proposal) with Johnson & Johnson for inclusion in the 2019 proxy statement and in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, the Boston Common ESG Impact U.S. Equity Fund holds more than \$2,000 of Johnson & Johnson common stock, acquired more than one year prior to today's date and held continuously for that time. Verification of ownership is enclosed. Boston Common Asset Management will continue to hold the required shares through the date of the 2019 annual meeting.

Boston Common is a co-filer on this resolution while Oxfam America is the lead filer on this resolution.

We would appreciate receiving a confirmation of receipt of this letter via email to lcompere@bostoncommonasset.com.

As Oxfam America indicated we are happy to engage in dialogue on this issue with Johnson & Johnson and we look forward to your response to our request.

Sincerely,

A handwritten signature in black ink that reads "Lauren Compere". The signature is written in a cursive, flowing style.

Lauren Compere, Managing Director

Cc: Nicholas Lusiani, Oxfam America

**SHAREHOLDER PROPOSAL REGARDING
EXECUTIVE COMPENSATION AND DRUG PRICING RISKS**

RESOLVED, that shareholders of Johnson & Johnson (“JNJ”) urge the Compensation and Benefits Committee (the “Committee”) to report annually to shareholders on the extent to which risks related to public concern over drug pricing strategies are integrated into JNJ’s incentive compensation policies, plans and programs (together, “arrangements”) for senior executives. The report should include, but need not be limited to, discussion of whether (i) incentive compensation arrangements reward, or not penalize, senior executives for adopting pricing strategies, or making and honoring commitments about pricing, that incorporate public concern regarding the level or rate of increase in prescription drug prices; and (ii) external pricing pressures are taken into account when setting targets for financial metrics.

SUPPORTING STATEMENT

As long-term investors, we believe that senior executive incentive compensation arrangements should reward the creation of sustainable long-term value. To that end, it is important that those arrangements align with company strategy and encourage responsible risk management.

A key risk facing pharmaceutical companies is potential backlash against high drug prices. Public outrage over high prices and their impact on patient access may force price rollbacks and harm corporate reputation. Legislative or regulatory investigations regarding pricing of prescription medicines may bring about broader changes. In May 2018, the White House released a ‘Blueprint to Lower Drug Prices’ that included promoting generics and biosimilars, as well as a different system for buying Medicare Part B drugs, such as JNJ’s Remicade.

We applaud JNJ for improving transparency on drug pricing and supporting alternative pricing approaches. We are concerned, however, that the incentive compensation arrangements applicable to JNJ’s senior executives may not encourage senior executives to take actions that result

in lower short-term financial performance even when those actions may be in JNJ's best long-term financial interests.

JNJ uses sales growth and earnings per share (EPS) as metrics for the annual bonus and EPS as a metric for performance share awards. (2018 Proxy Statement, at 43) Increasing revenues, either by increasing volumes or raising prices (or some combination), can boost both sales growth and earnings. A recent Credit Suisse analyst report identified JNJ as at significant risk from certain proposals in the Blueprint and ranked it in the bottom third on "overall resistance to emerging pressures."

In our view, excessive dependence on drug price increases is a risky and unsustainable strategy, especially when price hikes drive large senior executive payouts. For example, media coverage of the skyrocketing cost of Mylan's EpiPen noted that a 600% rise in Mylan's CEO's total compensation accompanied the 400% EpiPen price increase.

The disclosure we request would allow shareholders to better assess the extent to which compensation arrangements encourage senior executives to responsibly manage risks relating to drug pricing and contribute to long-term value creation in line with the company's stated credo to "maintain reasonable prices," "bear our fair share of taxes," and "put the needs and well-being of the people we serve first." We urge shareholders to vote for this Proposal.



November 13, 2018

Mr. Thomas J. Spellman III
Corporate Secretary, Assistant General Counsel
Office of Corporate Secretary
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Re: Johnson & Johnson Stockholder Proposal

Dear Mr. Spellman,

U.S. Bank Global Fund Services is the custodian and record holder for the Boston Common ESG Impact U.S. Equity Fund (BCAMX).

We are writing to affirm that the Boston Common U.S. Equity Fund (BCAMX) currently holds 5,610 shares of Johnson & Johnson common stock and has held at least \$2,000.00 in market value of Johnson & Johnson shares continuously for at least the one-year period prior to and including the date of the submission of the Stockholder Proposal, November 13, 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Smith". The signature is fluid and cursive.

Jennifer Smith
Compliance Administrator



THOMAS J. SPELLMAN III
ASSISTANT GENERAL COUNSEL
CORPORATE SECRETARY

ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-0026
(732) 524-3292
FAX: (732) 524-2185
TSPELLMA@ITS.JNJ.COM

November 14, 2018

VIA FEDEX

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America
1101 17th Street, NW Suite 1300
Washington, DC 20036

Dear Mr. Lusiani:

This letter acknowledges receipt by Johnson & Johnson on November 9, 2018, of the shareholder proposal submitted by Oxfam America, Inc. (the "Proponent") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Rule"), for consideration at the Company's 2019 Annual Meeting of Shareholders (the "Proposal").

Paragraph (b) of the Rule provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year preceding and including the date the shareholder proposal was submitted, which was November 9, 2018. The Company's stock records do not indicate that the Proponent is a record owner of Company shares, and to date, we have not received sufficient proof that the Proponent has satisfied the Rule's ownership requirements.

Accordingly, please furnish to us, within 14 days of your receipt of this letter, a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) and a participant in the Depository Trust Company ("DTC") verifying that the Proponent beneficially owned the requisite number of Company shares continuously for at least the one-year period preceding, and including, November 9, 2018, the date the Proposal was submitted. The Proponent can confirm whether a particular broker or bank is a DTC participant by asking the broker or bank or by checking DTC's participant list, which is currently available on the Internet at: <http://www.dtcc.com/client-center/dtc-directories>.

If the Proponent's broker or bank is not on the DTC participant list, the Proponent will need to obtain a written statement from the DTC participant through which the Proponent's shares are held verifying that the Proponent beneficially owned the requisite

number of Company shares continuously for at least the one-year period preceding, and including, November 9, 2018, the date the Proposal was submitted. The Proponent should be able to find who this DTC participant is by asking the Proponent's broker or bank. If the broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant knows the Proponent's broker or bank's holdings, but does not know the Proponent's holdings, the Proponent can satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, for at least the one-year period preceding and including November 9, 2018, the required amount of securities was continuously held – one from the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant confirming the Proponent's broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Johnson & Johnson, One Johnson & Johnson Plaza, New Brunswick, NJ 08933, Attention: Corporate Secretary. For your convenience, a copy of the Rule is enclosed.

Once we receive any response, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Company's 2019 Annual Meeting of Shareholders. We reserve the right to seek relief from the Securities and Exchange Commission as appropriate.

In the interim, you should feel free to contact either my colleague, Renee Brutus, Assistant Corporate Secretary, at (732) 524-1531 or me at (732) 524-3292 if you wish to discuss the Proposal or have any questions or concerns that we can help to address.

Very truly yours,



Thomas J. Spellman III

cc: Renee Brutus, Esq.



November 20th, 2018

BY EMAIL AND OVERNIGHT DELIVERY

Johnson & Johnson, Inc.
Attn: Assistant General Counsel and Corporate Secretary Thomas J. "Tom" Spellman, III
1 Johnson & Johnson Plaza
New Brunswick, NJ 08933
Email: tspellma@its.jnj.com

Re: Ownership verification for shareholder proposal for 2019 Annual Shareholder Meeting

Dear Mr. Spellman,

Pursuant to your letter last week regarding our shareholder proposal submitted on November 9, 2018 with co-filers Boston Common Asset Management, attached please find verification of continuous ownership by Oxfam America, Inc. of the requisite shares in Johnson and Johnson, Inc. since October 26, 2011.

Please let me know if you have any questions or require any additional information. We sent a hard copy to you via overnight mail, as well.

Oxfam America welcomes the opportunity to discuss this proposal with representatives of the Company. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Lusiani".

Nicholas J. Lusiani
Senior Advisor, Private Sector Department
Oxfam America

Cc: Renee Brutus, Esq.

Fidelity Clearing & Custody
Solutions

100 Crosby Parkway KC1J
Covington, KY 41015



November 9, 2018

Oxfam America Inc.
Activist Fund
226 Causeway St, Fl 5
Boston, MA 02114-2155

RE: 38 shares of Johnson & Johnson. - Account ending ***

To Whom It May Concern:

Please accept this letter as confirmation that National Financial Services (NFS) holds 38 shares of Johnson & Johnson (JNJ) for the benefit of Oxfam America, Inc. Per our records 55 shares were purchased on October 26, 2011 and a sell of 17 shares was processed on July 29, 2014 leaving a balance of 38 shares.

Certification of Beneficial Ownership

This Certification relates to the 38 shares of common stock (the "Shares") of Johnson & Johnson. (The "Issuer") owned beneficially by Oxfam America, Inc. (the "Proponent".)

This Certification is given in connection with the submission on November 9, 2018 (the "Proposal Submission Date") by the Proponent of the Issuer of a shareholder proposal under Rule 14a-8 under the Securities Exchange Act of 1934, as amended. The undersigned hereby certifies, as of the date set forth above, as follow.

I. The undersigned is and has been the record holder of the shares from and including the Proposal Submission Date and through and including the date hereof.

II. The proponent is the beneficial owner of the Shares and has owned 38 shares continuously since October 26, 2011.

The undersigned acknowledges and agrees that this Certification may be delivered to the Issuer as proof of the Proponent's beneficial ownership of the Shares pursuant to Rule 14a-8.

Sincerely,

A handwritten signature in cursive script that reads "Linda M. Gilman".

Linda Gilman
Client Services Manager

Our file: W634174-15NOV18