



DIVISION OF  
CORPORATION FINANCE

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

February 15, 2019

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

Re: AbbVie Inc.  
Incoming letter dated December 21, 2018

Dear Mr. Gerber:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to AbbVie Inc. (the "Company") by The City of Philadelphia Public Employees Retirement System (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated December 27, 2018 and February 12, 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: Maureen O'Brien  
Segal Marco Advisors  
mobrien@segalmarco.com

February 15, 2019

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

Re: AbbVie Inc.  
Incoming letter dated December 21, 2018

The Proposal urges the board to adopt a policy that no financial performance metric shall be adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive incentive compensation award.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, the Proposal micromanages the Company by seeking to impose specific methods for implementing complex policies. Specifically, the Proposal, if implemented, would prohibit any adjustment of the broad categories of expenses covered by the Proposal without regard to specific circumstances or the possibility of reasonable exceptions. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Kasey L. Robinson  
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.



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February 12, 2019

Via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
Securities and Exchange Commission  
Office of the Chief Counsel  
Division of Corporation Finance  
100 F Street, NE  
Washington, DC 20549

Re: Request by AbbVie Inc. to omit proposal submitted by The City of Philadelphia Public Employees Retirement System

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, The City of Philadelphia Public Employees Retirement System (the "Proponent") submitted a shareholder proposal (the "Proposal") to AbbVie Inc. ("AbbVie" or the "Company"). The Proposal asks AbbVie's board to adopt a policy that no financial performance metric shall be adjusted to exclude "Legal or Compliance Costs," as defined in the Proposal, when evaluating performance for purposes of determining the amount or vesting of any senior executive incentive compensation award.

In a letter to the Division dated December 21, 2018 (the "No-Action Request"), AbbVie 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. AbbVie argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the grounds that the Proposal deals with AbbVie's ordinary business operations; and Rule 14a-8(i)(11), as substantially duplicative of an earlier-submitted proposal that AbbVie intends to include in its proxy statement unless the Division grants AbbVie's separate request to exclude that proposal. As discussed more fully below, AbbVie has not met its burden of proving its entitlement to exclude the Proposal on either basis, and the Proponent respectfully requests that AbbVie's request for relief be denied.

### **The Proposal**

The Proposal states:

RESOLVED, that shareholders of AbbVie Inc. ("AbbVie") urge the Board of Directors to adopt a policy that no financial performance metric shall be adjusted to exclude Legal

or Compliance Costs when evaluating performance for the purpose of determining the amount or vesting of any senior executive Incentive Compensation award. “Legal or Compliance Costs” are expenses or charges associated with any investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution, including legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgment of claims of the kind described above.

## **Background**

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, Johnson & Johnson (“J&J”) challenged a proposal substantially similar to the Proposal on ordinary business grounds. J&J argued that the proposal’s subject was the company’s legal compliance program rather than senior executive compensation. The Staff declined to allow exclusion.<sup>1</sup>

In October 2018, the Division clarified its views regarding certain shareholder proposals on senior executive compensation in Staff Legal Bulletin 14J (“SLB 14J”).<sup>2</sup> 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 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).<sup>3</sup>

AbbVie invokes SLB 14J, urging that “the incentive compensation targeted by the Proposal is broadly available to a significant portion of the Company’s employees.”<sup>3</sup> AbbVie also urges that the Proposal would micromanage the Company. Neither argument is persuasive.

## **The Specific Incentive Compensation Arrangements Applicable to Senior Executives Should Be Considered the “Primary Aspect” of Compensation Targeted by the Proposal, Not the Plan or Program Under Which Both Senior Executives and Others Are Eligible to Receive Incentive Pay**

AbbVie asserts that both the AbbVie Incentive Plan (“AIP”), in which 14,000 of the Company’s employees participate, and the senior executive short-term cash bonus plan, in which 40 employees participate, use financial performance metrics and would be affected by the Proposal. As a result, AbbVie claims, “the incentive compensation that is the subject of the [Proposal’s] request is broadly applicable to the Company’s workforce and, as such, does not raise a significant policy issue.”<sup>4</sup> AbbVie’s argument implies that the “primary aspect of

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<sup>1</sup> Johnson & Johnson (Feb. 2, 2018).

<sup>2</sup> Staff Legal Bulletin 14J (Oct. 23, 2018).

<sup>3</sup> No-Action Request, at 4.

<sup>4</sup> No-Action Request, at 4.

compensation”<sup>5</sup> targeted by the Proposal, within the meaning of SLB 14J, is the form the pay takes.

That claim is unpersuasive for four reasons:

1. The arrangements to which the Proposal applies are not limited to bonuses. The Proposal’s definition of “Incentive Compensation” encompasses both short- and long-term incentive pay, but the No-Action Request does not discuss arrangements related to LTI compensation for senior executives or other employees. In addition to annual bonuses, AbbVie’s senior executives receive long-term incentive (“LTI”) compensation in the form of stock options and performance-based awards. LTI compensation is a substantial portion of senior executive pay: In 2017, approximately two-thirds of AbbVie’s named executive officers’ (“NEOs”) total direct compensation consisted of LTI compensation.<sup>6</sup>

AbbVie’s LTI programs use three financial metrics, two of which would be affected by the Proposal. Performance-vested restricted stock awards can vest at 0-150% of target depending on AbbVie’s relative return on equity (“ROE”) over a three-year period.<sup>7</sup> ROE is calculated by dividing net income by shareholders’ equity.<sup>8</sup> Because the amount of net income is affected by the inclusion or exclusion of expenses such as Legal or Compliance Costs, the Proposal could affect the value of performance-based restrictive stock awards.

As well, performance shares vest at 0-200% of target, based on AbbVie’s earnings per share (EPS) and relative total shareholder return over a three-year period. Earnings and, by extension, EPS is affected by the amount of expenses a company books. Thus, adding back Legal or Compliance Costs pursuant to the Proposal would affect the value of senior executives’ performance share awards. The “primary aspect” of compensation targeted by the Proposal is therefore significantly broader than the bonus programs to which AbbVie points.

2. Many aspects of the incentive compensation arrangements for AbbVie’s senior executives differ significantly from those available to other employees, even when they use the same compensation plan or type of award. The Proponent submitted the Proposal to AbbVie out of concern that AbbVie’s incentive compensation arrangements, by excluding the impact of legal and compliance costs from the calculation of pay metrics, do not hold senior executives<sup>9</sup> accountable for legal and compliance failures. Those failures can be costly for shareholders. Because metrics involving expenses, such as net income (and thereby ROE) and EPS, can be used in more than one pay program, the Proposal focuses not on a particular form of compensation but rather on the calculation of metrics, regardless of the program.

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<sup>5</sup> AbbVie did not use the phrase “primary aspect,” but its argument depends on a conclusion that the primary aspect is determined by reference to the general form of compensation.

<sup>6</sup> 2018 Proxy Statement, at 42.

<sup>7</sup> 2018 Proxy Statement, at 38.

<sup>8</sup> Amy Gallo, “A Refresher on Return on Assets and Return on Equity,” Harvard Business Review, Apr. 4, 2016 (<https://hbr.org/2016/04/a-refresher-on-return-on-assets-and-return-on-equity>).

<sup>9</sup> In our view, it is generally not appropriate to hold lower-level employees accountable for legal and compliance failures because they lack the degree of control necessary to direct company policy.

AbbVie's proxy statement indicates that there are important differences between senior executive bonuses and those paid to other employees. The Committee determines NEO compensation, including annual incentive awards, but does not set pay for lower-level employees. The factors considered by the Committee include competitive benchmarking, "individual performance, leadership, and contributions to AbbVie's business and strategic performance."<sup>10</sup> By definition, the latter two criteria are unlikely to influence the amount of compensation paid to employees further down in the organization. NEOs' bonuses are limited to 200% of the target amount,<sup>11</sup> but there is no mention of a limit on other employees' bonuses. We recognize that lower-level employees are unlikely to earn bonuses of more than 200% of target, but this restriction shows that AbbVie treats NEO bonuses as being on a separate footing from bonuses to other employees.

Incentive pay arrangements for senior executives that could be affected by exclusion of Legal or Compliance Costs—the subject of the Proposal—thus have little overlap with programs for lower-level employees, even though both groups are awarded bonuses. AbbVie identifies no similarities between the AIP and senior executive short-term cash bonus plan other than their use of financial metrics, and the No-Action Request is silent on LTI compensation, which is covered and could be affected by the Proposal. As a result, it is unreasonable to conclude that the primary aspect of the compensation targeted by the Proposal is available or applicable to AbbVie's lower-level employees.

3. AbbVie's suggested interpretation of SLB 14J runs counter to the broader context of the societal debate over top executive pay, which focuses on amount and design considerations rather than simply the form in which pay is delivered. Senior executive compensation has been widely studied and has been the subject of intense interest from investors, regulators and the general public for decades. Attention sometimes focuses on the absolute amount of pay, especially in the general media, but in the main, senior executive compensation 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.<sup>12</sup> 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. Two senior executives receiving the same forms of pay can be influenced to behave differently by these factors.

Allowing AbbVie to exclude a proposal explicitly limited to senior executive incentive compensation because one form of such compensation is also available to lower-level employees

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<sup>10</sup> 2018 Proxy Statement, at 33-34.

<sup>11</sup> 2018 Proxy Statement, at 42.

<sup>12</sup> 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.").

would ignore what matters to shareholders about executive pay. Shareholders should be able to communicate with one another and 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 AbbVie to include Legal or Compliance Costs to ensure that executives are held accountable for ethical and compliance lapses.

4. 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. 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.<sup>13</sup> Ten of those proposal types address or implicate 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.

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 salaried employees in their annual incentive or bonus plans. Over half of respondents included non-exempt salaried and non-exempt unionized employees.<sup>14</sup>
- 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.<sup>15</sup>
- 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.<sup>16</sup>

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<sup>13</sup> 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>).

<sup>14</sup> 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>).

<sup>15</sup> 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>).

<sup>16</sup> Prudential/PLANSPONSOR, “2017 Executive Benefit Survey,” at 5 (available at <https://www.prudential.com/media/managed/documents/rp/Executive-Benefit-Survey-Results-Report.pdf>).

Barring most proposals on senior executive pay would be inconsistent with the Commission's long-standing approach to the ordinary business exclusion and would lead to an inefficient outcome. Shareholder proposals have spurred better tailoring of senior executive pay to promote value maximization and responsible behavior, including 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.

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 through federal legislation. They found that market value, profitability and productivity improved by 5% in companies where say on pay proposals passed.<sup>17</sup> 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.<sup>18</sup>

AbbVie'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 for shareholders is how effectively it encourages the creation of 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 shareholders 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.

**AbbVie 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.

AbbVie has made no argument on the second part of the test. The Division has not defined "significant compensation matters," but it would be logical to conclude that senior executives' eligibility to receive short- and long-term incentive pay implicates significant

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<sup>17</sup> Vicente Cunat et al., "Say Pays! Shareholder Voice and Firm Performance," Review of Finance, Vol. 20, Issue 5, 1799-1834 (2016).

<sup>18</sup> 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](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=160188&download=yes)).

compensation matters, given that incentive compensation accounts for a substantial proportion of total pay. For example, 72% of CEO Richard Gonzalez’s 2017 total compensation, as disclosed in the summary compensation table, consisted of stock awards, stock option awards and non-equity incentive plan (bonus) compensation.<sup>19</sup> The target pay mix for Mr. Gonzalez for 2017—of which 91% was variable--emphasized incentive pay even more.<sup>20</sup>

Equity-based compensation can substantially dilute shareholders’ ownership stakes. The Division recognized that such dilution qualifies as a significant policy issue in Staff Legal Bulletin 14A,<sup>21</sup> 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 dilution to shareholders is not excludable on ordinary business grounds. Accordingly, AbbVie has not met its burden of showing that senior executives’ eligibility to receive incentive compensation or bonuses does not implicate significant compensation matters.

**The Proposal Does Not Involve Intricate Detail or Ask AbbVie to Use a Specific Method for Implementing a Complex Policy, So It Would Not Micromanage AbbVie**

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.” AbbVie claims that the Proposal would micromanage the Company because it would “impos[e] specific methods for implementing complex policies.”<sup>22</sup>

But the Proposal does not ask AbbVie to implement a complex policy. The Proposal does not purport to affect the metrics used to assess company-wide financial performance for incentive pay purposes. Nor does it advocate changing the weight assigned to each of those metrics, or how company-wide financial performance factors into overall senior executive performance evaluation. The Proposal would affect a single aspect of this process, asking the Committee not to exclude the impact of Legal or Compliance Costs in the calculation of metrics for senior executive incentive pay purposes. That change would require only that the amount of Legal or Compliance Costs be reflected in net income/earnings, a single arithmetic operation.

In 2015, the Staff rejected an argument that an arguably more prescriptive proposal about senior executive pay metrics micromanaged ConocoPhillips.<sup>23</sup> The proposal asked ConocoPhillips’ compensation committee to adopt a policy that it would not use reserves additions, reserve replacement ratio or any other reserves-based metric to determine senior executive incentive pay unless the reserves number used in the metric was adjusted “to exclude barrels of oil equivalent that are not economically producible under a scenario . . . in which the price of a barrel of Brent crude oil decreases to \$65 by 2020 and remains flat thereafter.”

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<sup>19</sup> 2018 Proxy Statement, at 43.

<sup>20</sup> 2018 Proxy Statement, at 35.

<sup>21</sup> Staff Legal Bulletin 14A (July 12, 2002).

<sup>22</sup> No-Action Request, at 5.

<sup>23</sup> ConocoPhillips (Feb. 15, 2015).

ConocoPhillips urged that the proposal was excludable on ordinary business grounds because it “dictat[ed] the metrics that may be used by the Company in its compensation plans.” The Staff declined to grant the requested relief.

The ConocoPhillips proposal was more specific and detailed than the Proposal because it sought to bar the use of a metric unless complicated adjustments were made. Those adjustments required an inquiry into the break-even price for each reserve under the reduced price scenario, which would depend on the development cost and the market value at the new price.<sup>24</sup> Unlike the ConocoPhillips proposal, the Proposal asks AbbVie simply to include an expense in income that it had previously excluded, requiring no research or additional financial calculations.

Underlying the micromanagement doctrine is the Commission’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.”<sup>25</sup> The Proposal requests a single straightforward change to how AbbVie calculates one category of financial metric. Shareholders already evaluate these kinds of adjustments, which are disclosed in the proxy statement, when voting on management say on pay proposals. There is no reason to believe shareholders would not be capable of making an informed judgment on the Proposal’s request.

### **Substantial Duplication**

AbbVie claims that the Proposal substantially duplicates an earlier-received proposal submitted by the United Church Funds (the “Prior Proposal”) and thus is excludable pursuant to Rule 14a-8(i)(11). The Prior Proposal states:

RESOLVED, that shareholders of AbbVie Inc. (“AbbVie”) urge the Compensation 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 AbbVie’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) such concern is considered when setting financial targets for incentive compensation arrangements.

According to AbbVie, the “principal thrust or focus of the Proposal and the Prior Proposal are the same—reevaluation of the Company’s senior executive incentive compensation practices in response to reputational risks faced by the Company as a result of its sale of pharmaceutical products.” That framing is inaccurate and ignores important differences between the Proposal and the Prior Proposal.

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<sup>24</sup> See <https://www.forbes.com/sites/arthurberman/2017/04/09/low-break-even-prices-are-for-everyone-not-just-shale/#742763117803>.

<sup>25</sup> Exchange Act Release No. 40018, “Amendments to Rules on Shareholder Proposals” (May 21, 1998).

First, the Proposal suggests a specific change in how earnings-related metrics are calculated for senior executive incentive pay, in order to ensure accountability for unlawful company conduct. No “reevaluation” by AbbVie would be involved in implementing the Proposal. The Prior Proposal, by contrast, does not seek any change in compensation policies or practices, but only requests disclosure about how drug pricing concerns are incorporated into senior executive incentive arrangements; those arrangements would include targets and policies such as clawbacks, in addition to the whole range of compensation metrics. Contrary to AbbVie’s assertion, by asking for disclosure the Prior Proposal does not ask AbbVie to “reevaluate” its senior executive incentive pay arrangements, as proposals seeking a “review” and analysis of senior executive pay do.<sup>26</sup>

Second, AbbVie’s claim that reputational risks are the motivating force behind both proposals is incorrect. Although minimizing reputational risk is one reason senior executives should not be shielded from the consequences of company misconduct, other reasons—including the financial consequences of misconduct and the potential for regulatory blowback—receive equal attention in the Proposal. “Legal or Compliance Costs,” as defined in the Proposal, are limited to direct financial costs stemming from investigations, litigation or enforcement actions related to drug manufacturing, sales, marketing or distribution; indirect consequences from reputational damage do not fall within that definition. The Prior Proposal refers to “public concern” and “public outrage” over high drug prices as potential triggers for legislative or regulatory responses, but the principal focus is the financial risk of basing one’s strategy on unfettered price increases, given the high level of public concern, rather than on reputational risk more generally.

In ExxonMobil Corp.,<sup>27</sup> the Staff rejected substantial duplication arguments much like AbbVie’s that focused on similarity of subject matter and supporting arguments. ExxonMobil had first received a proposal (the “emissions reduction proposal”) asking the board “to adopt quantitative, based on current technologies, for reducing total greenhouse gas emissions from the Company’s products and operations,” citing the urgency of climate change and its impacts (emphasis in original). The company then received a proposal (the “stranded assets proposal”) asking it to report on its strategy “to address the risk of stranded assets presented by global climate change” and a proposal (the “strategic plan” proposal) requesting a report on

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<sup>26</sup> See, e.g., proposal 11, Definitive Proxy Statement of Goldman Sachs Group Inc. filed on Apr. 7, 2010, at 62-64 (asking compensation committee to “initiate a review of our company’s executive compensation policies,” including “evaluation of whether our senior executive compensation packages . . . are ‘excessive’ and should be modified to be kept within reasonable boundaries”); proposal 8, Definitive Proxy Statement of TJX Companies Inc. filed on Apr. 27, 2017, at 63-64 (requesting that compensation committee review executive compensation policies, including “whether our senior executive compensation packages . . . should be modified to be kept within boundaries, such as that articulated in the previously proposed Excessive Pay Shareholder Approval Act; and . . . whether sizable layoffs or the level of pay of our lowest paid workers should result in an adjustment of senior executive pay to more reasonable and justifiable levels and how the Company will monitor this comparison annually in the future.”)

<sup>27</sup> ExxonMobil Corporation (Mar. 17, 2014); see also Kraft Foods Group, Inc. (Jan. 28, 2015) (proposals requesting reports on environmental impacts of non-recyclable packaging and general sustainability matters did not substantially duplicate first-received proposal seeking a report on deforestation impacts; Kraft had argued that impact on forests was subsumed within sustainability).

ExxonMobil's strategic plan in light of projected climate change impacts and the company's planned responses.

ExxonMobil urged that the stranded assets and strategic plan proposals substantially duplicated the emission reduction proposal because "all three proposals share the same principal thrust: reporting on how the Company plans to adapt its business to address climate change." Specifically, ExxonMobil pointed to the fact that all three proposals were "concerned with the Company's strategic plans to respond to climate change," "emphasize[d] the importance of responding to climate change" and "address[ed] the possibility that government action related to climate change might affect the Company." As well, the stranded assets proposal and emissions reduction proposal, according to ExxonMobil, expressed the view that "operations or assets that are based on oil as an energy source could become devalued."

The proponents stressed the different actions requested by the proposals—reporting vs. setting a quantitative emissions reduction goal--which ExxonMobil had argued were irrelevant. They also disputed the notion that arguments in common about "the need for long-term strategy and the fact that government action related to climate change might affect the Company" could serve as the basis for a finding of substantial duplication. The proponents withdrew the strategic plan proposal after ExxonMobil filed its no-action request, so the Staff's determination did not address that proposal. The Staff did not concur that the stranded assets proposal substantially duplicated the emissions reduction proposal, and declined to grant relief.

Like the proposals in ExxonMobil, the Proposal and the Prior Proposal request different actions, one a concrete change in a compensation practice and the other a report on how drug pricing concerns are reflected in senior executive incentive pay arrangements. The arguments supporting both proposals are even less similar than those shared by the ExxonMobil proposals: The Proposal is concerned with deterring misconduct and ensuring accountability, while the Prior Proposal focuses on the long-term strategic risks associated with reliance on drug price increases. Accordingly, exclusion of the Proposal on substantial duplication grounds would be inappropriate.

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For the reasons set forth above, AbbVie has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7) or Rule 14a-8(i)(11). The Proponent thus respectfully requests that AbbVie'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 (312) 612-8446 or [mobrien@segalmarco.com](mailto:mobrien@segalmarco.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen O'Brien". The signature is fluid and cursive, with the first name "Maureen" written in a larger, more prominent script than the last name "O'Brien".

Maureen O'Brien  
Vice President, Corporate Governance Director  
Segal Marco Advisors

cc: Marc S. Gerber, Esq.  
[Marc.Gerber@skadden.com](mailto:Marc.Gerber@skadden.com)

December 27, 2018

VIA EMAIL

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

Re: Shareholder proposal submitted to AbbVie Inc. The City of Philadelphia Public Employees Retirement System

Ladies and Gentlemen,

By letter dated December 21, 2018, AbbVie Inc. (the “Company”) asked that the Office of the Chief Counsel of the Division of Corporation Finance (the “Staff”) confirm that it will not recommend enforcement action if it omits a shareholder proposal (the “Proposal”) submitted pursuant to the Commission’s Rule 14a-8 by The City of Philadelphia Public Employees Retirement System (the “Proponent”).

In accordance with Securities and Exchange Commission (“SEC”) Staff Legal Bulletin No. 14D (Nov. 7, 2008), the proponent will respond to the Company’s request promptly.

Should you have any questions in the meantime, please feel free to contact the undersigned at 312-612-8446 or [mobrien@segalmarco.com](mailto:mobrien@segalmarco.com).

Sincerely,



Maureen O’Brien  
Vice President, Corporate Governance Director  
Segal Marco Advisors

CC: Marc S. Gerber; Christopher DiFusco

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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

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

**BY EMAIL** (shareholderproposals@sec.gov)

December 21, 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: AbbVie Inc. – 2019 Annual Meeting  
Omission of Shareholder Proposal of The  
City of Philadelphia Public Employees  
Retirement System

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, AbbVie Inc., a Delaware 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 The City of Philadelphia Public Employees Retirement System (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”).

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 Proponent 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 Proponent that if the Proponent submits 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 AbbVie Inc. ("AbbVie") urge the Board of Directors to adopt a policy that no financial performance metric shall be adjusted to exclude Legal or Compliance Costs when evaluating performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award. "Legal or Compliance Costs" are expenses or charges associated with any investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution, including legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgment of claims of the kind described above. "Incentive Compensation" is compensation paid pursuant to short-term and long-term incentive compensation plans and programs. The policy should be implemented in a way that does not violate any existing contractual obligation of AbbVie or the terms of any compensation or benefit plan.

## **II. Bases 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; and
- Rule 14a-8(i)(11) because the Proposal substantially duplicates a shareholder proposal previously submitted to the Company that the Company intends to include in its 2019 proxy materials in the event that the Staff does not concur with the exclusion of the previously submitted proposal from the Company's 2019 proxy materials.

### **III. Background**

The Company received the Proposal, accompanied by a cover letter from the Proponent, by email at 11:23 A.M. (Central Time) on November 13, 2018. The Company received a letter from J.P.Morgan, dated November 13, 2018, verifying the Proponent's stock ownership as of such date (the "Broker Letter"). Copies of the Proposal, cover 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.

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.*

The Company recognizes that in the past the Staff found a similar proposal requesting adoption of a policy that would prohibit adjusting financial performance metrics to exclude legal or compliance costs for purposes of determining senior executive incentive compensation focused on senior executive compensation and therefore was not excludable under Rule 14a-8(i)(7). *See Johnson & Johnson* (Feb. 2, 2018). Nevertheless, the Staff recently established in Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB 14J”) that proposals addressing 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 the company’s 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. The Company’s incentive compensation award programs that use financial performance metrics and would be affected by the Proposal include the AbbVie Incentive Plan (“AIP”) and the senior executive short-term cash bonus plans. The AIP is the short-term cash bonus plan in which approximately 14,000 (or close to 50%) of the Company’s employees participate. The senior executive short-term cash bonus plans, in which about 40 employees participate, and the AIP have the same general performance categories to determine payouts: a combination of (i) company-wide performance, (ii) organizational subset performance and (iii) individual performance. Therefore, while the Proposal’s request for the Company to adopt a policy requiring that performance measures used to determine incentive compensation take into account legal and compliance costs 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 micromanages 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 Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *RH* (May 11, 2018); *JPMorgan Chase & Co.* (Mar. 30, 2018); *Amazon.com, Inc.* (Jan. 18, 2018). 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.

In this case, the Proposal seeks to micromanage the Company by imposing specific methods for implementing complex policies. It does so by requesting a policy that would prohibit the Company from adjusting any financial performance metrics used to “evaluat[e] performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award” to “exclude Legal or Compliance Costs.” In particular, the Proposal would prohibit, without regard to circumstance and without any reasonable exceptions, all adjustments relating to “expenses or charges associated with *any* investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution,” including any and all “legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgment of claims of the kind described” (emphasis added).

Moreover, specific judgments concerning whether and how, if at all, to adjust financial performance metrics entails a complex process involving the business judgment of the Compensation Committee of the Company’s Board of Directors as informed by the views and experience of the Committee’s independent compensation consultant and other advisors, as well as the input of the Company’s management. The Proposal’s attempt to categorically prohibit any adjustment whatsoever of the broad categories of expenses covered by the Proposal without regard to circumstance and without any reasonable exceptions would impose specific methods for implementing complex policies and therefore, probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment. 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, consistent with SLB 14J and the other precedent described 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. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(11) Because the Proposal Substantially Duplicates Another Proposal Previously Submitted to the Company.**

Under Rule 14a-8(i)(11), a company may exclude a shareholder proposal if it substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting. The Commission has stated that the purpose of Rule 14a-8(i)(11) is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted by proponents acting independently of each other. *See*

Securities Exchange Act Release No. 34-12598 (July 7, 1976). Two shareholder proposals need not be identical in order to provide a basis for exclusion under Rule 14a-8(i)(11). Proposals are substantially duplicative when the principal thrust or focus is substantially the same, even though the proposals differ in terms of the breadth and scope of the subject matter. In *Abbott Laboratories* (Feb. 4, 2004), for example, the Staff permitted exclusion under Rule 14a-8(i)(11) of a proposal requesting that the company replace its current system of compensation for its senior executives with a new system containing certain features enumerated in the proposal as substantially duplicative of another proposal that sought limitations on executive compensation. *See also, e.g., Pfizer Inc.* (Feb. 17, 2012); *Ford Motor Co.* (Feb. 15, 2011); *Wells Fargo & Co.* (Jan. 7, 2009); *General Motors Corp.* (Apr. 5, 2007); *Weyerhaeuser Co.* (Jan. 18, 2006).

The Company received a proposal (the “Prior Proposal”) from United Church Funds on November 13, 2018, delivered to the Company by priority U.S. mail at 9:04 A.M. (Central Time). A copy of the Prior Proposal is attached hereto as Exhibit B. The Company submitted a letter to the Staff on December 21, 2018 requesting that the Staff concur with the Company’s view that it may exclude the Prior Proposal from the 2019 proxy materials. In the event that the Staff does not concur with the exclusion of the Prior Proposal from the 2019 proxy materials, the Company believes that the Proposal substantially duplicates the Prior Proposal and, as such, the Proposal may be excluded pursuant to Rule 14a-8(i)(11).

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

RESOLVED, that shareholders of AbbVie Inc. (“AbbVie”) urge the Compensation 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 AbbVie’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) such concern is considered when setting financial targets for incentive compensation arrangements.

The principal thrust or focus of the Proposal and the Prior Proposal are the same – reevaluation of the Company’s senior executive incentive compensation practices in response to reputational risks faced by the Company as a result of its sale of pharmaceutical products. Specifically, the Proposal asks the Company to reevaluate its incentive compensation practices for senior executives by asking that the Company prohibit the adjustment of financial performance metrics to exclude legal or compliance

costs arising out of, among other things, the sale of pharmaceutical products. Likewise, the Prior Proposal asks the Company to reevaluate its senior executive incentive compensation practices by seeking an explanation of how risks related to public concern over drug pricing strategies, which inherently relates to the sale of pharmaceutical products, are integrated into the Company's senior executive incentive compensation practices.

In addition, the supporting statement of each proposal demonstrates the proposals' shared focus on reputational risks. The Proposal's supporting statement cites "potential reputational . . . risks AbbVie faces over its role in the nation's opioid epidemic"<sup>1</sup> and encourages "safeguarding company . . . reputation over the long-term" in furtherance of its request to change the way in which the Company determines senior executive incentive compensation. Similarly, the Prior Proposal's supporting statement asserts that "[s]ocietal anger over exorbitant [drug] prices" may "harm corporate reputation" and cites the "key risk" of "potential backlash against high drug prices" as a reason the Company should reevaluate its incentive compensation practices for senior executives.

Although the breadth and scope of the proposals may differ, with one emphasizing legal and compliance costs and the other emphasizing drug pricing strategies, the Proposal and the Prior Proposal share the same thrust or focus – reevaluation of the Company's senior executive incentive compensation practices in response to reputational risks faced by the Company as a result of its sale of pharmaceutical products. Therefore, the inclusion of both proposals in the Company's 2019 proxy materials would be duplicative and would frustrate the policy concerns underlying the adoption of Rule 14a-8(i)(11).

Accordingly, because the Proposal substantially duplicates the Prior Proposal, which was previously submitted to the Company, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) in the event that the Staff does not concur with the exclusion of the Prior Proposal from the Company's 2019 proxy materials.

## **VI. 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.

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<sup>1</sup> We note that AbbVie does not currently manufacture or distribute any opioid products.

Office of Chief Counsel  
December 21, 2018  
Page 8

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: Laura J. Schumacher  
Vice Chairman, External Affairs and Chief Legal Officer  
AbbVie Inc.

Christopher DiFusco  
Chief Investment Officer  
The City of Philadelphia Public Employee Retirement System

EXHIBIT A

(see attached)



**BOARD OF PENSIONS AND RETIREMENT**  
**PHILADELPHIA PUBLIC EMPLOYEES**  
**RETIREMENT SYSTEM**

**BOARD MEMBERS:**  
ROB DUBOW, Chairperson  
REBECCA RHYNHART  
MARCEL PRATT, Esq.  
MARSHA GREEN  
FRANCOIS DUTCHIE  
RONALD STAGLIANO, Vice Chair  
CAROL G. STUKES-BAYLOR  
VERONICA M. PANKEY  
BRIAN P. COUGHLIN

CHRISTOPHER DIFUSCO  
Chief Investment Officer

Sixteenth Floor  
Two Penn Center Plaza  
Philadelphia, PA 19102-1712  
(215) 496-7461  
FAX (215) 496-7460

November 13, 2018

By regular mail and email [Laura.Schumacher@abbvie.com](mailto:Laura.Schumacher@abbvie.com)

Ms. Laura J. Schumacher  
EVP, External Affairs, General Counsel and Corporate Secretary  
AbbVie Inc.  
1 North Waukegan Road  
North Chicago, IL 60064

Re: The City of Philadelphia Public Employees Retirement System

Dear Ms. Schumacher:

In my capacity as the Chief Investment Officer of The City of Philadelphia Public Employees Retirement System (the "Fund"), I write to give notice that pursuant to the 2018 proxy statement of AbbVie Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2019 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock for at least one year prior to the date of this letter is being sent under separate cover. The Fund also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting.

I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally.

Sincerely,

Christopher DiFusco  
Chief Investment Officer

RESOLVED that shareholders of AbbVie Inc. ("AbbVie") urge the Board of Directors to adopt a policy that no financial performance metric shall be adjusted to exclude Legal or Compliance Costs when evaluating performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award. "Legal or Compliance Costs" are expenses or charges associated with any investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution, including legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgment of claims of the kind described above. "Incentive Compensation" is compensation paid pursuant to short-term and long-term incentive compensation plans and programs. The policy should be implemented in a way that does not violate any existing contractual obligation of AbbVie or the terms of any compensation or benefit plan.

#### SUPPORTING STATEMENT

As AbbVie shareholders, we support compensation arrangements that incentivize senior executives to drive growth while safeguarding company operations and reputation over the long-term. AbbVie adjusts certain financial metrics when calculating progress on goals for the purposes of awarding incentive compensation. While some adjustments may be appropriate, we believe senior executives should not be insulated from legal risks, particularly on matters that are core to the company's business.

These considerations are especially critical at AbbVie given the potential reputational, legal and regulatory risks AbbVie faces over its role in the nation's opioid epidemic. Abbott Laboratories ("Abbott") spun off its proprietary drug business to AbbVie in 2013. Before the spin off Abbott entered into a marketing partnership with Purdue Pharma. As detailed in the Washington Post, Purdue carried out questionable sales tactics related to prescription opioid OxyContin). (<https://www.washingtonpost.com/graphics/2018/national/amp-stories/oxycontin-how-misleading-marketing-got-america-addicted/>)

Abbott was named as a defendant in numerous lawsuits involving OxyContin manufactured by Purdue Pharma. Abbott previously promoted OxyContin under a co-promotion agreement with Purdue Pharma, as discussed on page 12 of the 2003 annual report.

As of July 2018, the Wall Street Journal reported that over 600 lawsuits have been filed by municipalities, states and Native American tribes related to the opioid epidemic. The majority of these lawsuits have been consolidated to the Northern District Court of Ohio, where AbbVie is one of the named defendants.

In the midst of such scrutiny, we take issue with AbbVie's use of non-GAAP income before taxes, non-GAAP net revenues, non-GAAP operating margin, adjusted ROA and adjusted diluted EPS, each which excludes litigation reserves, according to exhibit 99.1 from the Company's January 2018 8-K.

We believe a superior approach is to include Legal and Compliance Costs, particularly those associated with opioid litigation.

We urge shareholders to vote for this proposal.

# J.P.Morgan

Neil Kleinberg  
Client Service  
CIB Client Service Americas

November 13, 2018

By regular mail and email      Laura.Schumacher@abbvie.com

Ms. Laura J. Schumacher  
EVP, External Affairs, General Counsel and Corporate Secretary  
AbbVie Inc.  
1 North Waukegan Road  
North Chicago, IL 60064

Re: The City of Philadelphia Public Employees Retirement System

Dear Ms. Schumacher:

As custodian of The City of Philadelphia Public Employees Retirement System (the "Fund"), we are writing to report that as of the close of business on 11/13/18 the Fund held shares of AbbVie Inc. ("Company") stock in our account at stock in our account at Depository Trust Company and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since 11/13/17.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 212-623-8787.

Sincerely,



Neil Kleinberg  
Vice President

## Berlage, Rachel H (WAS)

---

**From:** Berlage, Rachel H (WAS)  
**Sent:** Friday, December 21, 2018 5:33 PM  
**To:** Berlage, Rachel H (WAS)  
**Subject:** FW: [EXTERNAL] Shareholder Proposal  
**Attachments:** AbbVie 11.13.18.pdf

---

**From:** Kristyn Bair [<mailto:Kristyn.Bair@Phila.gov>]  
**Sent:** Tuesday, November 13, 2018 11:23 AM  
**To:** Schumacher, Laura J  
**Cc:** Maureen O'Brien ([obrien@marcoconsulting.com](mailto:obrien@marcoconsulting.com))  
**Subject:** [EXTERNAL] Shareholder Proposal

Good Morning Laura,

Please see attached shareholder proposal from the City of Philadelphia Board of Pensions and Retirement. Our custodial verification will be submitted separately.

Thank you,

Kristyn Bair  
Investment Officer II  
City of Philadelphia Board of Pensions and Retirement  
Two Penn Center Plaza, 17th Floor  
1500 John F. Kennedy Blvd.  
Philadelphia, PA 19102  
(p) 215-685-3477 | [Kristyn.Bair@phila.gov](mailto:Kristyn.Bair@phila.gov)

EXHIBIT B

(see attached)



*Jessie*

November 8, 2018

Laura J. Schumacher  
Corporate Secretary  
Dept. V364, AP34  
AbbVie Inc.  
1 North Waukegan Road  
North Chicago, IL 60064

Dear Ms. Schumacher:

United Church Funds (UCF) is a shareholder of AbbVie Inc. and considers the social impacts of our investments as part of our sustainability focus.

UCF strongly believes that our Company must consider access to affordable medicine for Americans and risks related to public concern on drug prices when determining how to structure incentive compensation plans for senior executives. We note that this issue was supported by a significant amount of AbbVie shareholders at our company's 2018 Annual Meeting.

United Church Funds is filing the enclosed shareholder proposal for inclusion in the proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. United Church Funds has been a shareholder continuously for more than one year holding at least \$2000 in market value and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. A representative of the filers will attend the Annual Meeting to move the resolution as required by SEC rules. Upon request, the verification of ownership may be sent to you separately by our custodian, a DTC participant. We expect the same resolution will also be submitted by other like-minded investors.

We look forward to having productive conversations with the company. United Church Funds will act as led filer.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie", with a long horizontal flourish extending to the right.

Kathryn McCloskey  
Director, Social Responsibility  
475 Riverside Drive, Suite 1020  
New York, NY 10115  
[Katie.mccloskey@ucfunds.org](mailto:Katie.mccloskey@ucfunds.org)

## Senior Executive Incentives - Integrate Drug Pricing Risk

2019 – AbbVie

**RESOLVED**, that shareholders of AbbVie Inc. (“AbbVie”) urge the Compensation 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 AbbVie’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) such concern is considered when setting financial targets for incentive compensation arrangements.

**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. Societal anger over exorbitant prices and pressure over limited patients’ access due to unaffordability may force price rollbacks and harm corporate reputation.

We applaud AbbVie for committing not to increase prices by more than 10% for 2018, yet we are unaware of a like commitment for 2019 or beyond. Moreover, we are concerned that the incentive compensation arrangements applicable to AbbVie’s senior executives may undermine any such commitment.

AbbVie uses net revenue, income before taxes and Humira sales as metrics for the annual bonus and earnings per share (EPS) as a metric for certain long-term incentive awards to senior executives. (2018 Proxy Statement, at 31) A 2017 Credit Suisse analyst report stated that “US drug price rises contributed 100% of industry EPS growth in 2016” and characterized that fact as “the most important issue for a Pharma investor today.” The report identified AbbVie as a company where price increases accounted for at least 100% of EPS growth in 2016. (*Global Pharma and Biotech Sector Review: Exploring Future US Pricing Pressure*, Apr. 18, 2017, at 1.) It has been noted that the company’s 2018 9.7% price increase for Humira could add \$1.2 billion to the U.S. healthcare system ([https://www.fiercepharma.com/pharma/drug-price-hikes-a-few-bad-actors-or-widespread-pharma?mkt\\_tok=eyJpLjoiWWpZeFltRTBOMIZoTkRjNSIsInQiOiJhckk2U0NqNXBxN0x2UCtvdVdldzZVZXRIUHlrS0xZOVRBNXdTV1F0eVNBSDMxb3NWUGJsRWtNcFROZmlPYmM5d2hXd3VuV0k1dGlcElBTYmk2](https://www.fiercepharma.com/pharma/drug-price-hikes-a-few-bad-actors-or-widespread-pharma?mkt_tok=eyJpLjoiWWpZeFltRTBOMIZoTkRjNSIsInQiOiJhckk2U0NqNXBxN0x2UCtvdVdldzZVZXRIUHlrS0xZOVRBNXdTV1F0eVNBSDMxb3NWUGJsRWtNcFROZmlPYmM5d2hXd3VuV0k1dGlcElBTYmk2)).

In our view, excessive dependence on drug price increases is a risky and unsustainable strategy, especially when price hikes drive large senior executive payouts. We believe that the company’s strategy to use “nursing support,” which the California Department of Insurance claims in its suit against the company to be largely a kickback scheme to boost Humira sales, may have been better managed by leadership if Humira sales were not an explicit part of the payment incentive plan (<https://www.law360.com/articles/1084008>).

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. We urge shareholders to vote for this Proposal.

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**DELIVERY OPTIONS (Customer Use Only)**

SIGNATURE REQUIRED Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

**Delivery Options**

No Saturday Delivery (delivered next business day)  
 Sunday/Holiday Delivery Required (additional fee, where available\*)  
 10:30 AM Delivery Required (additional fee, where available\*)  
 \*Refer to USPS.com® or local Post Office™ for availability.

TO: (PLEASE PRINT) PHONE ( )

Laura J Schumacher  
 Dept. V364, AP34  
 AbbVie Inc.  
 1 North Waukegan Road  
 North Chicago, IL  
 ZIP + 4® (U.S. ADDRESSES ONLY)  
 60064

- For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
- \$100.00 insurance included.

OR **POSTAGE ONLY**

1-Day

PO ZIP Code 16089 (MM/DD/YY)

Date Accepted 11/8 Scheduled Delivery Time 10:30 AM Delivery Fee \$ 75.4

Time Accepted 9:46 AM PM \$ \$ \$ \$

Weight lbs. 7 ozs. \$ \$ \$ \$

Acceptance Employee Initials \$ 75.40

**DELIVERY (POSTAL SERVICE USE ONLY)**

Delivery Attempt (MM/DD/YY) Time 11/9 2:15 PM Employee Signature SW

Delivery Attempt (MM/DD/YY) Time Employee Signature

LABEL 11-B, JANUARY 2014 PSN 7690-02-000-9996 1-ORIGIN POST OFFICE COPY

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