



DIVISION OF  
CORPORATION FINANCE

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

February 14, 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 February 8, 2019 concerning the shareholder proposal (the "Proposal") submitted to Johnson & Johnson (the "Company") by The City of Philadelphia Public Employees Retirement System and the Rhode Island Employees' Retirement Systems Pooled Trust (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponents' behalf dated January 30, 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 14, 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 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,

Lisa Krestynick  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

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

February 8, 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  
The City of Philadelphia Public Employees Retirement  
System and Rhode Island Employees' Retirement  
Systems Pooled Trust

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 The City of Philadelphia Public Employees Retirement System (“Philadelphia PERS”), and co-filed by Rhode Island Employees’ Retirement Systems Pooled Trust (“Rhode Island Trust”), 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”). Philadelphia PERS and Rhode Island Trust are sometimes referred to collectively as the “Proponents.”

This letter is in response to the letter to the Staff, dated January 30, 2019, submitted 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 Johnson & Johnson’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 Proponents’ Letter argues that the No-Action Request disregards the fact that compensation is determined individually for Johnson & Johnson’s senior executives, and then proceeds to recount numerous passages from Johnson & Johnson’s proxy statement describing aspects of compensation policies and processes with respect to named executive officers. The pertinent question, however, is not whether it is possible to apply the policy requested by the Proposal only to Johnson & Johnson’s senior executives. 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). The Proposal is clear that its focus is “compensation paid pursuant to short-term and long-term incentive compensation plans and programs.” 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.

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).

Furthermore, the Staff recently affirmed the view that proposals couched in terms of executive compensation that focus primarily on ordinary business matters are excludable under Rule 14a-8(i)(7). In *AT&T Inc.* (Jan. 29, 2019), the proposal asked the company’s board of directors to amend the compensation of the CEO and CFO to include the company’s long-term issuer debt rating in an advisory manner as an incentive metric weighting. In granting relief to exclude the proposal under Rule 14a-8(i)(7), the Staff noted that “the focus of the [p]roposal is on the ordinary business matter of management of existing debt.” In this instance, the Proposal similarly relates to Johnson & Johnson’s ordinary business operations, specifically aspects of compensation that are available to both Johnson & Johnson’s senior executives and the general workforce.

Finally, the Proponents’ Letter argues that the Proposal does not micromanage Johnson & Johnson because the requested change would require only “a single arithmetic operation.” As described in the No-Action Request, judgments concerning whether and how, if at all, to adjust financial performance metrics entails a complex process involving the business judgment of the Compensation & Benefits Committee of Johnson & Johnson’s Board of Directors as informed by the views and experience of its advisors. The Proposal seeks to impose a specific methodology for addressing this complex process and, therefore, the Proposal attempts to micromanage Johnson & Johnson. Accordingly, the Proposal may be excluded from Johnson & Johnson’s 2019 proxy materials pursuant to Rule 14a-8(i)(7).

## **II. The Proposal Duplicates Another Proposal Previously Submitted to Johnson & Johnson.**

The Proponents’ Letter further argues that the Proposal is not excludable under Rule 14a-8(i)(11) because the Proposal does not substantially duplicate the earlier proposal from Oxfam America, Inc. (the “Prior Proposal”). Specifically, the Proponents’ Letter observes that the Proposal asks Johnson & Johnson to make a certain change, while the Prior Proposal asks Johnson & Johnson to make disclosures. The Proponents’ narrow framing of the two proposals is inconsistent with Rule 14a-8(i)(11). As described in the No-Action Request, proposals are

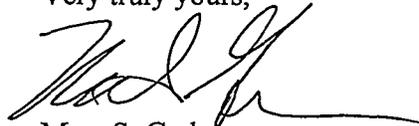
substantially duplicative when the principal thrust or focus is substantially the same, even though the proposals differ in terms of the breadth and scope of the subject matter. In this case, although the breadth and scope of the Proposal and the Prior Proposal differ, both proposals seek a shareholder vote calling for a reevaluation of Johnson & Johnson's senior executive incentive compensation practices in response to reputational risks faced by Johnson & Johnson as a result of its sale of pharmaceutical products. Therefore, the inclusion of both proposals in Johnson & Johnson's 2019 proxy materials would be duplicative and would frustrate the policy concerns underlying the adoption of Rule 14a-8(i)(11). Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(11).

### **III. 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

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

Seth M. Magaziner  
General Treasurer  
Rhode Island Employees' Retirement Systems Pooled Trust



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January 30, 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 Johnson & Johnson to omit proposal submitted by The City of Philadelphia  
Public Employees Retirement System and Rhode Island Employees' Retirement Systems  
Pooled Trust

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, The City of Philadelphia Public Employees Retirement System and Rhode Island Employees' Retirement Systems Pooled Trust (the "Proponents") submitted a shareholder proposal (the "Proposal") to Johnson & Johnson ("J&J" or the "Company"). The Proposal asks J&J's 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.

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; and Rule 14a-8(i)(11), because the Proposal substantially duplicates an earlier-received proposal. As discussed more fully below, J&J has not met its burden of proving its entitlement to exclude the Proposal on either of those bases, and the Proponents respectfully request that J&J's request for relief be denied.

### **The Proposal**

The Proposal states:

RESOLVED that shareholders of Johnson & Johnson ("J&J") 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 judgement of claims of the kind described above.

### **Ordinary Business**

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.” For nearly three decades, the Staff has viewed proposals specifically addressing senior executive compensation as implicating a significant policy issue and therefore not excludable on ordinary business grounds. In fact, the Commission denied a similar request for no action relief from Johnson & Johnson on the same grounds on a nearly identical proposal submitted by the same proponent last year.

In October 2018, the Division clarified its views regarding certain shareholder proposals on senior executive compensation in Staff Legal Bulletin 14J (“SLB 14J”).<sup>1</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). SLB 14J also clarified that the micro-management doctrine supports omission of 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 incentive compensation targeted by the Proposal is broadly available to a significant portion of J&J’s employees.”<sup>2</sup> Both J&J-specific and more general considerations undermine J&J’s interpretation. J&J also claims that the Proposal would micromanage the Company, but that contention lacks merit because the Proposal does not ask J&J to implement a “complex policy.” Accordingly, J&J has not met its burden of proving that the Proposal is excludable on ordinary business grounds.

### **Neither the Form of Compensation, Nor the Use of the Same Company-Wide Financial Performance Metric, Is the “Primary Aspect” of the Senior Executive Incentive Compensation Arrangements That Are the Proposal’s Subject**

J&J’s argument assumes that a “primary aspect of compensation” addressed by the Proposal, within the meaning of SLB 14J, is either the form senior executive incentive compensation takes--the annual bonus, for example—or the use of the same company-wide financial performance metric that could be affected by the Proposal, or both. This claim is unpersuasive for two reasons:

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<sup>1</sup> Staff Legal Bulletin 14J (Oct. 23, 2018).

<sup>2</sup> No-Action Request, at 5.

1. The Compensation and Benefits Committee (the “Committee”) engages in an individualized process when setting pay for named executive officers (“NEOs”) and J&J fails to explain why the form of the incentive pay, or the fact that certain company-wide performance metrics are used, eclipses the many differences between NEO incentive pay and incentive pay for lower-level employees.
2. 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.

*Senior Executive Incentive Pay is Determined Through an Individualized Process Different From That Used for Lower-Level Employees, and the Policy Requested in the Proposal Can be Applied Only to Senior Executive Incentive Compensation Calculations, So the “Primary Aspect” of Compensation Targeted by the Proposal Is Not Applicable to J&J’s General Workforce*

The Proponents submitted the Proposal to J&J out of concern that J&J’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>3</sup> accountable for legal and compliance failures. Because metrics involving expenses, such as earnings and earnings per share (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.

J&J cites the fact that “[o]ver 96,000 employees<sup>4</sup> are paid an annual performance bonus based, in part, on overall corporate performance” as evidence that a primary aspect of compensation addressed by the Proposal is available to the general workforce.<sup>5</sup> J&J does not, however, make a case for why the form of compensation, and/or the use of certain corporate financial performance metrics, 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 to justify exclusion of the Proposal.

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<sup>3</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.

<sup>4</sup> 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.

<sup>5</sup> 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, even when the same form of pay or corporate financial performance metrics are used. The process by which the board and Committee set targets, evaluate performance and determine NEOs' incentive pay award amounts is highly individualized. The amounts of the annual bonuses awarded to NEOs depend on company-wide and individual performance, and company-wide strategic, as well as financial, goals are used. For 2017, targets were established for each financial and strategic goal used for the NEOs based on "long-term strategic objectives, [J&J's] product portfolio and pipeline, and competitive benchmarking."<sup>6</sup>

Each NEO has different individual objectives tailored to his 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."<sup>7</sup>

The company-wide and individual performance assessments are combined to produce a multiplier for each NEO; the multiplier is then 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 and used financial results for divisions or units, as well as individual performance assessments, more for lower-level employees.<sup>8</sup> NEOs' multipliers ranged from 95 to 150% for 2017 and target bonuses ranged from \$901,300 to \$2,800,000.<sup>9</sup> The target amount is different for each NEO because it is based on the NEO's salary.<sup>10</sup>

The process for determining long-term incentive ("LTI") compensation awards is similar to the process used 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.<sup>11</sup> That NEOs had different multipliers suggests that their individual performance assessments varied and/or that the factors listed above were weighted differently among NEOs.

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<sup>6</sup> 2018 Proxy Statement, at 44.

<sup>7</sup> 2018 Proxy Statement, at 48.

<sup>8</sup> E.g., Bruce R. Ellic, 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).

<sup>9</sup> 2018 Proxy Statement, at 50, 73.

<sup>10</sup> 2018 Proxy Statement, at 57.

<sup>11</sup> 2018 Proxy Statement, at 50, 73.

Even if the same metrics are used for compensation for NEOs and lower-level employees, it is evident from the foregoing discussion that J&J's board and the Committee have significant involvement in NEO 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. Gorsky's recommendations regarding all other NEOs' pay.<sup>12</sup> 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.<sup>13</sup>

The plans governing J&J's senior executive incentive compensation give the Committee broad power to set performance criteria. The 2012 Long-Term Incentive Plan states that the Committee "shall impose such terms, conditions, and/or restrictions on any Restricted Shares, Performance Shares, Restricted Share Units or Performance Share Units granted pursuant to the Plan as it may deem advisable including: . . . restrictions based upon the achievement of specific performance goals (either as described in Section 8 hereof or otherwise) . . . To the extent the Performance Shares or Performance Share Units are intended to qualify for the Performance-Based Exception under Section 162(m) of the Code, the applicable restrictions shall be based on the achievement of Qualifying Performance Criteria over a Performance Period, as described in Section 8 hereof."<sup>14</sup> "Qualifying Performance Criteria" include earnings and earnings per share,<sup>15</sup> but there are no limitations on the Committee's authority to decide how those criteria are calculated. Indeed, the Committee "may" adjust any evaluation of performance under a Qualifying Performance Criteria to exclude "litigations, claims, judgments or settlements," but is not required to do so.<sup>16</sup>

The Executive Incentive Plan is even less prescriptive. It provides, "The amounts of Awards to Eligible Employees shall be determined by the Committee acting in its discretion subject to the maximum amounts set forth above [individual award limits expressed as a percentage of Consolidated Earnings]. Such determinations, except in the case of the Award for the Chairman, shall be made after considering the recommendations of the Chairman and such other matters as the Committee shall deem relevant."<sup>17</sup>

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, or the use of company-wide financial metrics that could be affected by the Proposal (or both), 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-setting process involves individualized evaluations of performance that take into account company financial performance, company strategic performance, and individual objectives. The board or Committee makes NEO compensation

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<sup>12</sup> 2018 Proxy Statement, at 64.

<sup>13</sup> 2018 Proxy Statement, at 61.

<sup>14</sup> 2012 Long-Term Incentive Plan, section 7(c)(vi), Appendix A to 2017 Proxy Statement.

<sup>15</sup> 2012 Long-Term Incentive Plan, section 8(b).

<sup>16</sup> 2012 Long-Term Incentive Plan, section 8(d).

<sup>17</sup> Johnson & Johnson Executive Incentive Plan, section VI(a), Exhibit 10(f) to Form 10-K for year ended Dec. 31, 2000.

decisions, but not decisions about other employees' incentive pay. Competitive market data are used to help determine NEO incentive pay amounts.

J&J does not explain why these differences are overridden by the form compensation takes or the common use of earnings-related metrics. As well, given that the Policy requested in the Proposal could be applied to senior executives but not lower-level employees, J&J has not shown that the Proposal's primary aspect must be considered applicable to employees below the senior executive level. J&J has thus failed to meet its burden of proving that the Proposal's subject targets a "primary aspect" of senior executive pay that is also available or applicable to J&J's general workforce.

*Adopting J&J's 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 submitted by shareholders address or implicate forms of compensation that are not exclusive to senior executives: Companies tend to award particular forms of incentive pay to both senior executives and other employees, and a single plan often authorizes a variety of arrangements that can be tailored to different employee groups.

The U.S. Proxy Voting Guidelines of proxy advisor Institutional Shareholder Services ("ISS") describe 21 types of shareholder proposals on executive pay.<sup>18</sup> 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 salaried employees in their annual incentive or bonus plans. Over half of respondents included non-exempt salaried and non-exempt unionized employees.<sup>19</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

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<sup>18</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>19</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>).

receive stock options at 47% of companies whose LTI compensation programs awarded stock options.<sup>20</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>21</sup>

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 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.<sup>22</sup>

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 became 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.<sup>23</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>24</sup>

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<sup>20</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>21</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>).

<sup>22</sup> See Randall S. Thomas et al., "Dodd-Frank's Say o 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).

<sup>23</sup> Vicente Cunat et al., "Say Pays! Shareholder Voice and Firm Performance," *Review of Finance*, Vol. 20, Issue 5, 1799-1834 (2016).

<sup>24</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)).

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

*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.<sup>25</sup> The target pay mix for Mr. Gorsky for 2017--74% LTI compensation, 17% annual bonus and 9% salary--emphasized variable pay even more.<sup>26</sup>

What's more, equity-based compensation can significantly dilute shareholders' ownership stakes. The Division recognized that such dilution qualifies as a significant policy issue in Staff Legal Bulletin 14A,<sup>27</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 to dilution to shareholders is not excludable on ordinary business grounds.

Even if the "primary aspect" on which J&J relies is the use of earnings-related financial metrics, the Proponents believe that senior executives' eligibility to receive that compensation implicates significant compensation matters. Selecting compensation metrics, and deciding whether and how to adjust those metrics, sends a signal to employees about what kinds of behavior are valued. Adjusting earnings-related metrics to remove the effect of legal or compliance costs involving drug manufacturing or sales could be viewed as communicating that

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<sup>25</sup> 2018 Proxy Statement, at 68.

<sup>26</sup> 2018 Proxy Statement, at 60.

<sup>27</sup> Staff Legal Bulletin 14A (July 12, 2002),

misconduct involving those activities is not viewed as a serious problem. In the Proponents' view, the incentive effects of senior executive compensation arrangements are a "significant compensation matter." Accordingly, J&J has not satisfied its burden of proving that its senior executives' eligibility to receive the compensation targeted by the Proposal does not implicate significant compensation matters.

The Proposal Does Not Involve Intricate Detail or Ask J&J to Use a Specific Method for Implementing a Complex Policy, So It 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 because it would "impos[e] specific methods for implementing complex policies."<sup>28</sup>

But the Proposal does not ask J&J 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 try to change 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 costs and settlements in the calculation of earnings and EPS metrics for senior executive incentive pay purposes. That change would require only that the amount of legal costs and settlements be added back to 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>29</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." 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>30</sup> Unlike the ConocoPhillips proposal, the Proposal asks J&J simply to include an expense in income that it had previously excluded, requiring no research or additional financial calculations.

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<sup>28</sup> No-Action Request, at 5.

<sup>29</sup> ConocoPhillips (Feb. 15, 2015).

<sup>30</sup> See <https://www.forbes.com/sites/arthurberman/2017/04/09/low-break-even-prices-are-for-everyone-not-just-shale/#742763117803>.

\* \* \*

In sum, J&J's claim that the Proposal is excludable on ordinary business grounds because it involves forms of senior executive incentive pay also available to lower-level employees should be rejected. The form in which pay is delivered, or the use of the same financial metric, should not be considered a "primary aspect" of J&J's senior executive incentive pay, given the many differences between the process for setting senior executive bonuses and PSU and the process used for other employees. As well, J&J has made no argument that its senior executives' eligibility to receive incentive compensation does not implicate significant compensation matters. 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. The Proposal does not seek intricate detail or to impose a method to implement a complex policy. The Proponents respectfully ask that J&J's request to exclude the proposal in reliance on Rule 14a-8(i)(7) be denied.

### **Substantial Duplication**

Rule 14a-8(i)(11) allows a company to omit a proposal that "substantially duplicates" a previously-submitted proposal that will be included in the company's proxy materials for the same meeting. J&J urges that the Proposal substantially duplicates an earlier-received proposal (the "Oxfam Proposal") asking 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." Specifically, J&J claims that the Proposal and the Oxfam Proposal share the "principal thrust or focus" of "reevaluat[ing]" Johnson & Johnson's senior executive compensation practices "in response to reputational risks faced by Johnson & Johnson as a result of its sale of pharmaceutical products."<sup>31</sup>

That framing ignores important differences between the Proposal and the Oxfam Proposal. 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 J&J would be involved in implementing the Proposal. The Oxfam 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 J&J's assertion, by asking for disclosure the Oxfam Proposal does not ask J&J to "reevaluate" its senior executive incentive pay arrangements, as proposals seeking a "review" and analysis of senior executive pay do.<sup>32</sup>

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<sup>31</sup> No-Action Request, at 7-8.

<sup>32</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

Second, J&J’s claim that reputational risks are the motivating force behind both proposals is incorrect. Although minimizing reputational risk is cited as 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. Indeed, “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. The Oxfam 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>33</sup> the Staff rejected substantial duplication arguments much like J&J’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 goals 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 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.”

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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>33</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).

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

\* \* \*

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) or Rule 14a-8(i)(11). 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 312-612-8446 or mobrien@segalmarco.com.

Sincerely,



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

cc: Marc S. Gerber, Esq.  
Marc.Gerber@skadden.com

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**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 The City of  
Philadelphia Public Employees Retirement System and  
Rhode Island Employees' Retirement Systems  
Pooled Trust

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, to request 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, 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 ("Philadelphia PERS"), and co-filed by Rhode Island Employees' Retirement Systems Pooled Trust ("Rhode Island Trust"), from the proxy materials to be distributed by Johnson & Johnson in connection with its 2019 annual meeting of shareholders (the "2019 proxy materials"). Philadelphia PERS and Rhode Island Trust 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](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to Philadelphia PERS, on behalf of the Proponents, as notice of Johnson & Johnson’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 Johnson & Johnson.

## **I. The Proposal**

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

RESOLVED that shareholders of Johnson & Johnson (“J&J”) 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 judgement 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 the Company of the terms of any compensation or benefit plan.

## **II. Bases for Exclusion**

We hereby respectfully request that the Staff concur with Johnson & Johnson’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 Johnson & Johnson's ordinary business operations; and
- Rule 14a-8(i)(11) because the Proposal substantially duplicates a shareholder proposal previously submitted to Johnson & Johnson that Johnson & Johnson 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 Johnson & Johnson's 2019 proxy materials.

### **III. Background**

Johnson & Johnson received the Proposal, accompanied by a cover letter from Philadelphia PERS, on November 13, 2018. Johnson & Johnson received a letter from J.P.Morgan, dated November 13, 2018, verifying the stock ownership of Philadelphia PERS as of such date. Also on November 13, 2018, Johnson & Johnson received a copy of the Proposal, accompanied by a cover letter from Rhode Island Trust, indicating it was co-filing the Proposal with Philadelphia PERS, and a letter from BNY Mellon Asset Servicing, stating that Rhode Island Trust beneficially owned the requisite number of shares of Johnson & Johnson common stock for at least one year as of October 18, 2018. On November 14, 2018, Johnson & Johnson sent a letter to Rhode Island Trust via email requesting a written statement verifying that Rhode Island Trust beneficially owned the requisite number of shares of Johnson & Johnson common stock for at least one year preceding and including November 13, 2018, the date the Proposal was submitted to Johnson & Johnson by Rhode Island Trust (the "Deficiency Letter"). On November 16, 2018, Johnson & Johnson received a second letter from BNY Mellon Asset Servicing verifying Rhode Island Trust's stock ownership in Johnson & Johnson. Copies of the Proposal, cover letters, broker letters, Deficiency 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 Johnson & Johnson'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.*

Johnson & Johnson 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 Johnson & Johnson’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, which would be affected by any adjustment (or prohibition on adjustment) for compliance and litigation expenses. 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), which would be affected by any adjustment (or prohibition on adjustment) for compliance and litigation expenses. Therefore, while the Proposal’s request for Johnson & Johnson 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 Johnson & Johnson’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 Johnson & Johnson’s ordinary business operations.

B. *The Proposal micromanages Johnson & Johnson’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 Johnson & Johnson by imposing specific methods for implementing complex policies. It does so by requesting a policy that would prohibit Johnson & Johnson 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 judgement 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 & Benefits Committee of Johnson & Johnson’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 Johnson & Johnson’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 Johnson & Johnson 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, Johnson & Johnson believes that the Proposal may be excluded from its 2019 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Johnson & Johnson’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 Johnson & Johnson.**

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).

Johnson & Johnson received a proposal (the “Prior Proposal”) from Oxfam America, Inc. on November 9, 2018.<sup>1</sup> A copy of the Prior Proposal is attached hereto as Exhibit B. Johnson & Johnson submitted a letter to the Staff on December 13, 2018 requesting that the Staff concur with Johnson & Johnson’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, Johnson & Johnson 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 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.

The principal thrust or focus of the Proposal and the Prior Proposal are the same – reevaluation of Johnson & Johnson’s senior executive incentive compensation practices in response to reputational risks faced by Johnson & Johnson

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<sup>1</sup> Boston Common ESG Impact U.S. Equity Fund has co-filed the Prior Proposal.

as a result of its sale of pharmaceutical products. Specifically, the Proposal asks Johnson & Johnson to reevaluate its incentive compensation practices for senior executives by asking that Johnson & Johnson 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 Johnson & Johnson 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 Johnson & Johnson'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 [Johnson & Johnson] faces over its role in the nation's opioid epidemic" and encourages "safeguarding company . . . reputation over the long-term" in furtherance of its request to change the way in which Johnson & Johnson determines senior executive incentive compensation. Similarly, the Prior Proposal's supporting statement asserts that "[p]ublic outrage over high [drug] prices" may "harm corporate reputation" and cites the "key risk" of "potential backlash against high drug prices" as a reason Johnson & Johnson 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 Johnson & Johnson's senior executive incentive compensation practices in response to reputational risks faced by Johnson & Johnson as a result of its sale of pharmaceutical products. Therefore, the inclusion of both proposals in Johnson & Johnson'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 Johnson & Johnson, 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 Johnson & Johnson's 2019 proxy materials.

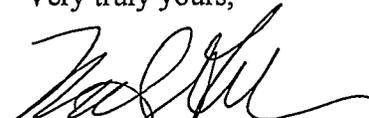
## **VI. Conclusion**

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

Office of Chief Counsel  
December 13, 2018  
Page 9

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

Enclosures

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

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

Seth M. Magaziner  
General Treasurer  
Rhode Island Employees' Retirement Systems Pooled Trust

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 GREENE  
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 [tspellma@its.jnj.com](mailto:tspellma@its.jnj.com)

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

Re: The City of Philadelphia Public Employees Retirement System

Dear Mr. Spellman:

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 Johnson & Johnson (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 Johnson & Johnson (“J&J”) 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 judgement 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 the Company of the terms of any compensation or benefit plan.

#### SUPPORTING STATEMENT

As J&J shareholders, we support compensation arrangements that incentivize senior executives to drive growth while safeguarding company operations and reputation over the long-term. J&J 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 J&J given the potential reputational, legal and regulatory risks it faces over its role in the nation’s opioid epidemic. According to the New York Times, in January 2018, New York City filed a lawsuit against J&J, Purdue Pharma, Teva, Endo Pharmaceuticals, Allergan and others for conducting marketing campaigns that misled doctors and patients about the danger of opioid additions and overdose. (<https://www.nytimes.com/2018/01/23/nyregion/nyc-deblasio-opioid-lawsuit.html>)

In its 2018 annual report, J&J disclosed that it is named in approximately 190 federal court cases related to opioids filed by counties, cities, hospitals, Indian tribes, and others. Also, the Company reported receiving subpoenas from a multi-state Attorneys General investigation into opioid sales, marketing and educational strategies.

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 J&J is one of the named defendants. (<https://www.wsj.com/articles/new-front-on-opioid-litigation-suits-over-rising-premiums-1525279402>)

In the midst of such scrutiny, we take issue with the Company’s use of adjusted EPS and adjusted operational EPS, each of which excludes certain litigation charges, according to exhibit 99.20 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 [tspellma@its.jnj.com](mailto:tspellma@its.jnj.com)

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

Re: The City of Philadelphia Public Employees Retirement System

Dear Mr. Spellman:

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 Johnson & Johnson ("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



State of Rhode Island and Providence Plantations  
Office of the General Treasurer  
State House – Room 102  
Providence, Rhode Island 02903

**Seth Magaziner**  
General Treasurer

November 13, 2018

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

Via FedEx and E-mail: [tspellma@its.jnj.com](mailto:tspellma@its.jnj.com)

Dear Mr. Spellman,

As long-term investors in Johnson & Johnson (the Company), I am writing on behalf of the members of Rhode Island Employees' Retirement Systems Pooled Trust to express our support as a co-filer of the attached proxy proposal, which was originally filed by the City of Philadelphia.

While we support appropriate compensation arrangements that incentivize senior executives to drive growth while safeguarding company operations and reputation over the long-term, we do not believe that it is appropriate for the Company to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive compensation award.

These considerations are especially critical at Johnson & Johnson given the potential reputational, legal and regulatory risks it faces over its role in the nation's opioid epidemic.

We do not believe senior executives should be insulated from legal risks. The Company is well positioned to incentivize senior executives to mitigate these risks by management of this crisis. Accordingly, we urge the Board of directors to adopt a policy as detailed in the shareholder proposal.

Attached, please find a letter from BNY Mellon, which confirms Rhode Island Employees' Retirement Systems Pooled Trust's ownership of Johnson & Johnson shares. The Trust intends to continue to hold the requisite number of shares through the date of the Company's 2019 annual meeting of stockholders.

We look forward to continuing the conversation with the Company on this very important issue. Please contact my colleague, Randy Rice, by phone at 401-487-3258 or by email at [Randall.rice@treasury.ri.gov](mailto:Randall.rice@treasury.ri.gov), if you would like to discuss this matter further.

Sincerely,

  
Seth M. Magaziner

RESOLVED that shareholders of Johnson & Johnson (“J&J”) 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 judgement 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 the Company of the terms of any compensation or benefit plan.

#### SUPPORTING STATEMENT

As J&J shareholders, we support compensation arrangements that incentivize senior executives to drive growth while safeguarding company operations and reputation over the long-term. J&J 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 J&J given the potential reputational, legal and regulatory risks it faces over its role in the nation's opioid epidemic. According to the New York Times, in January 2018, New York City filed a lawsuit against J&J, Purdue Pharma, Teva, Endo Pharmaceuticals, Allergan and others for conducting marketing campaigns that misled doctors and patients about the danger of opioid additions and overdose. (<https://www.nytimes.com/2018/01/23/nyregion/nyc-de-blasio-opioid-lawsuit.html>)

In its 2018 annual report, J&J disclosed that it is named in approximately 190 federal court cases related to opioids filed by counties, cities, hospitals, Indian tribes, and others. Also, the Company reported receiving subpoenas from a multi-state Attorneys General investigation into opioid sales, marketing and educational strategies.

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 J&J is one of the named defendants. (<https://www.wsj.com/articles/new-front-on-opioid-litigation-suits-over-rising-premiums-1525279402>)

In the midst of such scrutiny, we take issue with the Company’s use of adjusted EPS and adjusted operational EPS, each of which excludes certain litigation charges, according to exhibit 99.20 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.



BNY MELLON  
ASSET SERVICING

October 18, 2018

Re: Rhode Island Employees' Retirement Systems Pooled Trust  
Accounts \*\*\*

This letter is to confirm that The Bank of New York Mellon currently holds as custodian for the above mentioned client 199,588 shares of common stock in Johnson & Johnson, ticker – JNJ. The above mentioned client has also held over \$2,000 worth of the above mentioned stock for over a twelve month period as of October 18, 2018.

These shares are currently being held in the Bank of New York Mellon's omnibus account at Depository Trust Company account number 901. This letter serves as confirmation that the shares are held by The Bank of New York Mellon on behalf of the above mentioned client.

Sincerely,

James F. Mahoney, Jr.

Vice President



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 E-MAIL**

Randall Rice  
randall.rice@treasury.ri.gov

Dear Mr. Rice:

This letter acknowledges receipt by Johnson & Johnson (the “Company”) on November 13, 2018 of the shareholder proposal submitted by Rhode Island Employees’ Retirement Systems Pooled Trust (the “Proponent”), as co-filer with The City of Philadelphia Public Employees Retirement System, 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 13, 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.

You have provided a letter from The Bank of New York Mellon indicating ownership of Company shares for a twelve-month period as of October 18, 2018. There is a gap in the period of ownership covered by the letter in that it does not establish a continuous one-year ownership period preceding and including November 13, 2018.

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 13, 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 13, 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 13, 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.

Enclosure



November 16, 2018

Re: Rhode Island Employees' Retirement Systems Pooled Trust  
Accounts \*\*\*

This letter is to confirm that The Bank of New York Mellon currently holds as custodian for the above mentioned client 199,588 shares of common stock in Johnson & Johnson, ticker – JNJ. The above mentioned client has also held over \$2,000 worth of the above mentioned stock for over a twelve month period as November 15, 2018.

These shares are currently being held in the Bank of New York Mellon's omnibus account at Depository Trust Company account number 901. This letter serves as confirmation that the shares are held by The Bank of New York Mellon on behalf of the above mentioned client.

Sincerely,

A handwritten signature in blue ink, appearing to read "James F. Mahoney, Jr.", written in a cursive style.

James F. Mahoney, Jr.  
Vice President

EXHIBIT B

(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](mailto: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.

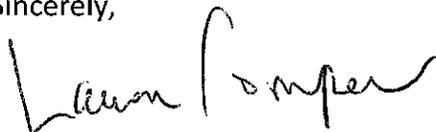
Therefore, Boston Common Asset Management, LLC (Boston Common) hereby submits the enclosed shareholder proposal (Proposal) with Johnson & Johnson for inclusion in the 2019 proxy statement and in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (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](mailto: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 fluid and cursive, with the first name "Lauren" written in a larger, more prominent script than the last name "Compere".

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.