



PHILIP MORRIS INTERNATIONAL INC.

November 26, 2020

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

Re: Omission of Shareholder Proposal Submitted by Mr. Alan Ball
Submitted for the Philip Morris International Inc. 2021 Annual
Shareholder Meeting

Ladies and Gentlemen:

Philip Morris International Inc. (the "Company") received a shareholder proposal stating in its entirety: "I propose that the balance sheet be strengthened significantly" (the "Proposal"). The Proposal was submitted by Mr. Alan Ball (the "Proponent"). A copy of the Proposal and related correspondence are attached as Exhibit A.

The Proponent submitted related proposals over the past two years:

- In 2018, the Proponent submitted a proposal for the inclusion in proxy materials for the 2019 Annual Shareholder Meeting requesting that "the annual dividend be reduced to \$1 until such time as assets over liabilities equals at least 110 percent, or stockholders equity of at least \$5 billion" (the "2019 Proposal") and stated in his letter to the Company: "**if my proposal does not pass I'll probably resubmit it continuously with minor alterations until it does – maybe.**" On January 31, 2019, the Staff responded that it would not recommend enforcement action to the Commission if the Company omitted the 2019 Proposal from its proxy materials in reliance on Rule 14a-8(i)(13).

- In 2019, the Proponent submitted a proposal for the inclusion in the proxy materials for the 2020 Annual Shareholder Meeting requesting that “the dividend be terminated for two years” (the "2020 Proposal"). On December 13, 2019, the Staff responded that it would not recommend enforcement action to the Commission if the Company omitted the 2020 Proposal from its proxy materials in reliance on Rule 14a-8(i)(13).

By copy of this letter, the Company hereby notifies the Proponent of its intention to omit the Proposal from any proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders scheduled for May 5, 2021 (the "Proxy Materials"). This letter constitutes the Company's statement of the reasons that it deems the omission to be proper.

On behalf of the Company and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we respectfully request that the Staff of Division of Corporation Finance (the "Staff") concur with our view that, for the reasons stated below, the Proposal may be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7) and 14a-8(i)(3) under the Exchange Act and confirm that the Staff will not recommend to the Commission that any enforcement action be taken against the Company if the Proposal is so excluded.

Pursuant to Rule 14a-8(j), the Company is filing this letter no later than 80 calendar days before it intends to file the definitive Proxy Materials for the Annual Meeting with the Commission. In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), this letter is being submitted via e-mail to shareholderproposals@sec.gov. In addition, pursuant to Rule 14a-8(j), a copy of this letter is being sent simultaneously to the Proponent as notice of the Company's intention to exclude the Proposal from the Proxy Materials. Rule 14a-8(k) and SLB 14D require a proponent to send the Company a copy of any correspondence that the proponent elects to submit to the Commission or to the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit

additional correspondence to the Commission or to the Staff with respect to the Proposal, a copy of that correspondence should be furnished to the undersigned concurrently.

I. THE PROPOSAL

The Proposal in its entirety reads as follows:

“I propose that the balance sheet be strengthened significantly.”

II. GROUNDS FOR OMISSION

The Company believes that it may omit the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) as it relates to the Company’s business operations.

Rule 14a-8(i)(7) allows a company to exclude a shareholder proposal that deals with a matter relating to the company's ordinary business operations. The Commission has provided the following guidance with regard to the application and purpose of Rule 14a-8(i)(7):

The general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholder meeting.

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run the 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.

Release No. 34-40018 (May 21, 1998); see also Staff Legal Bulletins 14I, 14J and 14K.

The Proposal seeks to subject ordinary business decisions, namely, the decisions impacting the Company's balance sheet, to direct shareholder oversight. The Staff has recognized that decisions regarding financial matters such as cash management, debt levels, dividends and share repurchases, sources and uses of cash, and financing plans are inherently functions that are handled by a company's management under the supervision of its board of directors.

Decisions regarding the uses of cash and other decisions that impact the balance sheet are determined on a daily basis by the Company's management and are subject to the oversight of the Finance Committee of the Company's Board of Directors, as stated in the Finance Committee's charter:

The purpose of this Committee shall be to monitor the financial performance and condition of the Company, oversee the sources and uses of cash flow, overhead costs, operations costs, working capital, capital expenditures, capital structure, cash management, pension plan status, including funded status and performance, investor relations and stock market performance, and advise the Board with respect to dividend policy, share repurchase programs and other financial matters such as long-term financing plans, short-term financing plans, and credit facilities.

In making financial decisions impacting its balance sheet, the Company's management can call on a constant flow of relevant information that is crucial to informed decision-making but unavailable to shareholders. These decisions are fact-specific and take into account complex competitive and

financial implications and constantly-evolving operating requirements, including, for example, current and expected levels of financial performance and liquidity, current and expected interest rates and market conditions, the availability of sources of capital and potential competing uses of capital (such as payment of dividends and reinvestment in the Company's business, research and development, and other strategic initiatives), as well as business and economic environment. Management, with its access to legal, accounting and financial advisors, possesses greater expertise and more current information concerning the financial affairs of the Company than the shareholders do as a group, and is in a position to make financial decisions impacting the Company's balance sheet in real time rather than once a year at the annual meeting. Shareholders cannot be expected to understand all of the complicated analyses that go into making financial decisions, nor can they be expected to make an informed judgment about such activities. Therefore, financial decisions impacting the balance sheet are exactly the types of day-to-day operational considerations that Rule 14a-8(i)(7) recognizes as a proper function for management and should not be left to be micro-managed by shareholders.

The Staff has consistently viewed shareholder proposals relating to financial matters to be within companies' ordinary business operations and, therefore, unsuitable topics for shareholder proposals. See *AT&T* (available January 29, 2019) (permitting, on ordinary business grounds, the exclusion of a proposal relating to the reduction of debt levels); *Twitter, Inc.* (available February 8, 2017) (permitting, on ordinary business grounds, the exclusion of a proposal relating to issuances of stock); *Pfizer Inc.* (available February 24, 2015) (permitting, on ordinary business grounds, the exclusion of a shareholder proposal relating to tax expenses and sources of financing); *Exxon Mobil Corp.* (available March 3, 2011) (permitting, on ordinary business grounds, an exclusion of a proposal relating to sources of financing); *Vishay Intertechnology, Inc.* (available March 28, 2008) (permitting, on ordinary business grounds, the exclusion of a proposal requesting a sale of shares to repay debt); *McDonald's Corporation* (available January 28, 2008) (permitting, on ordinary basis grounds, the exclusion of a proposal requesting a reduction in levels of cash and other

sources of financing as well as elimination of debt facilities and derivatives); *Stewart Enterprises, Inc.* (available January 2, 2001) (permitting, on ordinary business grounds, the exclusion of a proposal requesting a reduction in debt); *M&F Worldwide Corp.* (available March 29, 2000) (permitting, on ordinary business grounds, the exclusion of a proposal to implement actions relating to share repurchases, cash dividends, sales of assets and curtailment of non-operating activities); and *General Electric Corporation* (available February 15, 2000) (permitting, on ordinary business grounds, the exclusion of a proposal relating to sources of financing).

In each of the foregoing examples, it was clear that the decisions about a company's financial operations were to be made by the company and not left to shareholders. Allowing shareholders to decide on such matters would result in "micro-management" of the Company and its Board of Directors that the Staff sought to prevent in Staff Legal Bulletin 14I, 14J and 14K.

Accordingly, we believe that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

The Company believes that it may omit the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal is vague and indefinite.

Rule 14a-8(i)(3) allows a company to exclude a shareholder proposal if the "proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has consistently taken the position that vague and indefinite proposals are inherently misleading and, therefore, excludable pursuant to Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Section B.4. of Staff Legal Bulletin 14B (September

15, 2004). The courts have also ruled that “shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote” and that a proposal should be excluded when “it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.” *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

The Proposal fails to explain what actions or measures it would require. Moreover, the terms “strengthened” and “significantly” are impermissibly vague.

The Staff has repeatedly concurred with the exclusion of shareholder proposals with vague terms or ambiguous references where shareholders would not know with any certainty the matters on which they are asked to vote. When key terms in a proposal are vague or undefined, a company and shareholders may have diverging interpretations of these terms. Recently, the Staff permitted a company to exclude, as vague and indefinite, a proposal that sought to “improve [the] guiding principles of executive compensation,” noting that “[t]he proposal lacked sufficient description about the changes, actions or ideas for the company and its shareholders to consider that would potentially improve such guiding principles.” See *Apple Inc.* (available December 6, 2019). Similarly, in permitting an exclusion of a proposal to “reform” executive compensation, the Staff noted that “neither shareholders nor the company would be able to determine with any reasonable certainty the nature of the “reform” the proposal was requesting,” and therefore, the proposal, “taken as a whole, is so vague and indefinite that it is rendered materially misleading.” *Ebay, Inc.* (available April 10, 2019). Notably, the Staff permitted the exclusion of proposals purporting to address financial matters that provided no guidance or direction regarding the implementation of the proposals. See *Morgan Stanley* (available March 12, 2013) (permitting, on grounds of vagueness, the exclusion of a proposal requesting “an extraordinary transaction resulting in the separation of one or more businesses”); *Bank of America Corp.* (available March 12, 2013) (permitting, on grounds of vagueness, the exclusion of a proposal requesting the

formation of a committee to explore “extraordinary transactions that could enhance stockholder value”); *Fuqua Industries, Inc.* (available March 12, 1991) (permitting the exclusion, on grounds of vagueness, of a proposal, noting that such terms as “any major shareholder,” “assets/interest” and “obtaining control” would be subject to differing interpretations); and *Exxon Corporation* (January 29, 1992) (permitting the exclusion, on grounds of vagueness, of a proposal noting that such terms as “bankruptcy” and “considerable amount of money” would be subject to differing interpretations).

There are innumerable ways in which shareholders could interpret the Proposal to “significantly strengthen” the balance sheet, and each shareholder would be left to individually determine whether, and if so, how, the company’s balance sheet could be significantly strengthened. Below is a non-exhaustive list of questions illustrating how different shareholders could envision various and divergent strategies and actions the Proposal might contemplate:

- Does the Proposal seek to terminate or reduce the dividend, as requested by the Proponent’s 2019 Proposal and 2018 Proposal, each of which were excluded under Rule 14a-8(i)(13)?
- Does the Proposal seek a reduction of debt? If so, how much and which categories of outstanding instruments would the Proponent have the Company reduce?
- How would the Proponent have the Company finance such debt reduction?
- Does the Proposal seek to terminate investment in the Company’s business, effectively stopping the development and commercialization of reduced risk products?¹
- Does the Proposal call for a reduction in the Company’s workforce, salaries and/or pension contributions?

¹ Reduced Risk Products (“RRPs”) is the term PMI uses to refer to products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to these products versus continuing smoking. PMI has a range of RRP’s in various stages of development, scientific assessment and commercialization. PMI’s RRP’s are smoke-free products that produce an aerosol that contains far lower quantities of harmful and potentially harmful constituents than found in cigarette smoke.

The inability to answer these questions demonstrates that neither the Company nor its shareholders can determine with reasonable certainty what is required to implement the Proposal, and the Company's shareholders cannot be asked to guess on what they are asked to vote. In addition, the Company and the shareholders could have significantly different and divergent interpretations of the Proposal.

Therefore, the Company believes that the Proposal is so inherently vague, ambiguous, indefinite and misleading, that it may be omitted under Rule 14a-8(i)(3) in violation of Rule 14a-9.

Thank you for your consideration in this matter.

Sincerely,



Olga Khvatskaya
Assistant General Counsel and
Assistant Corporate Secretary

cc: Mr. Alan Ball
Ms. Suzanne Rich Folsom
Mr. Jerry Whitson

EXHIBIT A

I propose that the balance sheet be strengthened significantly.

A handwritten signature in black ink, appearing to read 'Alan Ball', written in a cursive style.

Alan Ball

Mãe Paula

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Alan Ball

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Energy Awareness Month



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