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December 21, 2020

By Email

Shareholderproposals@sec.gov
Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: **Churchill Downs Incorporated - Shareholder Proposal Submitted by PETA**

Ladies and Gentlemen:

On behalf of Churchill Downs Incorporated (the “Company”) and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, I hereby request confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if, in reliance on Rule 14a-8, the Company excludes from the proxy materials for the Company’s 2021 Annual Meeting of Shareholders a proposal submitted by People for the Ethical Treatment of Animals’ (“PETA” or the “Proponent”) on November 5, 2020 (together with the supporting statement, the “Proposal”).

Pursuant to Rule 14a-8(j),

- (a) a copy of the Proposal is attached hereto as Exhibit A;
- (b) a copy of all relevant correspondence exchanged with the PETA with respect to the Proposal is attached hereto as Exhibit B; and
- (c) a copy of this letter is being sent to notify PETA of the Company’s intention to omit the Proposal from its 2021 proxy materials.

The Company intends to file its definitive proxy materials for the 2021 Annual Meeting of Shareholders on or about March 11, 2021. The Company is submitting this letter no later than 80 calendar days before the Company intends to file its definitive 2021 proxy materials. Pursuant to *Staff Legal Bulletin No. 14D (Nov. 7, 2008)*, this letter and its exhibits are being submitted via email to shareholderproposals@sec.gov.

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The Proposal reads as follows:

RESOLVED, that Churchill Downs, Inc., assess and report to shareholders on the feasibility of replacing the dirt track surface at Churchill Downs with a synthetic surface, given the potentially detrimental effect on our Company of horse fatalities and the higher fatality rate associated with dirt tracks.

The supporting statement for such Proposal is set forth below:¹

Horse racing industry-generated statistics are clear: Fewer horses suffer fatal catastrophic injuries on synthetic surfaces than on dirt tracks. According to The Jockey Club's Equine Injury Database, between 2009 and 2019 there were 1.19 fatal injuries per 1000 starts on synthetic tracks versus 1.94 such injuries on dirt tracks and 1.48 on turf. Based on these statistics, if all the dirt starts from 2009-2019 had been run on synthetic instead, as many as 2,000 Thoroughbreds could have been spared from death. One-third of all racing-related fatalities could have been prevented.

It is not only the racing injuries that are catastrophic; the effect on a racetrack's reputation can be devastating. The dozens of racing and training deaths at Santa Anita Park in 2019 resulted in extensive negative media coverage, the temporary closure of the track, a criminal investigation, and an overhaul of the California Horse Racing Board.

Churchill Downs has already come under scrutiny by media. Our Company's most famous venue was identified as "one of the deadliest racetracks in America" by the Louisville Courier-Journal. The March 2019 article stated that "the home of the Kentucky Derby has lost 43 thoroughbreds to racing injuries since 2016, a 2.42 per 1,000-start average that was 50 percent higher than the national average during the same three-year span." To our Company's credit, Churchill Downs introduced safety measures, and its fatality rate improved in 2019 to 0.93 deaths per 1000 starts, which is equal to the 2019 fatality rate on synthetic surfaces. A combination of the track's safety measures and the installation of a high quality synthetic surface, such as Tapeta, is likely to spare even more horses.

¹ The supporting statement included several footnotes with hyperlinked sources that have been omitted here. To review such footnotes, please see Exhibit A.

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Our Company is aware that synthetic is desirable, as evidenced by its decision to install Tapeta at Turfway Park.

Our Company has an ethical and fiscal responsibility to do all in its power to prevent fatal injuries and to ensure the highest standards of safety. We urge shareholders to support this measure for a feasibility report.

I. Background Regarding the Company and Racetrack Surfaces

The Company is a racing, online wagering and gaming entertainment company. The Company operates Churchill Downs Racetrack (“CDRT”) located in Louisville, Kentucky, an internationally known thoroughbred racing operation best known as the home of The Kentucky Derby. The Company also operates several other equine racetracks across the country. In 2019, approximately 36,000 thoroughbred horse races were conducted in the United States. Of these races, CDRT hosted approximately 750 races, or 2.1% of the total.

The Proposal relates to the Company’s choice of track surface at CDRT. There are three types of possible track surfaces: dirt, turf and synthetic. CDRT includes a one-mile dirt track and a 7/8-mile turf track. The Company’s other racetracks include a mixture of dirt, turf and synthetic surfaces.

A “dirt” track is really a mixture of sand, clay, and silt, with the exact composition selected and maintained for each track. Synthetic tracks are mainly composed of sand, fibers and rubber all covered in wax, with Polytrack and Tapeta being two of the most popular materials. The vast majority of tracks in North America race on a dirt surface.² There are only five racetracks in North America that use synthetic surfaces and the company operates three of them: Presque Isle Downs in Erie, Pennsylvania (Tapeta), Arlington Park in Arlington Heights, Illinois (Polytrack) and Turfway Park in Florence, Kentucky (Tapeta).

II. The Proposal May be Properly Omitted from the Company’s Proxy Materials Under Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company’s Ordinary Business Operations and Seeks to Micromanage the Company

Rule 14a-8(i)(7) permits a company to omit a proposal from its proxy materials if the proposal “deals with matters relating to the company’s ordinary business operations.” The purpose of the ordinary business exclusion is “to confine the resolution of ordinary business

² There are 125 horse racetracks with a dirt surface in North America, based on TRA codes assigned to each track by the CHRIMS database (Originally named the California Horse Racing Information Management System).

problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” *See Release No. 34-40018 (May 21, 1998)*. As explained by the Commission, the term “ordinary business” in this context refers to “matters that are not necessarily ‘ordinary’ in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” *Id.*

There are two central components of the ordinary business exclusion. First, as it relates to the subject matter of the proposal, “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis” that they are not a proper subject matter for shareholder oversight. *Id.* The Commission has differentiated between these ordinary business matters and “significant social policy issues” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* The latter is not excludable as pertaining to ordinary business matters, and in assessing whether a particular proposal raises a “significant social policy issue,” the Staff will review the terms of the proposal as a whole, including the supporting statement. *Id.*

Second, as it relates to the implementation of the subject matter of the proposal, the ability to exclude a proposal “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.” *Id.* The Staff noted in *Staff Legal Bulletin No. 14K (Oct. 16, 2019)* that a proposal micromanages a company where it “seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” A proposal “that prescribes specific timeframes or methods for implementing complex policies” seeks to micromanage a company and is excludable under Rule 14a-8(i)(7). *Id.*

Framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See Exchange Act Release No. 20091 (Aug. 16, 1983); Johnson Controls, Inc.* (Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”). *See also Ford Motor Co.* (Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details such as the measured temperature at certain locations and the method of measurement, the effect on temperature of increases or decreases in certain atmospheric gases, the effects of radiation from the sun on

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global warming/cooling, carbon dioxide production and absorption, and a discussion of certain costs and benefits).

In this case, the Proposal asks the Company to “assess and report to shareholders on the feasibility of replacing the dirt track surface at [CDRT] with a synthetic surface.” Although framed as a request for a report, the nature of the Proposal is seeking to replace the dirt track surface with a synthetic surface at CDRT. This objective is clearly highlighted in Proponent’s supporting statement, which includes Proponent’s views on the benefits of a synthetic surface.

A. The Proposal Relates to an Ordinary Business Subject Matter

As stated above, the Company is in the business of thoroughbred horse racing and operates the iconic CDRT, best known as the home of The Kentucky Derby. The type of track surface used at CDRT is certainly a matter fundamental to management’s ability to run the Company on a day-to-day basis in making choices relevant to the race specifications for events held at CDRT. In making a decision regarding track surface type at CDRT, management takes into account many complex factors, as further detailed in section II.B. below. The Proposal seeks to circumvent management’s expert judgment in making a decision regarding track surface and substitute a shareholder’s directive for this fundamental business decision in a way that the Staff has repeatedly deemed to qualify as inappropriate. *See, e.g., RH* (May 11, 2018) (permitting exclusion of a proposal encouraging the company to enact a policy prohibiting the sale of down products at the company’s stores because it sought to dictate the company’s ordinary business decisions with respect to the types of products it sells); *SeaWorld Entertainment, Inc.* (Apr. 23, 2018) (permitting exclusion for micromanagement of a proposal urging the company to ban all captive breeding in its parks because it sought to dictate the company’s fundamental business decisions regarding the care and breeding of its animals); *The Wendy’s Company* (Mar. 2, 2017) (permitting exclusion of a proposal urging the company to join the “Fair Food Program” to protect and enhance consumer and investor confidence in the company’s brand as it relates to the purchase of produce because it sought to micromanage the company by probing too deeply into matters of a complex nature). Similar to the proposals described above, the Proposal attempts to impose on the Company a specific decision with respect to a fundamental and ordinary business matter — the track surface used at CDRT.

In addition, for the Company, the track surface it offers to race participants at CDRT is akin to being a product or service sold by the Company. The Staff has consistently concurred that proposals relating to the products and services offered by a company are excludable as relating to ordinary business. *See JPMorgan Chase & Co.* (Mar. 19, 2019) (concurring in the exclusion of a proposal relating to the construction of a sea-based canal in Mexico because it related to “the products and services offered for sale by the company”); *United Continental*

Holdings, Inc. (Mar. 23, 2018) (concurring in the exclusion of a proposal requesting a report on the regulatory risk and discriminatory effects of smaller cabin seat sizes on overweight, obese and tall passengers); *Pepco Holdings, Inc.* (Feb. 18, 2011) (concurring with the exclusion of a proposal urging the company to pursue the market for solar technology as concerning the sale of particular products and services); *Comcast Corp.* (Feb. 15, 2011) (concurring with the exclusion of a proposal to market and sell a particular type of wireless broadband product); *Wal-Mart Stores, Inc.* (Mar. 30, 2010) (concurring with the exclusion of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning the sale of particular products).

B. The Proposal Seeks to Micromanage the Company

The Proponent seeks to micromanage the Company by requesting that the Company use a synthetic track surface at CDRT. Determining the type of track surface used at CDRT is a complex matter requiring a deep understanding of the thoroughbred racing industry and operating environment as well as an assessment of a variety of complex factors, such as analysis of relevant injury data, costs of installation and maintenance, durability, maintenance requirements, subsurface engineering considerations, drainage, type of racing to be conducted, the advice of surface quality experts and associated data, location, geology, the time of year in which the track will be used and weather patterns, as well as demand for a dirt vs. synthetic track surface from customers, among other factors. Management regularly consults with outside experts and consultants, vendors of surface options and engineers. Management also consults with track personnel, trainers and jockeys regarding their experiences and preferences on race facilities, including track surface. After a decision on track surface has been made, management continues an ongoing analysis of the factors discussed above, including analysis of safety incidents, anomalies and trends in injury data, to continue improving and adequately maintaining the track. Management continually evaluates the need for improvements or replacements of track surfaces, with careful attention to the constant care and maintenance of the track surface at CDRT. This process was recently illustrated by the Company's announcement in November 2020 of its \$10 million investment to install a new turf course at CDRT that will widen the running surface and increase durability to improve running conditions with a state-of-the-art irrigation and drainage system.³ To design the new racing surface, the Company engaged STRI Group, a leading consultant on turf surfaces supporting equine athletics at the highest levels. This is an example of how the Company analyzes the performance of track surfaces and makes

³ Churchill Downs Incorporated News Release, Churchill Downs Racetrack to Install New Turf Course, Nov. 23, 2020, <https://www.churchilldownsincorporated.com/resources/company-investment/churchill-downs-racetrack-to-install-new-turf-course/>

investments in improvements or replacements when warranted after a careful analysis by management, with the assistance of field experts.

The ability of management to successfully weigh these considerations and reach an appropriate decision on the type of track surface at CDRT is critical to the operation of the Company's business and requires input from both internal and external specialists. This Proposal seeks to circumvent this deliberative process and substitute a shareholder's directive for the expert judgment of the Company's management as to this fundamental business decision in a way that the Staff has repeatedly deemed to qualify as inappropriate micromanagement.

The Proposal would replace the careful balancing of the factors that direct management's decisions on which track surface will be used at CDRT—a complex decision involving the constant weighing of many factors that are uniquely within the purview of management with the benefit of decades of experience and leading industry experts and consultants. Weighing and balancing each of these complex factors and considerations is at the core of the Company's ordinary business operations at CDRT. In that regard, the Proposal implicates precisely the type of day-to-day business operations that are too impractical and too complex to be subject to direct shareholder oversight.

To further illustrate this point, the Proponent has made a claim in the supporting statement that indicates a lack of understanding regarding the complex factors that are considered when determining the most appropriate surface type for a particular track. Proponent has stated "Our Company is aware that synthetic is desirable, as evidenced by its decision to install Tapeta at Turfway Park." However, the synthetic surface at Turfway Park is desirable at that location primarily because Turfway Park runs races in the winter, among other considerations. A synthetic surface is more consistent in winter conditions, unlike dirt. CDRT runs races only in the spring, summer and fall, which is one factor considered by management in determining that dirt is the preferred surface at that facility.

C. The Proposal Does Not Transcend the Day-to-Day Business of the Company Despite Touching on an Important Social Issue

Although the Proposal touches upon the policy issue of animal welfare, the primary focus of the Proposal is on the Company's choice of track surface. The Commission has repeatedly allowed exclusion of proposals, even when touching on significant policy issues, where the proposals seek to micromanage the company by probing too deeply into matters of a complex nature or otherwise the policy issues presented do not transcend the ordinary business of the Company. *See e.g. McDonald's Corp.* (Mar. 22, 2019) (permitting exclusion of a proposal that touched on concerns about animal cruelty because the proposal was "focuse[d] primarily on" the

company's ordinary business operations); *Amazon.com, Inc.* (Mar. 27, 2015) (concurring with the exclusion of a proposal requesting disclosure of reputational and financial risks related to the treatment of animals in the company's supply chain as "relating to Amazon's ordinary business operations" because it "relates to the products and services offered for sale by the company"); *Papa John's International, Inc.* (Feb. 13, 2015) (permitting exclusion of a proposal encouraging the company to add vegan options to its menu in order to advance animal welfare); *Marriott International Inc.* (March 17, 2010) (allowing exclusion of a proposal limiting showerhead flow to no more than 1.6 gallons per minute and requiring mechanical switches to control the level of water flow).

The Proposal purports to request action on an issue related to animal welfare — reducing equine fatalities on racetracks. However, as discussed in Section II.B above, the Proposal seeks to micromanage the Company by deciding for management that the best way to reduce equine fatalities at CDRT is by replacing the dirt surface with a synthetic surface. Also, in the context of the Proposal, this policy issue does not transcend the day-to-day business of this specific Company because the installation of a synthetic surface at CDRT would not guarantee fewer equine fatalities, and the Company is already very focused on improving safety and reducing equine fatalities as part of its day-to-day business, and may actually be implementing superior methods to achieve these goals over simply changing the track surface. Management utilizes industry experts along with a team with decades of experience to assess the safety and performance of not just the track, but all factors relevant in the safety of training and racing.

A Synthetic Surface at CDRT Would Not Guarantee Fewer Equine Fatalities

The equine fatality data collected by The Jockey Club is certainly considered by the Company in its decisions regarding track surfaces. As cited by Proponents, according to the Equine Injury Database, there are fewer fatalities per 1,000 starts on synthetic surfaces overall as compared to dirt surfaces, with the fatality rate of 1.6 per 1,000 starts for dirt and .93 per 1,000 starts for synthetic in 2019.⁴ However, there are concerns with relying solely on this data to conclude that synthetic is safer than dirt. Even as stated by The Jockey Club: "Although many factors are associated with racing fatalities, traditionally the annual summaries have been prepared by surface type."⁵ Equine fatalities could be caused by many factors outside of surface type, such as the use of medications, unsoundness, age of the horse, poor training, jockey errors and poor surface maintenance (regardless of surface type). Also, the data is not limited to tracks that have met certain safety standards and are thereby accredited by the National Thoroughbred

⁴ The Jockey Club News Release, The Jockey Club Releases Data from the Equine Injury Database for 2019, March 12, 2020, <http://jockeyclub.com/Default.asp?section=Resources&area=10&story=1184>.

⁵ *Id.*

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Racing Association's Safety & Integrity Alliance program. CDRT has such accreditation. The Company believes that track surface safety is primarily driven by proper maintenance regardless of surface type, a claim supported by Churchill Down's much-improved safety record in 2019 after making improvements (0.93 fatalities per 1,000 starts), which, as Proponent has admitted, is *equivalent* to the fatality per 1,000 starts on synthetic race tracks in 2019. No surface can prevent all injuries or fatalities. This was clearly evidenced by an unfortunate equine fatality on the opening night of racing at Turfway Park on its brand new synthetic Tapeta surface, which admittedly oversimplifies the issue that proponent is attempting to leverage.⁶ Finally, due to the few number of synthetic tracks in North America, there is less data on running races on synthetic tracks compared to dirt, and far less experience with the required maintenance on synthetic tracks over the long term. The Company is very focused on properly maintaining the dirt track at CDRT with the benefit of years of experience, the advice of experts, significant technological advancements and other investments in safety, as further explained below, with the goal to reduce equine fatalities. As illustrated by this discussion, the means of achieving the goal to improve track safety at CDRT is much more complex than simply changing the track surface to a synthetic material. These complex considerations and decisions are rightly within the purview of management. Presenting the Proposal to a shareholder vote would undermine management's judgment in making improvements with respect to the dirt track at CDRT—improvements that have thus far reduced equine fatalities as supported by the data.

The Company is Already Very Focused on Improving Safety and Reducing Equine Fatalities as Part of Its Day-to-Day Business

The safety of horses running at CDRT is of paramount importance to the Company. As Bill Carstanjen, CEO of the Company, has publicly stated:⁷

All of us in the industry care deeply about the safety and well-being of race horses, and we know how much they mean to the people who love and care for them. As the host of the Kentucky Derby and a key leader in the racing industry, Churchill Downs has a heightened responsibility to implement the world's best practices for caring for racehorses at our facilities. We also have a responsibility to educate and advocate so that others do so as well. Over the last several years, the landscape for animal welfare and safety practices has changed for the better,

⁶ Ray Paulick, Fatal Injury Mars Opening Night of Tapeta Era at Turfwa Park, December 3, 2020, <https://www.paulickreport.com/news/ray-s-paddock/fatal-injury-mars-opening-night-of-tapeta-era-at-turfway-park/>.

⁷ Churchill Downs Incorporated Tweet, Churchill Downs Emphasizes Safety Ahead of 2019 Kentucky Derby, April 18, 2019, <https://www.kentuckyderby.com/horses/news/churchill-downs-emphasizes-safety-ahead-of-2019-kentucky-derby>.

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and we will continue to embrace this progress and move forward with advancements to improve the health and welfare of our equine as well as human athletes. Our leadership and commitment to these important issues will never waiver.

The Company has undertaken significant measures to improve the safety and welfare of horses running on its racetracks, with a particular focus on safety enhancements following a spike in equine fatalities in 2018 at CDRT, and partly in response to the highly publicized fatalities that year at Santa Anita Park in Arcadia, California. The Company has a “Safety from Start to Finish” program, which first launched in 2009 and is updated each year. Additional information about the Company’s “Safety from Start to Finish” program, can be found online at <https://www.churchilldowns.com/about/community/health-and-safety/>. Such equine safety and welfare measures include the following:

- *Track Safety at CDRT*
 - Independent, standardized third-party engineering analysis, testing and monitoring of track surfaces.
 - Collaboration with Dr. Michael “Mick” Peterson, Ph. D., the Director of the Racetrack Safety Program and Professor of Biosystems and Agricultural Engineering at the University of Kentucky. He also serves as the Executive Director of the Racing Surfaces Testing Laboratory and is widely considered the world’s foremost racing surfaces researcher. Dr. Peterson routinely conducts engineering analyses and tests of the Company’s respective racing surfaces for safety and consistency. The Company has worked with Dr. Peterson to evaluate its racing surfaces since formally launching the “Safety from Start to Finish” program in 2009.⁸
 - Certification by the National Thoroughbred Racing Association’s Safety & Integrity Alliance program.
 - Professionally designed and installed safety rails on the inside of the dirt and turf course.
 - 3/8-inch foam padding on all parts of the starting gates.

⁸ The following article includes more information regarding Dr. Peterson’s extensive research and analysis of track surfaces, including his development of the “Orono Biomechanical Hoof Tester,” a machine that simulates the power of a thoroughbred’s step on a track to collect data on the impact, cushion depth, and moisture levels: Lexi Pandell, The Super-Optimized Dirt that Helps Keep Horses Safe, WIRED, October 30, 2019, <https://www.wired.com/story/super-optimized-dirt-that-helps-keep-racehorses-safe/>.

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- Pending installation of a new turf course at CDRT that will widen the running surface and increase the durability to improve running conditions with a state-of-the-art irrigation and drainage system.⁹
- *Equine Medical Director*
 - The Company has an Equine Medical Director to oversee safety and care at all Company properties. This position is responsible for implementing and enforcing all equine safety protocols and procedures, investigating and documenting all safety incidents and collecting and analyzing race data in order to implement evidence-based best practices across the Company's properties. The Equine Medical Director is also externally focused to better educate owners, trainers, and others in our industry about safety practices.
- *Industry Research*
 - The Company has made significant annual commitments, including \$175,000 in calendar year 2020, to fund key scientific research projects geared toward improving the safety and welfare of race horses, particularly with respect improving treatment options for joint and leg injuries.
- *Veterinarian Support at CDRT Races*
 - Veterinarians closely monitor and observe participants before, during and after training and in their stalls in the days before the race.
 - A veterinarian is present trackside at all times when horses have access to the track.
 - Prerace exams are performed by state veterinarians on every horse for every race. In-stall exams include a general health evaluation and palpation and flexion of the forelimbs. Veterinarians also observe horses out of their stalls, at a trot, to further assess soundness and fitness to race.
 - Two state veterinarians are positioned around the racetrack every race day. On Kentucky Oaks and Kentucky Derby Days, a team of veterinarians and volunteers from Rood & Riddle Equine Hospital are positioned around the racetrack should there be a need for an immediate response. Additionally, three veterinarians are in the paddock when horses are saddled for The Kentucky Derby (two for all other races).
 - Two state-of-the-art Kimzey Equine Ambulances are at CDRT on every race day, positioned at the quarter pole and the backstretch for immediate response.

⁹ Churchill Downs Incorporated News Release, Churchill Downs Racetrack to Install New Turf Course, Nov. 23, 2020, <https://www.churchilldownsincorporated.com/resources/company-investment/churchill-downs-racetrack-to-install-new-turf-course/>

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- A board-certified veterinary surgeon and veterinary anesthesiologist are present on the day of The Kentucky Derby should there be a need for immediate critical care response.
- An equine triage facility, with x-ray equipment, is available on the backstretch for patient evaluation.
- *Control of Medications*
 - Postrace drug testing is performed by a Racing Medication and Testing Consortium accredited laboratory; each sample is analyzed for more than 1,500 substances.
 - The Company has banned the use of anabolic steroids.
 - The Company prohibits “milkshaking,” which results in excessive levels of total carbon dioxide in Thoroughbred racehorses.
- *Advocating for Additional Equine Medication Reforms*
 - Furosemide (often referred to by the brand name, Lasix) is the only race-day medication permitted in U.S. horse racing. While the therapeutic use of Lasix on race-days is the subject of significant debate with recognized equine experts and veterinarians on both sides, the Company worked with the Kentucky Horse Racing Commission to eliminate Lasix for all 2-year-old races beginning in 2020 and in all stakes races beginning in 2021. The maximum dosage of Lasix was also reduced from 10 cc to 5 cc for all horses who continue to be allowed to compete with Lasix. The 2021 Kentucky Derby will be run without the permitted use of Lasix.
 - The Company successfully advocated to increase withdrawal times for nonsteroidal anti-inflammatory drugs and cortico-steroids so that horses can be more adequately evaluated during pre-race veterinary examinations. The Company is also continuing its strong financial support and advocacy for high quality drug testing as well as the mission of the Racing Medication and Testing Consortium to extend its accreditation program to measure not only the capabilities of testing labs but to also verify what testing is being performed.
- *Other General Equine Welfare Measures*
 - Prohibiting the transport of horses from Company facilities for slaughter.
 - Permanent revocation of stall and competition privileges for any owner or trainer who sells a horse for slaughter stabled at a Company track.
 - Revocation of stall and competition privileges for any owner or trainer convicted of animal abuse.
 - The banning of unsafe horseshoes, including front shoe toe grabs longer than two millimeters.

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- The Company successfully advocated the Kentucky Horse Racing Commission to change regulations limiting the use of the riding crop during races. The rule is currently in the process of adoption.
- Requirements for the use of only low-impact riding whips with restricted usage rules.
- Protocols for the treatment of horses that have been injured during racing or training, to ensure the most humane treatment possible.
- Encouraging anyone that suspects any wrongdoing or witnesses improper conduct at all Company tracks to speak up immediately via the independent and national office of the Thoroughbred Racing Protective Bureau's Integrity hotline at (866) 847-8772 or integrity@trpb.com.

The Company has acted, and continues to act, on the important policy issue of animal welfare touched on by the Proposal through existing policies and procedures regarding track surface and equine safety. As evidenced by the fact that Churchill Down's fatalities per 1,000 starts in 2019 was *equivalent* to the fatalities per 1,000 starts on synthetic race tracks in 2019, the safety measures implemented by the Company have been making a difference, and perhaps have increased equine safety at CDRT even more than might be accomplished by replacing the track surface with synthetic materials. The Company hopes to further improve safety at CDRT as a result of additional planned changes referenced in this letter. Given that the measures the Company has already taken resulted in significantly improved equine welfare at CDRT, the additional step requested by Proponents, to replace the track surface with synthetic material, does not present a policy issue so significant that it transcends the ordinary business of the Company.

The Proposal's specific directive of using a synthetic surface at CDRT directly interferes with the day-to-day ordinary business functions of Company's management. Management is charged with selecting and maintaining the most appropriate track surface at CDRT, which involves a complex analysis of all relevant considerations, with a clear focus on equine safety. To present the Proposal to shareholders would override the complex analysis the Company's management undertakes in making operational decisions—an analysis that is not appropriately within the purview of a shareholder vote. As such, the Company believes that the Proposal touches on social issues but does not do so in a way that transcends the ordinary business of the Company, and therefore is not suitable for a shareholder vote on the matter.

Based on the above, the Proposal is properly excludable as an ordinary business matter pursuant to Rule 14a-8(i)(7).

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III. Conclusion

For the foregoing reasons, the Company requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the Company's 2021 proxy materials for any of the reasons described in this letter.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If you have any questions regarding this request or require additional information, please contact the undersigned at (312) 853-7881 or by email at andrea.reed@sidley.com.

Best regards,



Andrea L. Reed

Enclosures

cc: Jared Goodman, PETA
Brad Blackwell, General Counsel, Churchill Downs Incorporated

Exhibit A

Proposal

Report to Shareholders on Replacing Churchill Downs Dirt Track with Synthetic Surface

Resolved that Churchill Downs, Inc., assess and report to shareholders on the feasibility of replacing the dirt track surface at Churchill Downs with a synthetic surface, given the potentially detrimental effect on our Company of horse fatalities and the higher fatality rate associated with dirt tracks.

Background

Horse racing industry-generated statistics are clear: Fewer horses suffer fatal catastrophic injuries on synthetic surfaces than on dirt tracks. According to The Jockey Club's Equine Injury Database, between 2009 and 2019 there were 1.19 fatal injuries per 1000 starts on synthetic tracks versus 1.94 such injuries on dirt tracks and 1.48 on turf.¹ Based on these statistics, if all the dirt starts from 2009-2019 had been run on synthetic instead, as many as 2,000 Thoroughbreds could have been spared from death. One-third of all racing-related fatalities could have been prevented.

It is not only the racing injuries that are catastrophic; the effect on a racetrack's reputation can be devastating. The dozens of racing and training deaths at Santa Anita Park in 2019 resulted in extensive negative media coverage, the temporary closure of the track,² a criminal investigation,³ and an overhaul of the California Horse Racing Board.⁴

Churchill Downs has already come under scrutiny by media. Our Company's most famous venue was identified as "one of the deadliest racetracks in America" by the Louisville Courier-Journal.⁵ The March 2019 article stated that "the home of the Kentucky Derby has lost 43 thoroughbreds to racing injuries since 2016, a 2.42 per 1,000-start average that was 50 percent higher than the national average during the same three-year span." To our Company's credit, Churchill Downs introduced safety measures, and its fatality rate improved in 2019 to 0.93 deaths per 1000 starts,⁶ which is equal to the 2019 fatality rate on synthetic surfaces.⁷ A combination of the track's safety measures and the installation of a high quality synthetic surface, such as Tapeta, is likely to spare even more horses.

¹ http://jockeyclub.com/pdfs/eid_11_year_tables.pdf

² <https://www.sfgate.com/sports/article/chrb-santa-anita-battle-of-midway-fatalities-13649643.php>

³ <https://www.nytimes.com/2019/03/15/sports/santa-anita-horse-deaths.html>

⁴ <https://www.courier-journal.com/story/sports/horses/horse-racing/2019/09/23/california-governor-gavin-newsom-says-horse-racing-industry-time-up-unless-reforms/2424861001/>

⁵ <https://www.courier-journal.com/story/sports/horses/horse-racing/2019/03/27/churchill-downs-horse-fatalities/3284846002/>

⁶ <https://www.courier-journal.com/story/sports/horses/horse-racing/2020/02/17/churchill-leading-way-synthetics-horse-safety-takes-forefront/4771359002/>

⁷ <http://jockeyclub.com/Default.asp?section=Resources&area=10&story=1184>

Our Company is aware that synthetic is desirable, as evidenced by its decision to install Tapeta at Turfway Park.⁸

Our Company has an ethical and fiscal responsibility to do all in its power to prevent fatal injuries and to ensure the highest standards of safety. We urge shareholders to support this measure for a feasibility report.

⁸ <https://www.courier-journal.com/story/sports/horses/horse-racing/2020/02/17/churchill-leading-way-synthetics-horse-safety-takes-forefront/4771359002>

Exhibit B

Correspondence



PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

November 5, 2020

Bradley K. Blackwell
Senior Vice President, General Counsel and Secretary
Churchill Downs Incorporated
600 N. Hurstbourne Parkway, Ste. 400
Louisville, Kentucky 40222

Via UPS Next Day Air Saver

Dear Mr. Blackwell:

Attached to this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2021 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals' (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 37 shares of Churchill Downs Incorporated common stock, which were acquired at least one year ago. PETA has held at least \$2,000 worth of common stock continuously and intends to hold at least this amount through and including the date of the 2021 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement or if you need any further information, please contact PETA's authorized representative Jared Goodman at 2154 W. Sunset Blvd., Los Angeles, CA 90026, (516) 319-5906, or JaredG@PetaF.org.

Sincerely,

Carrie Edwards, Executive Assistant
PETA Corporate Responsibility

Enclosures: 2021 Shareholder Resolution
RBC Wealth Management letter

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Berkeley
2855 Telegraph Ave.
Ste. 301
Berkeley, CA 94705
510-763-PETA

Info@peta.org
PETA.org

Affiliates:

- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)



**Wealth
Management**

99 Almaden Boulevard
Suite 300
San Jose, CA 95113-1603

Office: 408.292.2442
Fax: 408.298.8295

October 31, 2020

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in Churchill Downs Incorporated.

Dear Ms. Reiman,

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 37 shares of Churchill Downs Incorporated common stock and that PETA has continuously held at least \$2,000.00 in market value for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3344.

Sincerely,

A handwritten signature in black ink that reads 'James Nielsen'.

James Nielsen
Senior Vice President – Branch Director
RBC Wealth Management

Investment and insurance products: • Not insured by the FDIC or any other federal government agency
• Not a deposit of, or guaranteed by, the bank or an affiliate of the bank • May lose value



**Wealth
Management**

99 Almaden Boulevard
Suite 300
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November 20, 2020

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in Churchill Downs Incorporated

Dear Ms. Reiman,

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 37 shares of Churchill Downs Incorporated common stock and that PETA has continuously held at least \$2,000 in market value for at least one year prior to November 5, 2020, and through the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3322.

Sincerely,

A handwritten signature in blue ink that reads 'Thach Nguyen'.

Thach Nguyen
Senior Registered Client Associate to Joshua Levine
Senior Vice President – Financial Advisor
RBC Wealth Management

Investment and insurance products: • Not insured by the FDIC or any other federal government agency
• Not a deposit of, or guaranteed by, the bank or an affiliate of the bank • May lose value