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December 17, 2021

Via E-mail to shareholderproposals@sec.gov

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

**Re: Moderna, Inc.
Exclusion of Shareholder Proposal by Legal & General Investment Management
America, Inc.**

Ladies and Gentlemen:

We are writing on behalf of our client, Moderna, Inc. (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2022 annual meeting of shareholders (the “Proxy Materials”) the enclosed shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by Legal & General Investment Management America, Inc. (the “Proponent”) requesting that the Company report to shareholders “on whether and how Moderna’s receipt of government financial support for development and manufacture of a vaccine for COVID-19 is being, or will be, taken into account when making decisions that affect access to such products, such as setting prices.”

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons discussed below.

Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter, and the Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

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Background

On November 10, 2021, the Company received the Proposal from the Proponent, which states in relevant part as follows:

RESOLVED that shareholders of Moderna, Inc. (“Moderna” or the “Company”) ask the Board of Directors to report to shareholders, at reasonable expense and omitting confidential and proprietary information, on whether and how Moderna’s receipt of government financial support for development and manufacture of a vaccine for COVID-19 is being, or will be, taken into account when making decisions that affect access to such products, such as setting prices.

SUPPORTING STATEMENT

Moderna has received substantial government funding for the development of its COVID-19 vaccine. Prior to the pandemic, Moderna received over \$100 million in federal government funding to develop mRNA technology,¹ now used in its COVID-19 vaccine, and the National Institutes of Health conducted preclinical work on the vaccine.

The Biomedical Advanced Research and Development Authority provided nearly \$2.5 billion in funding for development and expansion of manufacturing capacity for Moderna’s vaccine,² more than any other vaccine manufacturer in the Operation Warp Speed (“OWS”) program. Federal funding covered all of the vaccine’s development costs. One commentator characterized the government’s role as “essentially remov[ing] the bulk of traditional industry risks related to vaccine development.”³

Universal and low-cost vaccine access is critical to save lives, stabilize the economy, and prevent domestic outbreaks. As of September 2021, Moderna had shipped 88% of its doses to upper- and upper-middle-income countries; it has acknowledged that its manufacturing capacity is “still limited.”⁴ As a result, Moderna is under pressure to share intellectual property with other manufacturers to boost supply. As of October 2021, Moderna had declined to transfer its technology to any manufacturer in a low- or middle-income country.

¹ <https://www.keionline.org/33763> and <https://www.nih.gov/news-events/news-releases/nih-moderna-investigational-covid-19-vaccine-shows-promise-mouse-studies>

² <https://www.fiercepharma.com/pharma/after-nearly-1b-research-funding-moderna-takes-1-5b-coronavirus-vaccine-order-from-u-s>

³ <https://www.healthaffairs.org/doi/10.1377/hb10q20210512.191448/full/>

⁴ <https://investors.modernatx.com/news-releases/news-release-details/our-global-commitment-vaccine-access>

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Unlike fellow OWS participants Janssen and AstraZeneca, Moderna has not committed to provide its vaccine on a nonprofit basis during the pandemic. Its pricing does not seem to be linked to income: It has charged Botswana, Thailand, and Colombia \$27 to \$30 per dose, more than the price charged to many high-income countries.⁵ According to one report, “[i]n some cases, Moderna has offered to provide poorer countries the vaccine at relatively low prices, but only after it has fulfilled other countries’ orders.”⁶

Advocates of technology transfers and lower prices often cite the crucial role played by government support in Moderna’s vaccine development. Senators Warren and Merkley and Representative Jayapal wrote in October 2021 to federal government officials, noting the urgent need to expand access and the extensive public funding Moderna received, and seeking clarification of the federal government’s rights to share vaccine technology under its contracts with Moderna.⁷

Moderna states that it aims “to provide effective and affordable vaccines and therapeutics to all populations” and that it will give Gavi-eligible countries its “lowest prices.”⁸ It does not, however, explain whether and how the significant contribution from public entities affects, or will affect, decisions about actions that Moderna could take to ensure access. This Proposal seeks to fill that gap.

Basis for Exclusion

The Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the Company will have substantially implemented the Proposal by the time the Company files its Proxy Materials.

The purpose of the Rule 14a-8(i)(10) exclusion is to “avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.” Commission Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow exclusion of a shareholder proposal only when the proposal was “‘fully’ effected” by the company, the Commission has revised its approach to the exclusion over time to allow for exclusion of proposals that have been “substantially implemented.” Commission Release No. 34-20091 (August 16, 1983) and Commission Release No. 34-40018 (May 21, 1998). In applying this standard, the Staff has noted that “a determination that the [c]ompany

⁵ <https://www.nytimes.com/2021/10/09/business/moderna-covid-vaccine.html>

⁶ <https://www.nytimes.com/2021/10/09/business/moderna-covid-vaccine.html>

⁷ <https://www.warren.senate.gov/imo/media/doc/2021.10.12%20Letter%20to%20WH%20and%20BARDA%20on%20Moderna%20Contract.pdf>

⁸ <https://www.modernatx.com/responsibility/medicines-patients>; <https://investors.modernatx.com/news-releases/news-release-details/modernas-commitment-vaccines-and-therapeutics-access>

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has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (March 6, 1991, *recon. granted* March 28, 1991). In addition, when a company can demonstrate that it already has taken actions that address the "essential objective" of a shareholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded as moot, even where the company's actions do not precisely mirror the terms of the shareholder proposal.

The Staff has consistently permitted the exclusion of shareholder proposals under Rule 14a-8(i)(10) when it has determined that the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal or where the company had addressed the underlying concerns and satisfied the "essential objective" of the proposal, even where the company's actions did not precisely mirror the terms of the shareholder proposal. For example, in *Apple Inc.* (December 17, 2020), the Staff concurred in exclusion pursuant to Rule 14a-8(i)(10) of a proposal requesting that the company report annually to shareholders on the company's management systems and processes, oversight mechanisms and responsive actions to government or third-party demands with respect to human rights matters regarding free expression and access to information. Despite not publishing a consolidated annual report, the company argued that it had substantially implemented the proposal by recently publishing its human rights policy and through existing disclosures in various public guidelines, reports, policies and charters. *See also Applied Materials, Inc.* (January 17, 2018) (in which the Staff concurred in exclusion of a proposal requesting that the company "improve the method to disclose the Company's executive compensation information with their actual compensation," on the basis that the company's "public disclosures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal," where the company argued that its current disclosures follow requirements under applicable securities laws for disclosing executive compensation); *Kewaunee Scientific Corporation* (May 31, 2017) (in which the Staff concurred in exclusion of a proposal requesting that nonemployee directors no longer be eligible to participate in the company's health and life insurance programs, on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal and that Kewaunee . . . substantially implemented the proposal," where the board had adopted a policy prohibiting nonemployee directors from participating in the company's health and life insurance programs after December 31, 2017); *MGM Resorts International* (February 28, 2012) (in which the Staff concurred in exclusion of a proposal requesting a report on the company's sustainability policies and performance and recommending the use of the Governance Reporting Initiative Sustainability Guidelines, on the basis that the company's "public disclosures compare favorably with the guidelines of the proposal and that MGM Resorts has, therefore, substantially implemented the proposal," where the company published an annual sustainability report that did not use the Governance Reporting Initiative

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Sustainability Guidelines or include all of the topics covered therein); and *Alcoa Inc.* (February 3, 2009) (in which the Staff concurred in exclusion of a proposal requesting a report describing how the company's actions to reduce its impact on global climate change may have altered the current and future global climate, where the company published general reports on climate change, sustainability and emissions data on its website that did not discuss all topics requested in the proposal).

The Staff also has consistently granted no-action requests pursuant to Rule 14a-8(i)(10) in circumstances where a company notifies the Staff that it intends to exclude a shareholder proposal on the basis that the company and/or board of directors is expected to take action that will substantially implement the proposal, and the company follows its initial submission with a supplemental notification to the Staff confirming that such action had been taken. For example, in *Exelon Corporation* (February 26, 2010), the Staff concurred in exclusion of a proposal that the company provide a report disclosing the company's policies and procedures for political contributions and its monetary and non-monetary political contributions, where the company expressed its intention to adopt and disclose such policies and report and subsequently notified the Staff that the actions had been taken. *See also Fortive Corporation* (March 13, 2019) (elimination of supermajority voting); *Invesco Ltd.* (March 8, 2019) (elimination of supermajority voting); *United Technologies Corporation* (March 1, 2019) (elimination of supermajority voting); *AbbVie Inc.* and *Cadence Design Systems, Inc.* (February 27, 2019) (elimination of supermajority voting); *NCR Corporation* (February 15, 2019) (elimination of supermajority voting); *State Street Corporation* (March 5, 2018) (elimination of supermajority voting); *The Southern Company* (February 24, 2017) (elimination of supermajority voting); *OGE Energy Corp.* (March 2, 2016) (elimination of supermajority voting); *The Progressive Corporation* (February 18, 2016) (elimination of supermajority voting); *Berry Plastics Group, Inc.* (December 14, 2016) (proxy access); *The Wendy's Company* (March 2, 2016) (proxy access); *Reliance Steel & Aluminum Co.* and *United Continental Holdings, Inc.* (February 26, 2016) (proxy access); *Huntington Ingalls Industries, Inc.* (February 12, 2016) (proxy access); and *Spirit AeroSystems Holdings, Inc.* (February 10, 2016) (majority voting for director elections proposal).

In this instance, the Company already provides information about: the pricing for the sales of its COVID-19 vaccine to the U.S. Government, which is the sole government to have provided financial assistance toward the development of the vaccine;⁹ its general approach to pricing during the pandemic and anticipated pricing once the COVID-19 pandemic enters an endemic

⁹ See Moderna, Inc., Current Report on Form 8-K, dated August 12, 2020, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1682852/000119312520216923/d45471d8k.htm>.

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phase;¹⁰ its commitment not to enforce its intellectual property rights during the pandemic;¹¹ and its global commitment to vaccine access.¹² The Company expects to supplement this existing disclosure with a statement to be published on the Company's website before February 15, 2022, and in any event, by the time the Company files its Proxy Materials. Such statement will address whether and how the Company's receipt of government financial support for development and manufacture of a COVID-19 vaccine is being, or will be, taken into account when making decisions that affect access to such products, such as setting prices, as contemplated by the Proposal. Accordingly, the combination of the information that the Company has already released and the new statement will both compare favorably with the guidelines of the proposal and satisfy the essential objective of the report requested in the Proposal.

For these reasons, and consistent with the line of precedent cited above, the Company believes it will have substantially implemented the Proposal before it files its Proxy Materials. Accordingly, the Company believes the Proposal may be excluded under Rule 14a-8(i)(10).

We are submitting this letter before the publication of the statement to address the timing requirements of Rule 14a-8(j). Once formal action has been taken by the Board to adopt the statement and the statement has been published on the Company's website, the Company will notify the Staff that this action has been taken and provide the full text of the statement. In addition, we note that we have been in discussions with the Proponent and understand that the Proponent may be willing to withdraw the Proposal following Board adoption of and publication of the statement. If the Proponent withdraws the Proposal before the Staff responds to this no-action request, the Company will promptly notify the Staff and withdraw this request for no-action relief.

Conclusion

For the foregoing reasons, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10), on the basis that the Company will have substantially implemented the Proposal by the time the Company files the Proxy Materials.

¹⁰ See, e.g., Moderna, Inc. Quarterly Report on Form 10-Q, dated August 6, 2020, at page 45, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1682852/000168285220000017/mma-20200630.htm>.

¹¹ See Moderna, Inc., "Statement by Moderna on Intellectual Property Matters During the COVID-19 Pandemic," dated October 8, 2020, available at <https://investors.modernatx.com/Statements--Perspectives/Statements--Perspectives-Details/2020/Statement-by-Moderna-on-Intellectual-Property-Matters-during-the-COVID-19-Pandemic/default.aspx>.

¹² See Moderna, Inc., "Our Global Commitment to Vaccine Access," dated October 8, 2021, available at <https://investors.modernatx.com/Statements--Perspectives/Statements--Perspectives-Details/2021/Our-Global-Commitment-to-Vaccine-Access/default.aspx>.

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If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

A handwritten signature in black ink, appearing to read "Lillian Brown".

Lillian Brown

Enclosures

cc: Shannon Klinger, Chief Legal Officer and Corporate Secretary
Brian Sandstrom, Vice President, Associate General Counsel, Securities
Moderna, Inc.

John Hoeppe, Head of US Stewardship and Sustainable Investing
Legal & General Investment Management America, Inc.

EXHIBIT A



LGIM America
71 South Wacker Drive
Suite 800
Chicago, IL 60606
www.lgima.com

November 9, 2021

BY EMAIL AND OVERNIGHT DELIVERY

Moderna, Inc.
Attn: Shannon Thyme Klinger
Chief Legal Officer and Corporate Secretary, Chief Governance Counsel

Email: [REDACTED]

Re: Shareholder Proposal for Circulation at 2022 Annual Shareholder Meeting

Dear Ms. Thyme Klinger,

On behalf of Legal & General Investment Management America, Inc. ("LGIM America") I am writing to give notice that pursuant to the 2021 Proxy Statement of Moderna, Inc. (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, LGIM America and other co-filers are presenting the attached proposal (the "Proposal") for inclusion in the proxy statement of the Company at its 2022 annual meeting of shareholders (the "Annual Meeting").

Attached is documentation from Citibank N.A., confirming that Legal & General Russell 1000 Growth CIT Fund (an investment vehicle for which LGIM America serves as investment manager) has continuously held, for at least one year as of the date hereof, at least \$25,000 worth of the Company's voting common stock (the "Shares"). In addition, Legal & General Russell 1000 Growth CIT Fund intends to continue its ownership of the Shares through the date on which the Annual Meeting is held.

LGIM America is the lead filer for this Proposal and may be joined by other shareholders as co-filers. LGIM America as lead filer is authorized to engage with the Company and negotiate on behalf of each co-filer any potential withdrawal of this proposal. The Proposal is attached.

LGIM America welcomes the opportunity to discuss this Proposal with representatives of the Company. We are available on **Wednesday, November 24 between 9am and 1pm ET; Tuesday, November 30 between 12 and 4pm ET; and Wednesday, December 8 between 10am and 4pm ET**. Any co-filers will either (a) be available on those dates and times or (b) in their submission letters, authorize us to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B). Please reach out to John Hoepfner, LGIM America's Head of US Stewardship and Sustainable Investing by phone at [REDACTED] or by email at [REDACTED] to schedule a meeting. Please feel free to contact me with any questions.

Sincerely,

Emma Rodriguez-Ayala

Emma Rodriguez-Ayala, General Counsel and Chief Compliance Officer
Legal & General Investment Management America, Inc.

RESOLVED that shareholders of Moderna, Inc. ("Moderna" or the "Company") ask the Board of Directors to report to shareholders, at reasonable expense and omitting confidential and proprietary information, on whether and how Moderna's receipt of government financial support for development and manufacture of a vaccine for COVID-19 is being, or will be, taken into account when making decisions that affect access to such products, such as setting prices.

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