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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 Oxfam 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 Oxfam America, Inc. (“Oxfam”) and co-filer Domini Impact Equity Fund (“Domini” and, together with Oxfam, the “Proponents”). The Proposal requests that the Company commission a report “analyzing the feasibility of promptly transferring intellectual property and technical knowledge (‘know-how’) to facilitate the production of COVID-19 vaccine doses by additional qualified manufacturers located in low- and middle-income countries, as defined by the World Bank.”

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 Proponents, 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 4, 2021 and November 9, 2021, the Company received the Proposal from Oxfam and Domini, respectively, which states as follows:

RESOLVED that shareholders of Moderna Inc. (“Moderna”) ask the Board of Directors to commission a third-party report to shareholders, at reasonable expense and omitting confidential and proprietary information, analyzing the feasibility of promptly transferring intellectual property and technical knowledge (“know-how”) to facilitate the production of COVID-19 vaccine doses by additional qualified manufacturers located in low- and middle-income countries, as defined by the World Bank.

SUPPORTING STATEMENT

Widespread vaccination is critical to achieving herd immunity and preventing the development of more transmissible and vaccine-resistant variants. Vaccine administration has been strikingly unequal. As of October 21, 2021, high-income countries have administered 134 doses, while low-income countries have administered only four doses, per 100 residents.¹ Vaccine inequity could cost the global economy over \$2 trillion.²

Moderna touts its agreement to sell 500 million doses to COVAX,³ and 110 million doses to the African Union.⁴ This is insufficient compared to global need. High-income countries account for a larger share of doses shipped by Moderna than any other manufacturer.⁵

Independent estimates indicate that Moderna will miss its 2021 production target of one billion doses by 33%. To ensure equitable access, Moderna should transfer the intellectual property and know-how associated with its vaccines to allow manufacture in low- and middle-income countries. Pressure, including by the U.S. government, is intensifying on Moderna to make such transfers.⁶

¹ <https://ourworldindata.org/covid-vaccinations> (last visited Oct. 22, 2021)

² <https://www.cnbc.com/2021/08/27/vaccine-inequality-could-cost-the-global-economy-trillions-report.html>

³ <https://investors.modernatx.com/news-releases/news-release-details/our-global-commitment-vaccine-access>

⁴ <https://www.reuters.com/world/africa/exclusive-african-union-buy-up-110-million-moderna-covid-19-vaccines-officials-2021-10-26/>

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

⁶ <https://endpts.com/as-pressure-to-share-technology-mounts-biontech-selects-rwanda-for-latest-vaccine-site/>;
<https://www.nytimes.com/2021/09/22/us/politics/covid-vaccine-moderna-global.html>

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Moderna has committed not to enforce its COVID-19 vaccine patents during the pandemic,⁷ but other manufacturers cannot produce Moderna's vaccine quickly without full technology transfer, including know-how regarding the manufacturing process. An effort to replicate Moderna's vaccine by the World Health Organization's mRNA Vaccine Technology Transfer Hub, which was recently established to facilitate technology transfer,⁸ has stalled because Moderna has not responded to requests to share know-how.⁹

Though CEO Stephane Bancel has said other companies would take 12 to 18 months to produce Moderna's vaccine,¹⁰ quicker production is possible with full technology transfer: Lonza began producing it within six months after the transfer was announced.¹¹ Moderna's former director of chemistry estimates that modern factories could start manufacturing mRNA vaccines within a few months if sufficient know-how is transferred.¹² The New York Times has identified ten emerging market manufacturers that can produce the vaccine.¹³

Moderna has not yet selected a country for its announced African mRNA vaccine plant, and Bancel has said that it would take two to four years to construct and validate. Thus, it will not ameliorate current supply challenges.

We believe backlash from Moderna not sharing information needed to manufacture its vaccine in low- and middle-income countries could tarnish its reputation, threaten its social license to operate, and undermine relations with the U.S. government. We urge Moderna to analyze the feasibility of providing know-how to qualified manufacturers that could independently increase supply and help end the pandemic.

⁷ <https://investors.modernatx.com/news-releases/news-release-details/our-global-commitment-vaccine-access>

⁸ <https://www.who.int/news-room/articles-detail/establishment-of-a-covid-19-mrna-vaccine-technology-transfer-hub-to-scale-up-global-manufacturing>

⁹ <https://www.news24.com/news24/Africa/News/covid-19-who-backed-vaccine-hub-for-africa-to-copy-modernas-shot-20210914>

¹⁰ <https://www.nature.com/articles/d41586-021-02383-z>

¹¹ <https://jamanetwork.com/journals/jama/fullarticle/2781756>

¹² <https://www.project-syndicate.org/onpoint/big-pharma-blocking-wto-waiver-to-produce-more-covid-vaccines-by-joseph-e-stiglitz-and-lori-wallach-2021-05>; <https://www.devex.com/news/where-are-we-on-covid-19-after-a-year-of-trips-waiver-negotiations-101795>

¹³ <https://www.nytimes.com/interactive/2021/10/22/science/developing-country-covid-vaccines.html>

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Basis for Exclusion

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the subject matter of the Proposal directly concerns the Company’s ordinary business operations.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion is “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 shareholders meeting.” SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”). An exception to this principle may be made where a proposal focuses on significant policy issues (e.g., significant discrimination matters) that transcend the day-to-day business matters of the company. *See* 1998 Release. The Staff most recently discussed its interpretation of how the Staff will consider whether a proposal “transcends the day-to-day business matters” of a company in Staff Legal Bulletin 14L (November 3, 2021) (“SLB 14L”), noting that it is “realign[ing]” its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976 and reaffirmed in the 1998 Release. Under this realignment, the Staff will “no longer take a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)” but rather will consider only “whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.”¹⁴

As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration is that “[c]ertain 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 other consideration is that a proposal should not “seek[] 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.” The Proposal implicates both of these considerations and does not raise a significant policy issue that transcends the ordinary business of the Company.

Framing a shareholder proposal in the form of a request for a report does not change the underlying nature of the proposal. The Commission has long held that the Staff evaluates proposals requesting dissemination of a report by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7), and that such proposals are excludable when the substance is within the ordinary business of the company. *See* Release No. 34-20091 (August 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be

¹⁴ SLB 14L also explicitly rescinded prior Staff Legal Bulletins 14I, 14J and 14K, which set out a company-specific approach to the significant policy issue analysis (the “Rescinded SLBs”).

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excludable”). *See also Rite Aid Corp.* (April 17, 2018) (concurring in exclusion of a proposal requesting a report on the feasibility of adopting company-wide goals for increasing energy efficiency and use of renewable energy, in which the Staff determined that the proposal focused “primarily on matters relating to the Company’s ordinary business operations”); and *Netflix, Inc.* (March 14, 2016) (concurring in exclusion of a proposal that requested a report relating to the company’s assessment and screening of “inaccurate portrayals of Native Americans, American Indians and other indigenous peoples,” in which the Staff determined that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

- A. *The Proposal may be excluded because it relates to ordinary business matters of how the Company manages its day-to-day operations, specifically with regard to the development, production and distribution of the Company’s products.*

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the matters to be addressed in the requested report – namely, the feasibility of transferring intellectual property and technical knowledge to facilitate the production of COVID-19 vaccine doses – relate to the Company’s ordinary business operations. Managing the development, production and distribution of particular products requires complex and extensive analysis that is not appropriate for shareholders and should be left to management. The analysis that would be required by the Proposal is exactly the type of analysis that Rule 14a-8(i)(7) recognizes as a proper function of management, who have the requisite knowledge and resources to appropriately analyze and weigh the various financial, contractual, regulatory, operational and reputational considerations and consequences relating to the development, production and distribution of the Company’s products, including any transfer of the Company’s intellectual property.

The Staff has consistently taken the position that decisions by companies as to the products and services that they sell and the manner in which those products and services are designed, developed, produced, distributed and marketed are a fundamental part of a company’s ordinary business operations and are excludable under Rule 14a-8(i)(7) as relating to ordinary business operations. For example, in *AT&T Inc.* (January 4, 2017), the Staff concurred in exclusion of a proposal that urged the company to report on progress towards providing internet service and products for low-income customers, noting that the proposal “relates to the products and services offered by the company.” In addition, in *International Business Machines Corp.* (January 22, 2009), the Staff concurred in exclusion of a proposal requesting that the company adopt a policy or take appropriate steps to further the advance of open source standards, as relating to “ordinary business operations (i.e., the design, development and licensing of IBM’s software products).” *See also Pfizer Inc.* (March 1, 2016) (concurring in exclusion of a proposal requesting a report describing the steps the company has taken to prevent the sale of its medicines to prisons for the purpose of aiding executions, noting that the proposal “relates to the sale or distribution of [the

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company's] products"); *Wal-Mart Stores, Inc.* (March 20, 2014) (concurring in exclusion of a proposal requesting board oversight relating to the formulation of policies that determine whether the company should sell a product that "especially endangers public safety and well-being, has the substantial potential to impair the reputation of the company and/or would reasonably be considered by many offensive to the family and community values integral to the company's promotion of its brands," noting that the proposal "relates to the products and services offered for sale by the company" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *DENTSPLY Int'l Inc.* (March 21, 2013) (concurring in exclusion of a proposal requesting a report summarizing the company's policies and plans for phasing out mercury from its products, noting that the proposal relates to the company's product development and that "[p]roposals concerning product development are generally excludable under rule 14a-8(i)(7)"); *Wells Fargo & Co.* (January 28, 2013, *recon. denied* March 4, 2013) (concurring in exclusion of a proposal that requested a report discussing the adequacy of the company's policies in addressing the social and financial impacts of the company's direct deposit advance lending service because the proposal related to "products and services offered for sale by the company"); *Applied Digital Solutions, Inc.* (April 25, 2006) (concurring in exclusion of a proposal requesting a report on the harm the continued sale and use of radio frequency identification chips could have to the public's privacy, personal safety and financial security because the proposal related to "ordinary business operations (i.e., product development)"); *Abbott Laboratories* (March 9, 2006) (concurring in exclusion of a proposal requesting that the board review and report to shareholders on the economic effects of the HIV/AIDS, tuberculosis and malaria pandemics on the company's business strategy and initiatives); and *International Business Machines Corp.* (January 6, 2005) (concurring in exclusion of a proposal requesting that the company take steps to offer customers software technology that has greater simplicity because the proposal related to "the design and development of [the company's] products," which is part of a company's ordinary business operations).

The Company believes that mRNA-based medicines have the potential to help patients in ways that could equal or exceed the impact of traditional approaches to medicine, and its strategy is designed to deliver on the full scope of the mRNA opportunity over the long term. Reaching patients with mRNA medicines, including the Company's COVID-19 vaccine, requires management to make complex choices, including: how much capital the Company should devote to technology creation, drug discovery, drug development, commercial and global marketing and infrastructure; which programs to advance and how; whether to advance programs along with strategic collaborators; and which capabilities to build internally versus outsource. Decisions relating specifically to the Company's COVID-19 vaccine, the Company's only commercial product at this time, and the methods by which the Company determines to make such vaccine (and related intellectual property) available to its customers, partners and the public are all clearly matters that fall within the purview and expertise of the Company's management and do

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not lend themselves to shareholder evaluation, and are therefore all inherently and undeniably related to the ordinary business operations of the Company. In making such decisions, the Company's management regularly considers a wide variety of factors and risks that may affect the Company's operations and financial condition.

Further, decisions by the Company with respect to which contract manufacturing partners are best-suited to make the Company's COVID-19 vaccine, which involves novel and complex technology for the production of mRNA-based medicines, is appropriately left to the judgment of management. The Company has limited personnel who are trained in the manufacturing processes to make its medicines, and management is best-suited to assess how those personnel should be deployed and which third parties should be trained to maximize the production of its vaccine. The COVID-19 vaccine is not only the Company's first product, but it is also one of the first commercial medicines to use mRNA-based technology. As a result, ensuring the integrity of manufacturing processes and protecting the reputation for quality of the Company's medicines, which may be compromised if the Company has no oversight role in the manufacturing of its products, as contemplated by the Proposal, are matters relating to the Company's ordinary business operations that should be left to management. Accordingly, the Company may exclude the Proposal under Rule 14a-8(i)(7) as it relates to the ordinary business of the Company.

B. The Proposal may be excluded because it relates to ordinary business matters of how the Company uses and protects its intellectual property.

The manner in which the Company uses and protects its intellectual property, including "know-how" and technical information, related to its COVID-19 vaccine, are fundamental to the Company's ordinary business operations and cannot be delegated to shareholders. Consistent with prior Staff precedent, the Company's ability to control decisions related to disclosure of highly confidential and proprietary information is precisely the type of ordinary business operation addressed in Rule 14a-8(i)(7). For example, in *Peregrine Pharmaceuticals, Inc.* (July 28, 2006), the Staff concurred in exclusion of a proposal requesting that the company provide on a monthly basis highly detailed information concerning each and every one of their clinical trials, as it related to the company's "ordinary business operations (*i.e.*, disclosure of ordinary business matters)." In *Peregrine*, the company noted that the information requested to be disclosed was highly confidential and sensitive, and related to the conduct of the company's ordinary business matters. *See also AmerInst Insurance Group, Ltd.* (April 14, 2005) (concurring in exclusion of a proposal requesting the board provide each quarter a full, complete and adequate disclosure of the accounting of the line items and amounts of the operating and management expenses of the company, as relating to "ordinary business operations (*i.e.*, presentation of financial information)."

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Similarly, the Proposal requests not just the disclosure, but the transfer, of the Company's intellectual property and technical knowledge of its COVID-19 vaccines, which is highly confidential and proprietary information of the Company, to qualified manufacturers located in low- and middle-income countries. The Company is a platform company, and the production of its medicines depends upon a few key components and the lipid nanoparticle delivery technology to deliver it into the human body. This technology is consistent across the platform, and, as such, sharing the technology risks undermining protections for other programs far beyond the Company's COVID-19 vaccine. The Company has devoted significant resources to advance its platform technology and its intellectual property. The Company intends to sustain its investment in its platform in the future because it believes it can establish new modalities and continue to make meaningful improvements in the performance of its current modalities. Transferring the intellectual property associated with this technology, without any guarantee with respect to whether future intellectual property rights will be respected, risks undermining the investments that have been made in this technology over the past decade, not only for the Company's COVID-19 vaccine, but for all of the medicines that the Company may seek to develop and produce in the future.

The Company has already stated that it will not enforce its intellectual property rights during the COVID-19 pandemic.¹⁵ The Proposal, however, would require the Company to go a step further, dictating that the Company not just refrain from enforcing its intellectual property rights, but also actively transfer the Company's most valuable asset – the “know-how” for the Company's only commercial product – to third parties without any assurances regarding protection and use of, or consideration for, the transfer of such highly sensitive and proprietary information. The decisions relating to how the Company uses and protects its intellectual property fall squarely within ordinary business matters best left to the Company's management. Given the importance of intellectual property to the Company's business and the specialized nature of protecting such intellectual property, the transfer of any such intellectual property (or any analysis of the feasibility of such transfer) should not, as a practical matter, be subject to direct shareholder oversight. Accordingly, the Company may exclude the Proposal under Rule 14a-8(i)(7) as it relates to the ordinary business of the Company.

¹⁵ See Statement by Moderna on Intellectual Property Matters During the COVID-19 Pandemic, 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>.

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C. *The Proposal does not focus on a significant social policy issue that transcends the Company's ordinary business operations.*

The Commission has distinguished proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *See* 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”). While “proposals . . . focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release.

The Staff has long permitted exclusion of shareholder proposals where the proposal focuses on ordinary business matters notwithstanding that it references a potential significant policy issue. This approach predates the Rescinded SLBs and relies on a different analysis than that addressed by SLB 14L – it does not focus on whether a particular policy is broadly significant versus significant for a particular company, but rather on whether the Proposal is fundamentally about day-to-day operations versus any significant policy issue that may be referenced in the proposal. For example, in *McDonald's Corp.* (March 22, 2019), the Staff concurred in 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. *See also* AT&T Inc. (December 28, 2015) (concurring in exclusion of a proposal seeking establishment of a program to educate company employees on health matters relating to HIV/AIDS, as relating to an ordinary business matter); *Papa John's International, Inc.* (February 13, 2015) (concurring in exclusion of a proposal encouraging the company to add vegan options to its menu, which touched on issues such as animal welfare and sustainability, because the proposal related to the company’s ordinary business and “[did] not focus on a significant policy issue”); *PetSmart, Inc.* (March 24, 2011) (concurring in exclusion of a proposal calling for suppliers to certify that they have not violated certain laws regarding the humane treatment of animals); *CIGNA Corp.* (February 23, 2011) (concurring in exclusion of a proposal when, although the proposal addressed access to affordable health care, it asked the company to report on expense management, an ordinary business matter); *JPMorgan Chase & Co.* (March 12, 2010) (concurring in exclusion of a proposal that requested the adoption of a policy banning future financing of companies engaged in a particular practice that impacted the environment because the proposal addressed “matters beyond the environmental impact of JPMorgan Chase’s project finance decisions”); *Apache Corp.* (March 5, 2008) (concurring in exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that “some of the

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principles relate to Apache's ordinary business operations"); and *Capital One Financial Corp.* (February 3, 2005) (concurring in exclusion of a proposal when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

The Company does not disagree that COVID-19 is an issue of global magnitude and importance and has made significant commitments as part of its strategy to ensure that people around the world have access to its COVID-19 vaccine as quickly as possible. However, the Proponents are seeking to prevent the Company's board and management from exercising their discretion in how to effectively address this issue. Since before its COVID-19 vaccine was even authorized in any jurisdiction, the Company's board and management have understood the Company's social responsibility to fight the pandemic and have carefully considered what steps the Company can take to help end the pandemic. In October 2020, the Company announced that, while the COVID-19 pandemic continues, it will not enforce its COVID-19-related patents against those making vaccines intended to combat the pandemic. Since then, the Company has contracted with the COVAX Facility, a global risk-sharing mechanism for pooled procurement and equitable distribution of COVID-19 vaccines for low- and middle-income countries, to supply up to 650 million doses of its COVID-19 vaccine beginning in 2021 and through 2022.¹⁶ The Company has also announced an agreement with the African Union to supply up to 110 million doses of its vaccine during the same time period.¹⁷ Additionally, as part of its comprehensive plan to bring vaccines to as many people as possible around the world, the Company has engaged with various countries, including many European governments, as well as the United States government, to facilitate donations from these countries to low- and middle-income countries.¹⁸ The Company has also announced its plan to build a state-of-the-art mRNA manufacturing facility in Africa with the goal of producing up to 500 million doses of vaccines each year to help guarantee the local supply of vaccines for any future pandemics.

¹⁶ See Moderna Announces Additional 20 Million Doses of COVID-19 Vaccine to COVAX for Supply in 2021 and New Additional Supply Agreement for 2022, available at <https://investors.modernatx.com/news/news-details/2021/Moderna-Announces-Additional-20-Million-Doses-of-COVID-19-Vaccine-to-COVAX-for-Supply-in-2021-and-New-Additional-Supply-Agreement-for-2022/default.aspx>.

¹⁷ See Moderna Announces Memorandum of Understanding to Supply up to 100 Million Doses of Its COVID-19 Vaccine to the African Union, available at <https://investors.modernatx.com/news/news-details/2021/Moderna-Announces-Memorandum-of-Understanding-to-Supply-up-to-110-Million-Doses-of-Its-COVID-19-Vaccine-to-the-African-Union-10-26-2021/default.aspx>.

¹⁸ See Moderna Announces European Union and European Economic Area Countries to Donate More Than 70 Million Doses of Moderna COVID-19 Vaccine to COVAX in 2021 to Help End COVID-19 Pandemic in Low Income Countries, available at <https://investors.modernatx.com/news/news-details/2021/Moderna-Announces-European-Union-and-European-Economic-Area-Countries-to-Donate-More-than-70-Million-Doses-of-Moderna-COVID-19-Vaccine-to-COVAX-in-2021-to-Help-End-COVID-19-Pandemic-in-Low-Income-Countries-11-16-2021/default.aspx>.

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Although the Proposal addresses COVID-19, and, in particular the Company's COVID-19 vaccine, the true focus of the Proposal is on the Company's ordinary business matters of the development, production and distribution of the Company's products and the use and protection of the Company's intellectual property. The Proposal seeks to substitute the Proponents' assessment of the most effective way to address a complicated issue for that of the Company's board and management, who have been laser-focused on combating the pandemic for nearly two years. The Proposal does not touch on an issue that transcends the ordinary business of the Company, but strikes at the heart of day-to-day decisions regarding how to best manage the Company's assets and business. Accordingly, and consistent with the precedent cited above, the Company may exclude the Proposal under Rule 14a-8(i)(7) as it relates to the ordinary business of the Company.

D. The Proposal may be excluded because it seeks to micromanage 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 addition to interfering with management's day-to-day operations, the Proposal also seeks to micromanage the Company with regard to the details of how and to whom the Company should transfer intellectual property relating to its COVID-19 vaccine. As the Staff explained in SLB 14L, in considering arguments under the micromanagement exclusion, the Staff will focus on "the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Proposal would dictate which third parties the Company should transfer its intellectual property to (i.e., not just those manufacturing partners already selected and vetted by the Company's management), where such third parties should be located (i.e., only in low- and middle-income countries), and on what terms the intellectual property should be transferred (i.e., without regard for the liability posed to the Company or the competency of the transferees to ensure the production of safe and effective vaccines), which would directly limit management's discretion to determine how to use and protect the Company's intellectual property.

Additionally, the Company's determinations about how to use and protect its intellectual property require a deep understanding of the Company's business, strategy, risk profile and operating environment as well as an assessment of a variety of complex factors and risks, including costs, protection of intellectual property, feasibility of manufacture and financial results, among others. Determining whether to disclose or transfer, and the timing and extent of any such disclosure or transfer of, sensitive and confidential intellectual property relating to the Company's COVID-19 vaccine is clearly 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 considering whether a proposal is too complex to enable shareholders to be in a position to make an informed judgment, the Staff "may consider the sophistication of investors generally on

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the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” SLB 14L. Intellectual property use and protection are highly sophisticated topics for which there is not robust public discussion or analysis or broad-based understanding. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

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)(7), on the basis that the Proposal relates to the Company’s ordinary business operations.

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 Proponents choose to submit any response or other correspondence to the Commission, we request that the Proponents 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,



Lillian Brown

Enclosures

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

Robert Silverman, Oxfam America
Mary Beth Gallagher, Domini Impact Investments LLC

EXHIBIT A



November 4, 2021

BY EMAIL AND OVERNIGHT DELIVERY

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

[REDACTED]
[REDACTED]
[REDACTED]
Email: [REDACTED]

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Ms. Thyme Klinger,

Enclosed please find a proposal of Oxfam America, Inc. ("Oxfam America") and other co-filers to be included in the proxy statement of Moderna (the "Company") for its 2022 annual meeting of shareholders.

Oxfam America has continuously held, for at least one year as of the date hereof, at least \$25,000 worth of the Company's common stock. Verification of this ownership will be forthcoming. Oxfam America intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

Oxfam America is the lead filer for this proposal and may be joined by other shareholders as co-filers. Oxfam 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.

Oxfam America welcomes the opportunity to discuss this proposal with representatives of the Company. We are available on **Tuesday, November 16 between 3 and 5pm ET; Wednesday, November 17 between 4 and 5pm ET; and Friday, November 19 between 1 and 3pm ET**. I can be contacted on [REDACTED] or by email at [REDACTED] to schedule a meeting. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Silverman", written over a light blue rectangular background.

Robert Silverman
Oxfam America

[Enclosure]

RESOLVED that shareholders of Moderna Inc. (“Moderna”) ask the Board of Directors to commission a third-party report to shareholders, at reasonable expense and omitting confidential and proprietary information, analyzing the feasibility of promptly transferring intellectual property and technical knowledge (“know-how”) to facilitate the production of COVID-19 vaccine doses by additional qualified manufacturers located in low- and middle-income countries, as defined by the World Bank.

SUPPORTING STATEMENT

Widespread vaccination is critical to achieving herd immunity and preventing the development of more transmissible and vaccine-resistant variants. Vaccine administration has been strikingly unequal. As of October 21, 2021, high-income countries have administered 134 doses, while low-income countries have administered only four doses, per 100 residents.¹ Vaccine inequity could cost the global economy over \$2 trillion.²

Moderna touts its agreement to sell 500 million doses to COVAX,³ and 110 million doses to the African Union.⁴ This is insufficient compared to global need. High-income countries account for a larger share of doses shipped by Moderna than any other manufacturer.⁵

Independent estimates indicate that Moderna will miss its 2021 production target of one billion doses by 33%. To ensure equitable access, Moderna should transfer the intellectual property and know-how associated with its vaccines to allow manufacture in low- and middle-income countries. Pressure, including by the U.S. government, is intensifying on Moderna to make such transfers.⁶

Moderna has committed not to enforce its COVID-19 vaccine patents during the pandemic,⁷ but other manufacturers cannot produce Moderna’s vaccine quickly without full technology transfer, including know-how regarding the manufacturing process. An effort to replicate Moderna’s vaccine by the World Health Organization’s mRNA Vaccine Technology Transfer Hub, which was recently established to facilitate technology transfer,⁸ has stalled because Moderna has not responded to requests to share know-how.⁹

¹ <https://ourworldindata.org/covid-vaccinations> (last visited Oct. 22, 2021)

² <https://www.cnbc.com/2021/08/27/vaccine-inequality-could-cost-the-global-economy-trillions-report.html>

³ <https://investors.modernatx.com/news-releases/news-release-details/our-global-commitment-vaccine-access>

⁴ <https://www.reuters.com/world/africa/exclusive-african-union-buy-up-110-million-moderna-covid-19-vaccines-officials-2021-10-26/>

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

⁶ <https://endpts.com/as-pressure-to-share-technology-mounts-biontech-selects-rwanda-for-latest-vaccine-site/>; <https://www.nytimes.com/2021/09/22/us/politics/covid-vaccine-moderna-global.html>

⁷ <https://investors.modernatx.com/news-releases/news-release-details/our-global-commitment-vaccine-access>

⁸ <https://www.who.int/news-room/articles-detail/establishment-of-a-covid-19-mrna-vaccine-technology-transfer-hub-to-scale-up-global-manufacturing>

⁹ <https://www.news24.com/news24/Africa/News/covid-19-who-backed-vaccine-hub-for-africa-to-copy-modernas-shot-20210914>

Though CEO Stephane Bancel has said other companies would take 12 to 18 months to produce Moderna's vaccine,¹⁰ quicker production is possible with full technology transfer: Lonza began producing it within six months after the transfer was announced.¹¹ Moderna's former director of chemistry estimates that modern factories could start manufacturing mRNA vaccines within a few months if sufficient know-how is transferred.¹² The New York Times has identified ten emerging market manufacturers that can produce the vaccine.¹³

Moderna has not yet selected a country for its announced African mRNA vaccine plant, and Bancel has said that it would take two to four years to construct and validate. Thus, it will not ameliorate current supply challenges.

We believe backlash from Moderna not sharing information needed to manufacture its vaccine in low- and middle-income countries could tarnish its reputation, threaten its social license to operate, and undermine relations with the U.S. government. We urge Moderna to analyze the feasibility of providing know-how to qualified manufacturers that could independently increase supply and help end the pandemic.

¹⁰ <https://www.nature.com/articles/d41586-021-02383-z>

¹¹ <https://jamanetwork.com/journals/jama/fullarticle/2781756>

¹² <https://www.project-syndicate.org/onpoint/big-pharma-blocking-wto-waiver-to-produce-more-covid-vaccines-by-joseph-e-stiglitz-and-lori-wallach-2021-05>; <https://www.devex.com/news/where-are-we-on-covid-19-after-a-year-of-trips-waiver-negotiations-101795>

¹³ <https://www.nytimes.com/interactive/2021/10/22/science/developing-country-covid-vaccines.html>



November 9, 2021

Via email: [REDACTED]

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

[REDACTED]
[REDACTED]
Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Corporate Secretary:

I am writing to you on behalf of the Domini Impact Equity Fund (the Fund), a long-term Moderna shareholder. The attached shareholder proposal is submitted for inclusion in the next proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

As of November 9, 2021, the Fund beneficially owned, and had beneficially owned continuously for at least one year, shares of Moderna's common stock worth at least \$25,000. The Fund will maintain ownership of the required number of shares through the date of the next stockholders' annual meeting.

A letter verifying our ownership of shares from our portfolio's custodian is enclosed. A representative of the filers will attend the stockholders' meeting to move the resolution as required by SEC Rules. We recognize Oxfam America as the lead filer of this proposal and authorize Oxfam to negotiate its withdrawal on our behalf. In its submission letter, Oxfam will provide dates and times of ability to meet. We designate the lead filer to meet initially with the Company but may join the meeting subject to our availability.

We strongly believe the attached proposal is in the best interests of our company and its shareholders and

Domini.

welcome the opportunity to discuss the issues raised by the proposal with you. I can be reached at [REDACTED]
or at [REDACTED]

Sincerely,

A handwritten signature in black ink that reads "Mary Beth Gallagher". The signature is written in a cursive, flowing style.

Mary Beth Gallagher
Director of Engagement
Domini Impact Investments LLC

Encl.

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⁶ <https://endpts.com/as-pressure-to-share-technology-mounts-biontech-selects-rwanda-for-latest-vaccine-site/>; <https://www.nytimes.com/2021/09/22/us/politics/covid-vaccine-moderna-global.html>

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