



PEOPLE FOR  
THE ETHICAL  
TREATMENT  
OF ANIMALS

February 5, 2021

*Via e-mail*

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Re: Response to Churchill Downs, Inc. Supplement  
Regarding the 2021 Annual Meeting Shareholder  
Proposal Submitted by People for the Ethical  
Treatment of Animals

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (“PETA”) in response to Churchill Downs, Inc.’s (“Churchill Downs”) January 29, 2021, supplemental letter in support of its request that the Staff of the Division of Corporation Finance (“Staff”) of the Securities and Exchange Commission (“Commission”) concur with its view that it may properly exclude PETA’s shareholder resolution and supporting statement (“Proposal”) from the proxy materials to be distributed by Churchill Downs in connection with its 2021 annual meeting of shareholders (the “proxy materials”).

PETA submits this letter to respond to certain arguments in Churchill Downs’ supplemental letter, inconsistent with the Staff’s own guidance, and to reaffirm its request that the Commission deny Churchill Downs’ request for a no-action letter concerning PETA’s Proposal, which requests that the Company “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.”

Churchill Downs remarkably asserts that the Proposal does not transcend day-to-day business matters because it

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merely “touches upon” the significant social policy issue of animal welfare, and the main focus of the Proposal is actually the track surface material. *See* Supplemental Letter at 4-5. This mischaracterizes the Proposal, which does not “touch upon” animal welfare, but rather asks Churchill Downs to prepare the report on changing the racetrack surface for *the sole reason* that it is safer for horses. The purpose of promoting these animals’ health and safety is made clear by the language of the resolution itself, as well as the supporting statement, which goes on to discuss the statistical evidence demonstrating that horses suffer far fewer fatal catastrophic injuries on synthetic surfaces than on dirt tracks, and the devastating impact these injuries can have on the Company, which has already received substantial negative media attention for its record of fatalities. Churchill Downs’ argument that the Proposal does not focus on the admittedly important social policy issue of animal welfare is baseless.

In addition, Churchill Downs’ contention that recent statistics show the other steps it has taken to improve racetrack safety for the horses have been sufficiently effective is misleading. As explained in PETA’s previous letter, the statistics to which Churchill Downs cites showing a drop in horse fatalities in 2019 compared to 2018 do not include horse fatalities that took place while training on the track. In fact, it has been reported, based on information obtained through public records requests, that *more* horses died at Churchill Downs in 2019 than in 2018 while training and racing.<sup>1</sup> Notably, the Company did not even dispute this point in its supplement.

Churchill Downs also argues that the Proposal is too complex and seeks to micromanage the company because “PETA merely intends to substitute its views on the appropriate track surface type at [Churchill Downs] for the reasoned analysis and judgment of the Company’s management, potentially disrupting the Company’s business of horse racing at CDRT.” *See* Supplemental Letter at 3. Churchill Downs does not dispute that synthetic tracks are inarguably safer and would reduce horse fatalities even further, in addition to the other steps they have taken that they purport have led to greater track safety (despite the statistics illustrating the contrary). Industry insiders agree that “most racing in the USA would absolutely, inarguably, be safer on synthetic tracks, and the sport really does not need bad publicity, bad injury statistics from these tracks.”<sup>2</sup> Additionally, PETA notes that Churchill Downs’ discussion of what it argues renders this decision too complex for

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<sup>1</sup> Patrick Battuello, *Killed, 2019*, Horseracing Wrongs (last visited Jan. 19, 2020), <https://horseracingwrongs.org/killed-2019/>. *See also* PETA Opposition at n.14-22 and accompanying text.

<sup>2</sup> Patrick Lawrence Gilligan, *How Synthetic Surfaces Could Become the Savior of American Dirt Racing*, ThoroughbredRacing.com (Feb. 1, 2021), <https://www.thoroughbredracing.com/articles/how-synthetic-surfaces-could-become-savior-american-dirt-racing/>.

shareholders is contained in a single paragraph in its Supplemental Letter. *See* Supplemental Letter at 3-4. The claim that some bettors, trainers, and breeders prefer dirt tracks does not make this issue too complex for a shareholder vote. Any proposal that is asking a company to make a change will require the company weighing more than a single factor—setting the bar for complexity this low would turn virtually *any* shareholder proposal into one that impermissibly micromanages.

Critically, the Company also ignores the Staff’s guidance on the scope of Rule 14a-8(i)(7). In Staff Legal Bulletin No. 14K, the Staff advised that “a proposal framed as a request that the company consider, discuss the feasibility of, or evaluate the potential for a particular issue”—as the Proposal does here—“generally would not be viewed as micromanaging matters of a complex nature.” It further noted, “Notwithstanding the precatory nature of a proposal, if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” In providing an example for guidance, the Staff advised:

[W]e did not concur with the excludability of a proposal seeking a report “describing if, and how, [a company] plans to reduce its total contribution to climate change and align its operations and investments with the Paris [Climate] Agreement’s goal of maintaining global temperatures well below 2 degrees Celsius.” The proposal was not excludable because the proposal transcended ordinary business matters and did not seek to micromanage the company to such a degree that exclusion would be appropriate. In our view, the proposal did not seek to micromanage the company because it deferred to management’s discretion to consider if and how the company plans to reduce its carbon footprint and asked the company to consider the relative benefits and drawbacks of several actions.

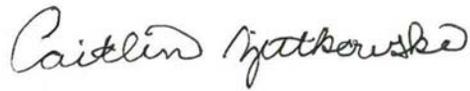
So too here. The Proposal merely requests a report on the feasibility of replacing a dirt track with a synthetic surface, given the indisputable evidence that synthetic tracks are safer for horses. As discussed above, the Proposal is not excludable because it transcends ordinary business matters and focuses on the significant social policy of animal welfare. Further, the Proposal does “not seek to micromanage the company to such a degree that exclusion would be appropriate” because “it defer[s] to management’s discretion to consider if and how the company plans to” replace the dirt track with a synthetic surface, and the feasibility report requested provides no specific prescriptions, and thereby only “ask[s] the company to consider the relative benefits and drawbacks of” doing so. *See* Staff Legal Bulletin No. 14K. The Proposal falls squarely within the Staff’s example and outside of the micromanagement ground for exclusion.

If Churchill Downs would like to take the position that replacing its track is inadvisable due to other reasons besides horse safety, such as economic factors, the company could certainly include this in its opposition statement and, if the Proposal passes, the requested report.

As Churchill Downs has failed to present a valid basis for excluding the Proposal under Rule 14a-8(i)(7), we respectfully request that the Staff decline to issue no-action relief to Churchill Downs and inform the Company that it may not omit the Proposal from its proxy materials.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Caitlin Zittkowski".

Caitlin Zittkowski  
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cc: Jared Goodman, PETA Foundation  
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January 29, 2021

**By Email**

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

Ladies and Gentlemen:

On December 21, 2020, Churchill Downs Incorporated (the “Company”), submitted a letter (the “Original Company Letter”) to the Securities and Exchange Commission (the “Commission”) notifying the Commission that the Company intends to omit from its proxy materials for its 2021 Annual Meeting of Shareholders (the “2021 Annual Meeting”) a shareholder proposal (the “Proposal”) submitted by People for the Ethical Treatment of Animals (“PETA” or the “Proponent”).

On January 20, 2021, the Proponent submitted a response to the Commission regarding the Original Company Letter (“Proponent Letter”). The Company is submitting this letter to respond to the Proponent Letter and reaffirm its request for confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend that enforcement action be taken by the Commission if the Company excludes the Proposal from its 2021 Annual Meeting proxy materials for the reasons set forth below, in addition to the reasons set forth in the Original Company Letter.

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this letter and its exhibits are being submitted via email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). A copy of this letter will also be sent to the Proponent.

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## THE PROPOSAL

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.

As explained in the Original Company Letter, there are three types of possible track surfaces: dirt, turf and synthetic. Churchill Downs Racetrack (“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. 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 PETA’s supporting statement, which includes PETA’s views on the benefits of a synthetic surface.

## RESPONSE TO THE PROPONENT LETTER

The Company believes that PETA’s arguments, as set forth in the Proponent Letter, do not provide any valid substantive rebuttal to the analysis set forth in the Original Company Letter. The Company therefore continues to believe that it may exclude the Proposal from the 2021 Proxy Materials in reliance upon Rule 14a-8(i)(7).

The Company will not address every point made in the Proponent Letter because the Company’s analysis on certain such points are clearly set forth in the Original Company Letter, and others are not relevant to the Staff’s analysis. However, the Company would like to reinforce a few key principles from the Original Company Letter, and also provide updated horse injury data for races at CDRT during 2020.

### *The Proposal Relates to an Ordinary Business Matter and Seeks to Micromanage the Company*

The type of track surface used at CDRT is 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 of the Original Company Letter, which includes the use of outside experts and the input of stakeholders. The Proponent Letter attempts to minimize this complexity,

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stating that the Company's argument "unnecessarily complicates the issue." Actually, the Proponent has grossly oversimplified the issue by (1) repeatedly pointing to historical statistics establishing that there are fewer horse fatalities on synthetic tracks than dirt tracks while disregarding the specific safety record at CDRT and disregarding the many other factors that contribute to horse fatalities that are unrelated to track surface type, and (2) ignoring the many other considerations beyond historical horse fatality statistics that the Company takes into account when determining track surface type at CDRT, as set forth in Section II.B of the Original Company Letter. The Proponent Letter makes clear that PETA merely intends to substitute its views on the appropriate track surface type at CDRT for the reasoned analysis and judgment of the Company's management, potentially disrupting the Company's business of horse racing at CDRT. The Proposal probes too deeply into matters of a complex nature upon which shareholders are not in a position to make an informed judgment, and therefore may be omitted pursuant to Rule 14a-8(i)(7).

As thoroughly explained in the Original Company Letter, horse fatalities are due to myriad factors, and it is the Company's position that a well-maintained dirt track can be just as safe or even safer than a synthetic surface. The Company leverages its experience and technical expertise with its dirt surface to maximize surface quality in the climate conditions present at CDRT. Further, CDRT has taken a number of recent measures to improve racetrack safety. These improvements are making a difference, as illustrated by CDRT's much-improved safety record in 2019 (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. Moreover, the safety record in 2020 improved further, with .88 fatalities per 1,000 starts at CDRT. For the industry as a whole, official statistics from the Equine Injury Database are not yet available for 2020. The Company notes that the Proponent Letter attempted to discredit these statistics, stating that injuries to horses incurred while training are not included. While it is true that training injuries are not included in the Equine Injury Database, the same holds true for training injuries on synthetic surfaces.

In addition, the track surface the Company offers to race participants at CDRT is akin to being a product or service sold by the Company, despite Proponent's claim in the Proponent Letter that the track surface should not be viewed this way. The Proponent Letter correctly states that the Company is in the business of live horse racing. The racetrack and the surface of that racetrack are key components of providing live horse racing to customers and attracting quality horses and fuller fields for racing. Further, the Company believes that a dirt track is preferred at CDRT by customers and race participants, as well as many thoroughbred breeders and trainers that have historically focused on bloodlines and training methods designed to enhance a horse's ability to run on a dirt surface. The decision to race particular horses at CDRT and a customer's decision to place

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a bet on a certain horse can result from how the horse is perceived to perform on a dirt track given the conditions on race day.<sup>1</sup> Accordingly, the precedents cited in the Original Company Letter illustrating that the Staff has consistently concurred that proposals relating to the products and services offered by a company are excludable as relating to ordinary business support the Company's position that the Proposal is also excludable.<sup>2</sup>

The purpose of the ordinary business exception provided by Rule 14a-8(i)(7) 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."<sup>3</sup> The fact that Proponent attempts to oversimplify the complex factors that are part of the Company's choice of track surface at CDRT supports the conclusion that this Proposal is properly excludable as an ordinary business matter pursuant to Rule 14a-8(i)(7). To present the Proposal to shareholders would override the complex analysis the Company's management undertakes in making operational decisions regarding track surface type—an analysis that is not appropriately within the purview of a shareholder vote.

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

In the Proponent Letter, Proponent argued that the Staff should deny the Company's request for no-action relief to be consistent with the many precedents cited in the Proponent Letter in which the Staff denied exclusion of proposals involving topics that are arguably ordinary business matters. However, the precedents cited by Proponent in the Proponent Letter are distinguishable because in each of those instances, the proposal at issue was not deemed to micromanage the company and/or focused on a policy issue that transcended the ordinary business of the company. 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

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<sup>1</sup> See, e.g., Betting On Dirt – Horse Racing 101, <https://www.bettingnews.com/legal/horses/betting-on-dirt/>.

<sup>2</sup> 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).

<sup>3</sup> Staff Legal Bulletin No. 14I dated November 1, 2017, quoting SEC Release No. 34-40018 (May 21, 1998).

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surface — a focus clearly within the ordinary business of the Company and an attempt to micromanage decisions appropriately within the purview of management. As further explained in the Original Company Letter and below, the policy issue raised by the Proposal does not transcend the ordinary business of the Company.

The Proponent Letter claims that all of the work the Company has done to improve safety at CDRT is irrelevant to the analysis, stating, “Churchill Downs’ list of unrelated steps it has taken to improve the track safety for the horses is not relevant to what this Proposal is asking for.” However, this list is very relevant. As stated in the Original Company Letter, the safety of horses running at CDRT is of paramount importance to the Company and the Company has taken many steps to improve safety in this regard. These steps are outlined on pages 10-13 of the Original Company Letter.

Because the Company is already focused on the policy issue implicated by the Proposal and has successfully taken many steps to improve the safety of horses running at CDRT, the additional step of changing the track surface from a dirt to a synthetic surface does not present a policy issue so significant that it transcends the ordinary business of the Company. In other words, the difference between what the Proposal is asking the Company to do, and what the Company has already done (the “delta”) does not present a significant policy issue for the Company. This is self-evident on the facts. The Proposal raises the policy issue of animal welfare, more specifically the safety of horses racing at CDRT. The Company acknowledges this important policy issue, has publicly stated that the safety of horses is of paramount importance to the Company, and has taken many steps to improve safety. Finally, those steps have been a great success, as proven by the data — 0.93 fatalities per 1,000 starts at CDRT in 2019, which is equivalent to the fatality per 1,000 starts on synthetic race tracks in 2019, further improved to .88 fatalities per 1,000 starts at CDRT for 2020. The steps that the Company has taken and the Company’s position on these matters are publicly available on the Company’s website and reinforced by the Company’s communications with the public, as set forth in the Original Company Letter.<sup>4</sup>

Further, the Proponent Letter states “[S]witching the track materials [to a synthetic surface] will reduce the number of horse fatalities, regardless of other measures the Company has taken.” As pointed out above and in the Original Company Letter, the historical fatality statistics on synthetic vs. dirt surfaces cannot be relied upon to make this

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<sup>4</sup> See, e.g., 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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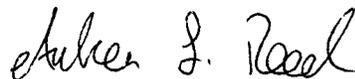
kind of hypothetical conclusion. As proven by the Company, additional safety measures and a focus on track maintenance can and do result in improved safety.

## Conclusion

Based upon the foregoing analysis, and the analysis set forth in the Original Company Letter, we again respectfully request that the Staff concur that it will take no action if the Proposal is omitted from the Company's 2021 proxy materials.

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 would like additional information, please contact the undersigned at (312) 853-7881 or by email at [andrea.reed@sidley.com](mailto:andrea.reed@sidley.com).

Best regards,



Andrea L. Reed

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



PEOPLE FOR  
THE ETHICAL  
TREATMENT  
OF ANIMALS

January 20, 2021

*Via e-mail*

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Securities and Exchange Commission  
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Re: Churchill Downs, Inc., 2021 Annual Meeting  
Shareholder Proposal Submitted by People for the  
Ethical Treatment of Animals

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to Churchill Downs, Inc.'s ("Churchill Downs") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by Churchill Downs in connection with its 2021 annual meeting of shareholders (the "proxy materials").

As discussed below, Churchill Downs' request for a no-action letter should be denied because the resolution does not seek to micromanage the Company and focuses on a significant social policy issue. Rule 14a-8(i)(7).

## I. Background

PETA's resolution provides:

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.

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### Affiliates:

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

The supporting statement then discusses the statistical evidence demonstrating that horses suffer far fewer fatal catastrophic injuries on synthetic surfaces than on dirt tracks, as well as the relatively high number of horse deaths per start that have occurred at Churchill Downs compared to other race tracks across the country.

## II. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(7)

Rule 14a-8(i)(7) provides that a company may exclude a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” Only “business matters that are mundane in nature and do not involve any substantial policy” considerations may be omitted under this exemption. Adoption of Amendments Relating to Proposals by Security Holders, 41 Fed. Reg. 52,994, 52,998 (1976). The Commission has explained that the policy underlying this rule rests on two central considerations. The first consideration “relates to the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.” Release No. 34-40018 (May 21, 1998).

Second, “certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* The Commission has stated and repeatedly found since that “proposals relating to such matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* In Staff Legal Bulletin No. 14H, the agency provided further guidance on the significant policy exception following the Third Circuit’s decision in *Trinity Wall St. v. Wal-Mart Stores, Inc.*, 792 F.3d 323 (3d Cir.), *cert. dismissed*, 136 S. Ct. 499 (2015). The Commission specifically rejected the majority’s interpretation of the exception as requiring a two-part test: (1) the proposal must focus on a significant policy issue; (2) the significant policy issue must “transcend” ordinary business by being “divorced from how a company approaches the nitty-gritty of its core business.” SLB No. 14H (citing *Trinity*, 792 F.3d at 347). The Commission reasoned that “a proposal’s focus [is not] separate and distinct from whether a proposal transcends a company’s ordinary business,” but instead:

[P]roposals focusing on a significant policy issue are not excludable under the ordinary business exception “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Thus, a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.”

*Id.* (citing Release No. 34-40018). Pursuant to this exception, “[t]he Division has noted many times that the presence of widespread public debate regarding an issue is among the factors

to be considered in determining whether proposals concerning that issue ‘transcend the day-to-day business matters.’” SLB No. 14A.

PETA’s Proposal does not seek to “‘micro-manage’ the company by probing too deeply into matters of a complex nature,” and does not implicate a day-to-day operation that is “mundane in nature,” but rather focuses on a substantial policy issue.

#### A. The Proposal does not seek to micro-manage the company.

Churchill Downs argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because PETA “seeks to micromanage the Company by requesting that the Company use a synthetic track surface at [Churchill Downs Racetrack (CDRT)].” *No-Action Request*, at 6. The Company asserts “[t]he Proposal would replace the careful balancing of the factors that direct management’s decisions on which track surface will be used at CDRT.” *No-Action Request*, at 7. Churchill Downs’ argument unnecessarily complicates the issue. The statistics surrounding race track materials and horse mortality definitively illustrate that significantly fewer horse fatalities are caused by synthetic tracks than dirt tracks. “Synthetic racetracks are indisputably safer.”<sup>1</sup> Since its creation in July 2008, the Equine Injury Database has shown dirt tracks have a 64% higher fatality rate than that of synthetic tracks, with dirt tracks averaging 1.97 fatalities per 1,000 starts, and synthetic tracks averaging only 1.2 fatalities per 1,000 starts.<sup>2</sup>

In response to mounting pressure, “thoroughbred racing has recently embraced a range of reforms aimed at reducing its disturbing death toll: Medication restrictions, additional veterinary screenings, whip limitations, etc. Yet an industry admittedly in crisis continues to resist change that arguably represents the clearest connection to enhanced safety”—the adoption of synthetic tracks.<sup>3</sup> This prescient report anticipated and rejected the very argument on which Churchill Downs relies in attempting to prevent shareholders from requiring the Company to assess and report to them on the feasibility of adopting this well-accepted means of reducing horse fatalities on its tracks. This issue is critically important to the Company’s long-term viability and success. As the former chairman of the Thoroughbred Owners and Breeders Association and owner of a past Kentucky Derby winner noted, the decision to use dirt tracks is not one made in the best interest of the horse, and “unless decisions are made that are in the best interest of the horse, we *will* lose [the horseracing industry].”<sup>4</sup>

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<sup>1</sup> Tim Sullivan, *‘We Bury Our Heads’: Horsemen Prefer Dirt Tracks Even Though They Lead to More Fatalities*, Courier Journal (July 1, 2019), <https://www.courier-journal.com/story/sports/horses/horse-racing/2019/07/01/horse-racing-deaths-could-lessened-with-artificial-racetracks/1579341001/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; see also Tim Sullivan, *With Fatalities Mounting, Horse Racing Has Rejected Safer Surfaces at Its Own Peril*, Courier Journal (Apr. 6, 2019), <https://www.courier-journal.com/story/sports/2019/04/06/horse-racing-has-rejected-safer-surfaces-its-own-peril/3387764002/>.

Converting four major California racetracks from dirt to synthetic materials resulted in racing fatalities falling by 37 percent over a period of five years.<sup>5</sup> In fact, in 2006, the California Horse Racing Board mandated that California racetracks conducting more than thirty continuous days of thoroughbred racing in any calendar year use synthetic racing surfaces.<sup>6</sup> Two California racetracks, Del Mar and Santa Anita, subsequently returned to dirt tracks after complaints from trainers, owners, and breeders, despite the “remarkable” decrease in the number of horse injuries on synthetic tracks.<sup>7</sup> Predictably, after reverting to a dirt surface, the Santa Anita track returned to having “catastrophic injury rates.”<sup>8</sup> These statistics from California racetracks significantly undercut the Company’s argument that synthetic surfaces are desirable primarily for those tracks that conduct races in the winter because a synthetic surface “is more consistent in winter conditions, unlike dirt.” *No-Action Request*, at 7. These California racetracks do not need to withstand winter weather, and nevertheless, the California Horse Racing Board (CHRB) mandated their conversion to synthetic surfaces. In addition, while explaining the CHRB’s decision, chairman Richard B. Shapiro stated, “I think injuries will be drastically reduced.”<sup>9</sup> Furthermore, a California Senate appropriations bill proposed in 2006 to assist with implementing the CHRB’s rule, states the CHRB approved the rule unanimously because it concluded synthetic surfaces were “crucial to the health and safety of the jockeys, horses, and other directly related participants in racing.”<sup>10</sup>

In addition, in 2014 the Jockey Club released statistics for another track in Kentucky, the Keeneland Race Course in Lexington, “showing that synthetic racetracks were far safer than dirt or turf, and that the one at Keeneland Race Course was one of the safest in the nation, with a fatality rate last year of 0.33 per 1,000 starts,” far below the national average on dirt tracks of 1.97 per 1,000 starts.<sup>11</sup> Nevertheless, Keeneland subsequently decided to replace its synthetic track with dirt at the request of owners and trainers who prefer dirt surfaces—but at the expense of the horses.<sup>12</sup>

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<sup>5</sup> Rick M. Arthur, *Comparison of Racing Fatality Rates on Dirt, Synthetic, and Turf at Four California Racetracks*, Am. Ass’n of Equine Practitioners Proceedings, 405 (2010), <https://aaep.org/sites/default/files/issues/proceedings-10proceedings-z9100110000405.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> Associated Press, *Santa Anita explores possible return to synthetic surface*, USA Today (Oct. 30, 2019), <https://www.usatoday.com/story/sports/horseracing/2019/10/30/santa-anita-explores-possible-return-to-synthetic-surface/40505783/>.

<sup>8</sup> Joe Drape & Corina Knoll, *Why So Many Horses Have Died at Santa Anita*, N.Y. Times (June 26, 2019), <https://www.nytimes.com/2019/06/26/sports/santa-anita-horse-deaths.html?auth=link-dismiss-google1tap>.

<sup>9</sup> Robyn Norwood, *Horse Racing Puts Real Hopes for Future on Synthetic Tracks*, L.A. Times (June 7, 2006), <https://www.latimes.com/archives/la-xpm-2006-jun-07-sp-belmont7-story.html>.

<sup>10</sup> Bill Analysis, Cal. S.B. 1464 (2006), [http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb\\_1451\\_1500/sb\\_1464\\_cfa\\_20060510\\_105503\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1451_1500/sb_1464_cfa_20060510_105503_sen_floor.html).

<sup>11</sup> See Joe Drape, *A Track’s Shift to Dirt Adds to Horses’ Risks*, N.Y. Times (Apr. 3, 2014), <https://www.nytimes.com/2014/04/04/sports/in-a-tracks-decision-horses-are-the-losers.html>.

<sup>12</sup> *Id.*

The focus of the Proposal is no more complex than issues related to animal experimentation, non-animal and *in vitro* alternatives, or requiring a particular killing method for millions of animals held by a company's many suppliers—all for which the Staff denied no-action relief pursuant to Rule 14a-8(i)(7). *See, e.g., The Gillette Co.* (Jan. 16, 1996) (proposal to eliminate animal tests); *Revlon, Inc.* (Mar. 18, 2014) (proposal regarding participation in government-mandated animal tests in China); *Wyeth* (Feb. 8, 2005) (proposal to discontinue promotion of pharmaceutical products pending further review and adopt protections for mares used in their production); *Denny's Corporation* (Mar. 22, 2007), *Outback Steakhouse, Inc.* (Mar. 6, 2006); *Hormel Foods Corp.* (Nov. 10, 2005), and *Wendy's International, Inc.* (Feb. 8, 2005) (proposals focusing on the implementation of controlled-atmosphere killing by poultry suppliers). The issues the Proposal raises are also no more complicated than other non-animal issues raised in proposals that the Staff concluded did not merit exclusion on micromanagement grounds in other areas such as pharmaceuticals and greenhouse gas emissions. *See, e.g., Bristol-Myers Squibb Co.* (Mar. 8, 2019) (proposal seeking annual report about extent to which risks related to public concern over drug pricing strategies were integrated into company's incentive compensation policies for senior executives); *Great Plains Energy Inc.*, (Feb. 5, 2015) (proposal requesting company adopt "quantitative, time bound, carbon dioxide reduction goals" and issue a report on its plan to achieve these goals).

Accordingly, the Proposal does not address any matter that is too complex for shareholders to make an informed judgment.

**B. The Proposal raises a significant policy issue that transcends day-to-day business matters.**

Churchill Downs contends that because the track type is equivalent to offering a particular product or service the Company sells, the Proposal attempts to dictate a decision concerning ordinary business matters. *No-Action Request*, at 5. However, the type of track used is not a product or service the Company sells—rather, the product or service Churchill Downs is in the business of providing is live horse racing—the Company characterizes itself as “an industry-leading racing, online wagering and gaming entertainment company.”<sup>13</sup> Thus, the Staff decisions to which the Company cites in which the Staff concurred proposals relating to companies' products or services were excludable because they related to ordinary business are not applicable here. Churchill Downs does not provide any evidence that the track surface directly influences how gamblers decide to place their bets, or any other evidence indicating the track surface directly influences the gambling service the Company actually provides.

Even assuming that the Staff deems the Proposal to deal with the sale of a product or service, it is well-established that a proposal is not excludable merely because it deals with the sale of a company's products or services where significant social policy issues are implicated—as they are here. Churchill Downs' argument that even if the Proposal merely

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<sup>13</sup> *Who We Are*, Churchill Downs Investor Relations (2021), <https://ir.churchilldownsincorporated.com/>.

“touches upon the policy issue of animal welfare,” and that “the primary focus of the Proposal is on the Company’s choice of track surface,” is unavailing. *No-Action Request*, at 7.

The Staff has long recognized that shareholder proposals may properly address business decisions regarding the sale of products where significant policy issues are at issue. *See e.g.*, *Kimberly-Clark Corp.* (Jan. 12, 1988); *Texaco, Inc.* (February 28, 1984); *American Telephone and Telegraph Co.* (December 12, 1985); *Harsco Corp.* (January 4, 1993); *Firststar Corp.* (February 25, 1993); *Gilead Sciences, Inc.* (Feb. 23, 2015); *Amazon.Com, Inc.* (Mar. 25, 2015); *AmerisourceBergen Corporation* (Jan. 11, 2018); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *Northrop Grumman Corp.* (Mar. 19, 2019). In Staff Legal Bulletin No. 14C, the Division considered proposals related to the environment and public health, which it had previously found to be significant policy considerations, and advised that “[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public’s health, we do not concur with the company’s view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7).” SLB No. 14C. The Staff has similarly concluded that animal welfare is a significant policy consideration and proposals relating to minimizing or eliminating operations that may result in certain poor animal welfare may not be excluded on this basis.

In *Coach, Inc.*, 2010 WL 3374169 (Aug. 19, 2010), for example, PETA’s resolution encouraged the company “to enact a policy that will ensure that no fur products are acquired or sold by [Coach].” In seeking to exclude the proposal, the company argued that “[t]he use of fur or other materials is an aesthetic choice that is the essence of the business of a design and fashion house such as Coach,” “luxury companies must be able to make free and independent judgments of how best to meet the desires and preferences of their customers,” and that the proposal “does not seek to improve the treatment of animals[, but] to use animal treatment as a pretext for ending the sale of fur products at Coach entirely.” *Id.* The Staff disagreed, writing:

In arriving at this position, we note that although the proposal relates to the acquisition and sale of fur products, it focuses on the significant policy issue of the humane treatment of animals, and it does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate. Accordingly, we do not believe that Coach may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7). *Id.*

Likewise, in *Revlon, Inc.* (Mar. 18, 2014), PETA requested that the company issue an annual report to shareholders accurately disclosing, among other things, whether the company has conducted, commissioned, paid for, or allowed tests on animals anywhere in the world for its products, the types of tests, the numbers and species of animals used, and the specific actions the company has taken to eliminate this testing. Like Churchill Downs, Revlon sought to exclude the proposal because “it deals with the sale of the company’s products,” and argued specifically that its decisions regarding in which countries to sell its products

“are ordinary business matters that are fundamental to management’s running of [Revlon] on a day-to-day basis and involve complex business judgments that stockholders are not in a position to make.” *Id.* The Staff disagreed and did not permit the company to exclude the proposal pursuant to Rule 14a-8(i)(7), finding that it “focuses on the significant policy issue of the humane treatment of animals.” *Id.*

The Staff has declined to issue no-action letters on this ground on many other occasions related to the humane treatment of animals. *See, e.g., Bob Evans Farms, Inc.* (June 6, 2011) (finding that a proposal to encourage the board to phase-in the use of “cage-free” eggs so that they represent at least five percent of the company’s total egg usage “focuses on the significant policy issue of the humane treatment of animals and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate”); *Denny’s* (March 17, 2009) (finding that a proposal requesting the board to commit to selling at least 10% cage-free eggs by volume could not be excluded in reliance on Rule 14a-8(i)(7)); *Wendy’s Int’l Inc.* (Feb. 19, 2008) (finding that a proposal requesting that the board issue a report on the feasibility of committing to purchase a percentage of its eggs from cage-free hens could not be excluded in reliance on Rule 14a-8(i)(7)); *see also Kellogg Co.* (Mar. 11, 2000) (finding that a proposal requesting that the board adopt a policy of removing genetically engineered crops, organisms, or products from all products sold or manufactured “appears to raise significant policy issues that are beyond the ordinary business operations of Kellogg”).

As noted above, a company may rely on Rule 14a-8(i)(7) to exclude a proposal only where that proposal relates to the company’s ordinary business operations—those matters that are “mundane in nature and do not involve any substantial policy” considerations. 41 Fed. Reg. at 52,998. Where such proposals focus on significant social policy issues—determined, in part, by widespread public debate—they transcend day-to-day business matters and would be appropriate for a shareholder vote.

The matter at issue in the Proposal about what type of track surface to use is a matter of life and death for these racehorses, as illustrated by the staggering statistics discussed in the previous section. In addition, the rise in racehorse fatalities has garnered widespread public attention and criticism. Professional racehorse trainer Michael Dickinson compared the use of dirt tracks to improvised explosive devices because “[i]t blows up in your face without any warning,” explaining that “[d]irt racing can’t conduct without a load of fatalities and a shed load of drugs,” two things that “the public won’t put up with.”<sup>14</sup> A comment by Bill Casner, owner of the winning horse of the 2010 Kentucky Derby, further emphasizes the extent of the public debate on this issue: “We’ve had all of this catastrophic publicity, this onslaught against our industry, and yet nobody is willing to recognize one of the most

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<sup>14</sup> *See* Tim Sullivan, ‘We bury our heads’: Horsemen Prefer Dirt Tracks Even Though They Lead to More Fatalities, *Courier Journal* (July 1, 2019), <https://www.courier-journal.com/story/sports/horses/horse-racing/2019/07/01/horse-racing-deaths-could-lessened-with-artificial-racetracks/1579341001/>.

obvious things that we can do by conversion to safer surfaces.”<sup>15</sup> Protesters gathered outside Santa Anita Park in January 2020 after three horses died there in just three days.<sup>16</sup> Series of horse deaths have spurred protests at other tracks across the country as well.<sup>17</sup> There is “growing public criticism of [horseracing] after a series of horse racing deaths and injuries . . . at Santa Anita” racetrack in 2019.<sup>18</sup> In fact, the “[i]ncreased attention to the deaths of racehorses . . . has shined a spotlight on horse racing’s downside that is changing public attitudes” and compelling the public to compare horse racing to other activities involving animals, like elephant performances at circuses or killer whale shows, that are no longer socially acceptable or tolerated, leading some to predict that “[h]orse racing awaits a similar reckoning.”<sup>19</sup> In addition, a McKinsey report commissioned by the Jockey Club in 2018 found that “[o]ne of the big issues in racing’s public perception continues to be on the matter of animal welfare,” with over fifty percent of casual fans stating they would stop betting if they knew horses were mistreated.<sup>20</sup> In light of the level of public debate, the issue of increased racehorse fatalities due to track surface type clearly transcends the Company’s day-to-day business.

Furthermore, Churchill Downs’ list of unrelated steps it has taken to improve track safety for the horses is not relevant to what this Proposal is asking for. *See No-Action Request*, at 10-13. As the statistics previously discussed show, switching the track material will reduce the number of horse fatalities, regardless of other measures the Company has taken. Furthermore, the statistics Churchill Downs cites are questionable, as Churchill Downs refuses to publicly disclose racehorse fatalities at its tracks, despite other racetracks across the country sharing these numbers.<sup>21</sup> It has been reported, based on information obtained from public records requests, that in fact more horses died at Churchill Downs while racing

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<sup>15</sup> *Id.*

<sup>16</sup> Kareen Wynter & Brian Day, *Protesters Decry Horse Deaths at Santa Anita Park in Arcadia*, KTLA (Jan. 19, 2020), <https://ktla.com/news/local-news/protesters-decry-horse-deaths-at-santa-anita-park-in-arcadia/>.

<sup>17</sup> *See, e.g.*, Jason Subik, *Group Protests Saratoga Springs Horse Deaths: Nine Horses Dead at Saratoga Race Course Since April 6*, The Daily Gazette (Aug. 3, 2019), <https://dailygazette.com/2019/08/03/group-protests-saratoga-springs-horse-deaths/>; Karla Ward, *Protesters Against Horse Racing Rally Outside Keeneland as Fall Meet Comes to a Close*, Lexington Herald Leader (Oct. 26, 2019), <https://www.kentucky.com/sports/horses/keeneland/article236687753.html>.

<sup>18</sup> Tom Kenny, *Kentucky Racetracks Applaud New Medication Regulations*, WTVQ (Dec. 11, 2019), <https://www.wtvq.com/2019/12/11/kentucky-racetracks-applaud-new-medication-regulations/>.

<sup>19</sup> *Horse Racing Has Outlived Its Time*, Wash. Post (Mar. 13, 2020), [https://www.washingtonpost.com/opinions/horse-racing-has-outlived-its-time/2020/03/12/5dd48e46-6476-11ea-acc8-80c22bbee96f\\_story.html](https://www.washingtonpost.com/opinions/horse-racing-has-outlived-its-time/2020/03/12/5dd48e46-6476-11ea-acc8-80c22bbee96f_story.html).

<sup>20</sup> *McKinsey Report 2018: A Situation Analysis for Thoroughbred Racing*, The Jockey Club (2018), <http://jockeyclub.com/default.asp?section=RT&year=2018&area=4>.

<sup>21</sup> *See* Caitlin McGlade, *With Race Horse Deaths Under Scrutiny, Kentucky Keeps Details Secret*, Ky. Ctr. for Investigative Reporting (June 4, 2019), [https://kycir.org/2019/06/04/with-race-horse-deaths-under-scrutiny-kentucky-keeps-details-secret/?fbclid=IwAR3t4DvpPC07t3yC0I2TmgmiYgULjFJ\\_JinOt11XoqSm\\_KCpbAJynGgtWWLw](https://kycir.org/2019/06/04/with-race-horse-deaths-under-scrutiny-kentucky-keeps-details-secret/?fbclid=IwAR3t4DvpPC07t3yC0I2TmgmiYgULjFJ_JinOt11XoqSm_KCpbAJynGgtWWLw).

or training in 2019—as many as twenty-two total—than in 2018, despite the implementation of these safety measures.<sup>22</sup> The statistics Churchill Downs provided in support of its claim that death totals fell in 2019 from 2018 due to other track safety measures the Company took appears to have omitted deaths that occurred at the track during training, as opposed to racing. *See No-Action Request*, at 9.

Accordingly, even if the Staff finds that the Proposal relates to Churchill Downs' ordinary business operations, it focuses on a significant social policy issue and transcends day-to-day business matters, and is appropriate for a shareholder vote.

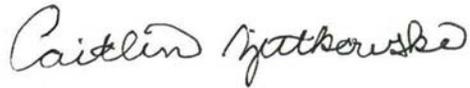
### III. Conclusion

We respectfully request that the Staff decline to issue no-action relief to Churchill Downs and inform the Company that it may not omit the Proposal from its proxy materials.

Should you need any additional information in reaching your decision, please contact me at your earliest convenience. If you intend to issue a no-action letter to Churchill Downs, we would welcome the opportunity to discuss this matter further before that response is issued.

Thank you.

Very truly yours,



Caitlin Zittkowski  
Counsel  
CaitlinZ@petaf.org  
(323) 644-7382

cc: Jared Goodman, PETA Foundation  
Andrea L. Reed, Sidley Austin LLP

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<sup>22</sup> Patrick Battuello, *Killed, 2019*, Horseracing Wrongs (last visited Jan. 19, 2020), <https://horseracingwrongs.org/killed-2019/>.



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## By Email

[Shareholderproposals@sec.gov](mailto: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](mailto: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:<sup>1</sup>

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.

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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).

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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.<sup>3</sup> 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

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<sup>3</sup> 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.<sup>4</sup> 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."<sup>5</sup> 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

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<sup>4</sup> 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>.

<sup>5</sup> *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.<sup>6</sup> 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:<sup>7</sup>

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,

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<sup>6</sup> 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/>.

<sup>7</sup> 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.<sup>8</sup>
  - 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.

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<sup>8</sup> 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.<sup>9</sup>
- *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.

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<sup>9</sup> 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/>

- 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](mailto: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](mailto: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.<sup>1</sup> 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,<sup>2</sup> a criminal investigation,<sup>3</sup> and an overhaul of the California Horse Racing Board.<sup>4</sup>

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.<sup>5</sup> 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,<sup>6</sup> which is equal to the 2019 fatality rate on synthetic surfaces.<sup>7</sup> 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.

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<sup>1</sup> [http://jockeyclub.com/pdfs/eid\\_11\\_year\\_tables.pdf](http://jockeyclub.com/pdfs/eid_11_year_tables.pdf)

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

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

<sup>4</sup> <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/>

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

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

<sup>7</sup> <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.<sup>8</sup>

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.

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<sup>8</sup> <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](mailto: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](mailto: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,

James Nielsen  
Senior Vice President – Branch Director  
RBC Wealth Management

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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  
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Office: 408.292.2442  
Fax: 408.298.8295

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

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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