



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

February 24, 2022

Margaret M. Madden  
Pfizer Inc.

Re: Pfizer Inc. (the "Company")  
Incoming letter dated December 22, 2021

Dear Ms. Madden:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the John Bishop Montgomery Trust U/A DTD 4/4/2019 for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks that the board commission and publish a report on (1) the public health costs created by the limited sharing of the Company's COVID-19 vaccine technologies and any consequent reduced availability in poorer nations and (2) the manner in which such costs may affect the market returns available to its diversified shareholders.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's public disclosures do not substantially implement the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). In our view, the Proposal does not substantially duplicate the proposal submitted by Oxfam America, Inc. et al.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Frederick H. Alexander  
The Shareholder Commons



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**BY EMAIL** (shareholderproposals@sec.gov)

December 22, 2021

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

RE: Pfizer Inc. – 2022 Annual Meeting  
Omission of Shareholder Proposal of  
the John Bishop Montgomery Trust

Ladies and Gentlemen:

We are writing pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that, for the reasons stated below, Pfizer Inc., a Delaware corporation (“Pfizer”), may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by The Shareholder Commons (“TSC”) on behalf of the John Bishop Montgomery Trust U/A DTD 4/4/2019 (the “Trust”) from the proxy materials to be distributed by Pfizer in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”). TSC and the Trust are sometimes collectively referred to as the “Proponents.”

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents as notice of Pfizer’s intent to omit the Proposal from the 2022 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponents that if the Proponents submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

## **I. The Proposal**

The text of the resolution contained in the Proposal is set forth below:

**RESOLVED**, shareholders ask that the Board of Directors commission and publish a report on (1) the public health costs created by the limited sharing of the Company's COVID-19 vaccine technologies and any consequent reduced availability in poorer nations and (2) the manner in which such costs may affect the market returns available to its diversified shareholders.

## **II. Bases for Exclusion**

We hereby respectfully request that the Staff concur with Pfizer's view that the Proposal may be excluded from the 2022 proxy materials pursuant to:

Rule 14a-8(i)(7) because the Proposal deals with matters relating to Pfizer's ordinary business operations;

Rule 14a-8(i)(10) because Pfizer has substantially implemented the Proposal; and

Rule 14a-8(i)(11) because the Proposal substantially duplicates two shareholder proposals previously submitted to Pfizer that Pfizer intends to include in its 2022 proxy materials in the event that the Staff does not concur with the exclusion of either of the previously submitted proposals from Pfizer's 2022 proxy materials.

## **III. Background**

Pfizer received the Proposal via email on November 12, 2021, accompanied by a cover letter from TSC dated November 12, 2021 and a letter from the trustee of the Trust authorizing TSC to act on its behalf. On November 15, 2021, Pfizer sent a letter via email to TSC, on the Trust's behalf, requesting a written statement from the record holder of the Trust's shares verifying that the Trust beneficially owned the requisite number of shares of Pfizer common stock continuously for at least the requisite period preceding and including November 12, 2021, the date of submission of the Proposal. The Deficiency Letter also requested written documentation from the trustee of the Trust that includes a statement from the trustee supporting the Proposal. On November 23, 2021, Pfizer received an email from TSC containing a letter from RBC Wealth Management verifying the Trust's continuous ownership of at least the requisite amount of stock for at least the requisite period and written documentation from the trustee of the Trust supporting the Proposal. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.

**IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to Pfizer’s Ordinary Business Operations.**

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company’s proxy materials if the proposal “deals with matters relating to the company’s ordinary business operations.” In Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that 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. The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”); *see also Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to the products and services offered for sale by a company and the methods of distribution of those products and services. *See, e.g., Verizon Communications Inc.* (Jan. 29, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company offer its shareholders the same discounts on its products and services that are available to its employees, noting that the proposal “relates to the [c]ompany’s ‘discount pricing policies’”); *Pfizer Inc.* (Mar. 1, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing the steps the company has taken to prevent the sale of its medicines to prisons for the purpose of aiding executions, noting that the proposal “relates to the sale or distribution of [the company’s] products”); *The Walt Disney Co.* (Nov. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company’s board of directors approve the release of a specific film on Blu-ray, noting that the proposal “relates to the products and services offered for sale by the company”); *Equity LifeStyle Properties, Inc.* (Feb. 6, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on, among

other things, “the reputational risks associated with the setting of unfair, inequitable and excessive rent increases that cause undue hardship to older homeowners on fixed incomes” and “potential negative feedback stated directly to potential customers from current residents,” noting that the “setting of prices for products and services is fundamental to management’s ability to run a company on a day-to-day basis”); *JPMorgan Chase & Co.* (Mar. 16, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board implement a policy mandating that the company cease its current practice of issuing refund anticipation loans, noting that the proposal “relate[s] to [the company’s] decision to issue refund anticipation loans” and that “[p]roposals concerning the sale of particular services are generally excludable under rule 14a-8(i)(7)”).

More specifically, under those same policy considerations underlying the ordinary business exclusion, the Staff has recognized that decisions regarding whether, how and when to license a company’s technologies are fundamental to a company’s day-to-day operations and cannot, as a practical matter, be subject to direct shareholder oversight. In *International Business Machines Corporation* (Jan. 22, 2009), for example, the proposal requested that the company take steps to further the advancement of open source software, which the company noted allows recipients to “freely copy, modify and distribute the program source code without paying a royalty fee.” In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal related to the company’s “ordinary business (i.e., the design, development and licensing of [the company’s] software products).”

Moreover, the Staff has reiterated this view even when proponents have raised questions concerning a company’s approach to protecting its intellectual property in light of global pandemics. For example, in *Abbott Laboratories* (Mar. 9, 2006), the Staff permitted exclusion as relating to ordinary business under Rule 14a-8(i)(7) of a proposal requesting a review of the economic effects of the HIV/AIDS, tuberculosis and malaria pandemics on the company’s business strategies and initiatives, where the proponents described intellectual property protections as “at odds with combatting HIV/AIDS and other diseases.” *See also Pfizer Inc.* (Jan. 24, 2006) (same); *Marathon Oil Corp.* (Jan. 23, 2006) (same).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(7) of proposals requesting a report on the impact of a company’s actions on overall market returns. *See, e.g., JPMorgan Chase & Co.* (Mar. 26, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the board report on the external costs created by the company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return, noting that the proposal “does not transcend the [c]ompany’s ordinary business operations”); *The Goldman Sachs Group, Inc.* (Mar. 9, 2021, *recon. denied* Mar. 19, 2021) (same).

In this instance, the Proposal focuses primarily on decisions concerning how Pfizer chooses to sell its products, decisions concerning whether, when and how Pfizer chooses to license technologies and decisions concerning how Pfizer chooses to safeguard intellectual property, all of which are quintessential ordinary business matters. Moreover, the Proposal’s call for a review on the impact of these decisions on overall market returns to investors that

may be “diversified” does not transform these matters from ordinary business matters, because the economic effect of such decisions is itself ordinary business.

The Proposal’s focus on these ordinary business matters is manifest. In particular, the Proposal’s resolved clause requests a report on the costs created by “limited sharing of [Pfizer’s] COVID-19 vaccine technologies and any consequent reduced availability in poorer nations” and the “manner in which such costs may affect [] market returns available to diversified shareholders.” In addition, the Proposal’s supporting statement asserts that Pfizer’s “enforcement of patents and limitations on technology transfer” has resulted in an imbalance between rich and poor nations with regard to COVID-19 vaccination rates and “prevent[ed] vaccine production in poorer nations,” thereby causing a “severe cost to the global economy” and “inhibiting worldwide economic recovery.” The supporting statement goes on to say that such global imbalances ultimately harm Pfizer’s shareholders, “who are diversified and thus rely on broad economic growth to achieve their financial objectives.” When read together, the Proposal’s resolved clause and supporting statement emphasize the Proposal’s focus on particular decisions made by Pfizer regarding the sale and distribution of its products, decisions about licensing technology and safeguarding intellectual property, and the overall economic effect of those decisions to “diversified” shareholders.

The Proposal’s concern with Pfizer’s decisions about whether and how to share its product technologies and how to safeguard intellectual property and the economic effect of those determinations clearly demonstrates that the Proposal is focused on Pfizer’s ordinary business matters. Decisions with respect to the manner and markets in which a company sells or licenses its products and technologies, and how a company protects intellectual property, are at the heart of Pfizer’s business as a global biopharmaceutical company and are so fundamental to Pfizer’s day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight. Moreover, calling for a review of the overall economic effect of those decisions on “diversified” investors does not change the fact that these matters are precisely the types of core business functions that the Staff has long recognized are not appropriate for direct shareholder oversight. Therefore, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to Pfizer’s ordinary business operations.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company’s ordinary business operations. *See* 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *PetSmart, Inc.* (Mar. 24, 2011), the proposal requested that the company’s board require suppliers to certify that they had not violated certain laws regulating the treatment of animals. Those laws affected a wide array of matters dealing with the company’s ordinary business operations beyond the humane treatment of animals, which the Staff has recognized as a

significant policy issue. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted the company's view that "the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" *See also, e.g., CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, even if the Proposal were to touch on a potential significant policy issue, the Proposal's overwhelming concern with the methods by which products and services are offered for sale by Pfizer, the decisions made concerning whether, when and how to license technology and safeguard intellectual property and the effects of those decisions on "diversified" investors demonstrates that the Proposal's focus is on ordinary business matters. In particular, the Proposal's supporting statement demonstrates this focus by overwhelmingly discussing the economic effects of Pfizer's product and licensing decisions. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

Accordingly, the Proposal should be excluded from Pfizer's 2022 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Pfizer's ordinary business operations.

**V. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(10) Because Pfizer Has Substantially Implemented the Proposal.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* 1983 Release; Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company. *See* 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal when it has determined that the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., Eli Lilly and Co.* (Feb. 26, 2021)\*; *Devon Energy Corp.* (Apr. 1, 2020)\*; *Johnson & Johnson* (Jan. 31, 2020)\*; *Pfizer Inc.* (Jan. 31, 2020)\*; *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont'l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29,

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\* Citations marked with an asterisk indicate Staff decisions issued without a letter.

2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where the company already addressed the underlying concerns and satisfied the essential objectives of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. For example, in *Oshkosh Corp.* (Nov. 4, 2016), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal asking the board to amend certain provisions of the company's proxy access bylaw in accordance with the six "essential elements" specified in the proposal. In arguing that the proposal had been substantially implemented, the company explained that it had adopted three of the six proposed changes in the proposal. Although the proposal asked for the adoption of all of the proposed changes, the Staff concluded that the company's bylaw amendments "compare favorably with the guidelines of the proposal" and that the company substantially implemented the proposal. Similarly in *PG&E Corp.* (Mar. 10, 2010), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company provide a report disclosing, among other things, the company's standards for choosing the organizations to which the company makes charitable contributions and the "business rationale and purpose for each of the charitable contributions." In arguing that the proposal had been substantially implemented, the company referred to a website where the company had described its policies and guidelines for determining the types of grants that it makes and the types of requests that the company typically does not fund. Although the proposal appeared to contemplate disclosure of each and every charitable contribution, the Staff concluded that the company had substantially implemented the proposal. *See also, e.g., The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report disclosing policies and procedures for political contributions and monetary and non-monetary political contributions where the company had adopted corporate political contributions guidelines).

In this instance, Pfizer has substantially implemented the Proposal, the essential objective of which is to report on Pfizer's approach to improving access to COVID-19 vaccines and treatments, and sharing related technologies. In particular, the Proposal's supporting statement notes that "vaccine inequality is caused in part by the enforcement of patents and limitations on technology transfer."

Pfizer already has published information on its approach to improving access to COVID-19 vaccines and treatments, and related technology licensing. In this respect, Pfizer published an announcement in November 2021 stating that it signed a voluntary license agreement with the Medicines Patent Pool (“MPP”), a United Nations-backed public health organization, for Pfizer’s COVID-19 oral antiviral treatment candidate. Pfizer expects that “the agreement will enable MPP to facilitate additional production and distribution” of Pfizer’s antiviral, “by granting sub-licenses to qualified generic medicine manufacturers” primarily in low- and middle-income countries, “with the goal of facilitating greater access to the global population.” Under the agreement, Pfizer will not receive royalties on sales in low-income countries and will further waive royalties on sales in all countries covered by the agreement while COVID-19 remains classified as a Public Health Emergency of International Concern by the World Health Organization.<sup>1</sup> Accordingly, Pfizer has reported on its approach to improving access to COVID-19 vaccines and treatments for residents of low- and middle-income countries, including by announcing Pfizer’s entry into a voluntary license agreement with MPP to share intellectual property related to its COVID-19 oral antiviral treatment candidate.

In addition, Pfizer maintains a portion of its corporate website dedicated to providing updates on its COVID-19 related initiatives and statements, including a webpage titled “Coronavirus Disease (COVID-19) Resources,” which includes information detailing Pfizer’s approach to making its COVID-19 vaccine widely available. For example, Pfizer states it is “extremely proud of the fact that, to-date, 161 countries around the world have already received doses of the Pfizer-BioNTech vaccine, and [Pfizer is] expanding that reach every day, working with governments and [its] global health partners to ensure doses reach more and more people.” Pfizer also notes that it is “working tirelessly with governments and [its] global health partners to ensure doses reach the arms of even more people” and that it is “leveraging contract manufacturing to expand [its] global supply chain network, which now spans four continents and includes more than 20 manufacturing facilities.” Moreover, Pfizer highlights that its “collaborations with local biopharmaceutical companies Eurofarma in Brazil and Biovac in South Africa will ensure doses are manufactured at scale for Latin America and Africa, and [Pfizer] continue[s] to pursue opportunities to bring new partners into [its] supply chain network to further accelerate access to [its] vaccine for countries across the world.”<sup>2</sup>

These public disclosures address the underlying concerns and essential objectives of the Proposal. Specifically, as disclosed on Pfizer’s website, in September 2020, Pfizer

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<sup>1</sup> See “Pfizer And The Medicines Patent Pool (MPP) Sign Licensing Agreement For COVID-19 Oral Antiviral Treatment Candidate To Expand Access In Low- And Middle-Income Countries,” available at <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-medicines-patent-pool-mpp-sign-licensing> and attached hereto as Exhibit B.

<sup>2</sup> See “Working to Reach Everyone, Everywhere,” available at <https://www.pfizer.com/science/coronavirus/vaccine/working-to-reach-everyone-everywhere> and attached hereto as Exhibit C.

signed a pledge with eight other biopharmaceutical companies to “[w]ork to ensure a sufficient supply and range of vaccine options, including those suitable for global access.”<sup>3</sup> In addition, Pfizer explained that, starting in 2020, its COVID-19 vaccine has been offered through tiered pricing such that “[t]he price for wealthier nations would be about the cost of a takeaway meal, and would be offered at a price that enables governments to provide it to their populations for free”; “[m]iddle-income countries were offered doses at roughly half that price”; and “[l]ow-income countries were offered doses at a not for profit price.”<sup>4</sup> Among its other efforts, Pfizer has supported global initiatives to help ensure that every country that chooses Pfizer’s vaccine can have access to it. As disclosed on Pfizer’s website, it also has pledged to provide to low- and middle-income countries at least one billion vaccine doses in each of 2021 and 2022 and, as of December 12, 2021, has delivered more than 871 million doses to 97 of these countries. In addition, Pfizer has 64 direct COVID-19 vaccine supply agreements with country governments to reach more than 140 countries worldwide, and more than half of these agreements are with low- and middle-income countries. Pfizer also is partnering with supranational organizations like COVAX and the European Union, and also through its partnerships with wealthy nations to donate doses to countries in need and humanitarian donations to vulnerable populations. In this respect, Pfizer has a supply agreement to provide 40 million doses of its COVID-19 vaccine in 2021. As of December 12, 2021, vaccine doses allocated through COVAX have reached 57 countries in every region of the world, 46 of which are low- and middle-income countries. Pfizer also has an agreement with the U.S. government to provide one billion doses at a not for profit price to donate to low- and lower-middle-income countries through 2022. As of December 2021, more than 120 million vaccine doses have been delivered to 52 countries.

Consistent with the precedent described above, Pfizer’s public disclosures already have satisfied the essential objective of the Proposal by explaining how Pfizer has improved access to COVID-19 vaccines and treatments, and related technology licensing. Moreover, public disclosures on Pfizer’s corporate website compare favorably with the guidelines of the Proposal, as those disclosures provide details on how Pfizer has approached providing equitable access to COVID-19 vaccines and treatments, such as through sharing intellectual property for our investigational oral antiviral therapy with MPP pursuant to a voluntary license agreement. Thus, Pfizer has substantially implemented the Proposal.

Accordingly, the Proposal should be excluded from Pfizer’s 2022 proxy materials pursuant to Rule 14a-8(i)(10) as substantially implemented.

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<sup>3</sup> See “COVID-19 Vaccine Maker Pledge,” available at <https://www.pfizer.com/science/coronavirus/manufacturing-and-distribution/pledge> and attached hereto as Exhibit D.

<sup>4</sup> See “Supporting Manufacturing, Trade and Equitable Global Access to COVID-19 Vaccines,” available at [https://cdn.pfizer.com/pfizercom/141221\\_Pfizer\\_Factsheet\\_Dec\\_update.pdf](https://cdn.pfizer.com/pfizercom/141221_Pfizer_Factsheet_Dec_update.pdf) and attached hereto as Exhibit E.

**VI. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(11) Because the Proposal Substantially Duplicates Proposals Previously Submitted to Pfizer.**

Under Rule 14a-8(i)(11), a company may exclude a shareholder proposal if it substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting. The Commission has stated that the purpose of Rule 14a-8(i)(11) is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted by proponents acting independently of each other. *See Securities Exchange Act Release No. 34-12598 (July 7, 1976).*

Two shareholder proposals need not be identical in order to provide a basis for exclusion under Rule 14a-8(i)(11). Proposals are substantially duplicative when the principal thrust or focus is substantially the same, even though the proposals differ in terms of the breadth and scope of the subject matter. In *Duke Energy Corp.* (Feb. 19, 2016), for example, the Staff granted the company's request to exclude a proposal asking the board to initiate a review of the organizations of which the company was a member or otherwise supported that may engage in lobbying activities and to provide a related report to shareholders. In that proposal, the supporting statement described the benefits received by the company from limited government and relationships with pro-growth groups. In its no-action request, the company explained that the proposal shared the same principal thrust or focus as a previously-submitted proposal requesting a report on the company's direct and indirect lobbying activities, including grassroots lobbying activities, even though, unlike the other supporting statement, the previously-submitted proposal's supporting statement described the need for transparency and accountability concerning the company's role in influencing legislation and the use of corporate funds for lobbying activities. *See also, e.g., Exxon Mobil Corp.* (Mar. 13, 2020) (proposal requesting a report on how the company's lobbying activities align with the Paris Climate Agreement's goal may be excluded under Rule 14a-8(i)(11) because the proposal shared the same principal thrust or focus as a previously-submitted proposal seeking disclosure of lobbying expenditures that was broader in scope); *Danaher Corp.* (Jan. 19, 2017) (proposal to adopt goals for reducing greenhouse gas emissions, with a supporting statement describing four different reasons to do so, including a moral obligation, may be excluded under Rule 14a-8(i)(11) because the proposal shared the same principal thrust or focus as a previously-submitted proposal with a supporting statement describing the risks and opportunities provided by climate change); *Pfizer Inc.* (Feb. 17, 2012) (proposal requesting a lobbying priorities report, with a supporting statement describing the company's role in the passage of "ObamaCare," may be excluded under Rule 14a-8(i)(11) because the proposal shared the same principal thrust or focus as a previously-submitted proposal with a supporting statement calling for greater transparency of the company's lobbying expenditures).

A. *The Proposal Substantially Duplicates the Proposal Received by Pfizer on November 4, 2021.*

Pfizer received a proposal (the “First Proposal”) from Oxfam America, Inc., sent via email and overnight mail, on November 4, 2021. The First Proposal is co-filed by the Adrian Dominican Sisters and Mercy Investment Services, Inc. A copy of the First Proposal is attached hereto as Exhibit F. Pfizer believes that the Proposal substantially duplicates the First Proposal and, as such, the Proposal may be excluded pursuant to Rule 14a-8(i)(11).

The text of the resolution contained in the First Proposal is set forth below:

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

The principal thrust and focus of the Proposal and the First Proposal are the same – an assessment of Pfizer’s approach to providing COVID-19 vaccine access, including the sharing of technology with developing nations. Specifically, the Proposal’s resolution asks Pfizer to report on “the public health costs created by the limited sharing of [Pfizer’s] COVID-19 vaccine technologies and any consequent reduced availability in poorer nations.” Likewise, the First Proposal’s resolution asks Pfizer to report on “the feasibility of promptly transferring intellectual property and technical knowledge (“know-how”) to facilitate the production of COVID-19 vaccine doses by additional qualified manufacturers located in low- and middle-income countries.”

In addition, the supporting statement of each proposal demonstrates the proposals’ shared focus on Pfizer’s approach to COVID-19 vaccine access and sharing of technology with developing nations. The Proposal’s supporting statement asserts that “many countries struggle to obtain vaccines for their most susceptible communities” and that “[t]he imbalance in COVID-19 vaccination between rich and poor countries is striking,” arguing that “vaccine inequality is caused in part by the enforcement of patents and limitations on technology transfer.” Similarly, the First Proposal’s supporting statement asserts that despite “broad agreement that widespread vaccination is critical” to curbing the pandemic, “vaccine administration has been strikingly unequal” with low vaccination rates in low-income countries, and argues that, in response to this vaccine inequity, “[p]ressure is intensifying on COVID-19 vaccine makers, including Pfizer,” to transfer the intellectual property associated with their vaccines to manufacturers in low- and middle-income countries.

Although the breadth and scope of the Proposal and the First Proposal, as well as their respective supporting statements, may differ, with one emphasizing how the public health costs created by limited sharing of Pfizer’s COVID-19 vaccine technologies may impact

market returns and the other emphasizing the need to promptly transfer intellectual property given the COVID-19 pandemic, the Proposal and the First Proposal overwhelmingly share the same thrust and focus – an assessment of Pfizer’s approach to providing COVID-19 vaccine access and sharing of technology with developing nations. Therefore, the inclusion of both proposals in Pfizer’s 2022 proxy materials would be duplicative and would frustrate the policy concerns underlying the adoption of Rule 14a-8(i)(11).

*B. The Proposal Substantially Duplicates the Proposal Received by Pfizer on November 8, 2021.*

Pfizer received a proposal (the “Second Proposal”) from Trinity Health, sent via email and overnight mail, on November 8, 2021.<sup>5</sup> A copy of the Second Proposal is attached hereto as Exhibit G. Pfizer believes that the Proposal substantially duplicates the Second Proposal and, as such, the Proposal may be excluded pursuant to Rule 14a-8(i)(11).

The text of the resolution contained in the Second Proposal is set forth below:

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

The principal thrust and focus of the Proposal and the Second Proposal are the same – an assessment of Pfizer’s approach to COVID-19 vaccine access. Specifically, the Proposal’s resolution asks Pfizer to report on “the public health costs created by the limited sharing of [Pfizer’s] COVID-19 vaccine technologies and any consequent reduced availability in poorer nations.” Likewise, the Second Proposal’s resolution asks Pfizer to report on its decisions that affect global access to the COVID-19 vaccine, in light of Pfizer’s or its business partner’s purported receipt of public funding for the development and manufacture of vaccines and limited vaccine access in low-income countries.

In addition, the supporting statement of each proposal demonstrates the proposals’ shared focus on Pfizer’s approach to providing COVID-19 vaccine access. The Proposal’s supporting statement asserts that “many countries struggle to obtain vaccines for their most susceptible communities” and that “[t]he imbalance in COVID-19 vaccination between rich and poor countries is striking,” arguing that “vaccine inequality is caused in part by the enforcement of patents and limitations on technology transfer.” Similarly, the Second

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<sup>5</sup> The following shareholders have co-filed the Second Proposal: Bon Secours Mercy Health, Inc.; CommonSpirit Health; Missionary Oblates of Mary Immaculate-United State Province; PeaceHealth; The American Baptist Home Mission Society; The Sisters of Charity of Saint Elizabeth; The Sisters of Charity of the Blessed Virgin Mary, Dubuque, Iowa; and The Sisters of St. Francis of Philadelphia.

Proposal's supporting statement asserts that "[d]espite widespread vaccination being key to ending the pandemic, vaccine access has been markedly unequal" with low vaccination rates in low-income countries, and argues that, because of this vaccine inequity, Pfizer could face "enormous pressure" to help achieve global vaccination, which may entail asking companies to "charge lower prices or transfer technology" to improve vaccine access.

Although the breadth and scope of the Proposal and the Second Proposal, as well as their respective supporting statements, may differ, with one emphasizing how the public health costs created by limited sharing of Pfizer's COVID-19 vaccine technologies may impact market returns and the other emphasizing how Pfizer's or its business partner's purported receipt of public funding may affect its decisions on vaccine access, the Proposal and the Second Proposal overwhelmingly share the same thrust and focus – an assessment of Pfizer's approach to providing COVID-19 vaccine access. Therefore, the inclusion of both proposals in Pfizer's 2022 proxy materials would be duplicative and would frustrate the policy concerns underlying the adoption of Rule 14a-8(i)(11).

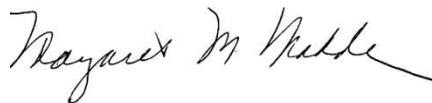
Accordingly, because the Proposal substantially duplicates the First Proposal and the Second Proposal, which were previously submitted to Pfizer, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) in the event that the Staff does not concur with the exclusion of the First Proposal or the Second Proposal from Pfizer's 2022 proxy materials.

## **VII. Conclusion**

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if Pfizer excludes the Proposal from its 2022 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Pfizer's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at (212) 733-3451 or Marc S. Gerber of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,



Margaret M. Madden

Enclosures

Office of Chief Counsel

December 22, 2021

Page 14

cc: Sara E. Murphy  
Chief Strategy Officer  
The Shareholder Commons

John B. Montgomery  
Trustee  
The John Bishop Montgomery Trust U/A DTD 4/4/2019

EXHIBIT A

(see attached)



**Via electronic mail**

November 12, 2021

**Pfizer Inc.**

235 East 42<sup>nd</sup> Street  
New York, NY 10017

Attn: Margaret M. Madden  
Senior Vice President and Corporate Secretary

RE: Rule 14a-8 shareholder proposal for 2022 Annual Shareholder Meeting

Dear Ms. Madden,

The Shareholder Commons ("TSC") is filing a shareholder proposal on behalf of the John Bishop Montgomery Trust U/A DTD 4/4/2019 (the "Proponent"), a shareholder of Pfizer Inc. (the "Company"), for action at the next Company annual meeting. The Proponent submits the enclosed shareholder proposal for inclusion in Pfizer Inc.'s 2022 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The Proponent has continuously beneficially owned, for at least 3 years as of the date hereof, at least \$2,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. The Proponent intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

A letter from the Proponent authorizing TSC to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

The Proponent and I are available to meet with the Company via teleconference on November 22, 2021, at 1:00 p.m. EST or 4:00 p.m. EST. The proponent can be reached at [REDACTED]. We are available to discuss this issue and appreciate the opportunity to engage and seek to resolve the Proponent's concerns. I can be contacted at [REDACTED] or [REDACTED]. Please address any future correspondence regarding the proposal to me.

Sincerely,

Sara E. Murphy

Encl: Authorization Letter



[Pfizer Inc.: Rule 14a-8 Proposal, November 12, 2021]

[This line and any line above it – Not for publication.]

ITEM 4\*: Report on public health cost of protecting vaccine technology

**RESOLVED**, shareholders ask that the Board of Directors commission and publish a report on (1) the public health costs created by the limited sharing of the Company's COVID-19 vaccine technologies and any consequent reduced availability in poorer nations and (2) the manner in which such costs may affect the market returns available to its diversified shareholders.

### **Supporting Statement:**

A recent headline emphasizes the financial rewards accruing to the Company for being an early developer of a COVID-19 vaccine: "Pfizer Stock Leaps after Q3 Earnings Beat; Sees \$36 Billion in COVID Vaccine Sales."<sup>1</sup>

But while the Company is boosting earnings with vaccine sales, many countries struggle to obtain vaccines for their most susceptible communities. The imbalance in COVID-19 vaccination between rich and poor countries is striking: As of early September 2021, more than 50 percent of U.S. and European Union populations were fully vaccinated, compared with just 3 percent of Africa's population.<sup>2</sup>

This vaccine inequality is caused in part by the enforcement of patents and limitations on technology transfer designed to prevent competition.<sup>3</sup> Civil society and government leaders—including U.S. President Biden—have called for waivers of intellectual property rights to vaccine technology. Human rights organization Oxfam has called for governments and corporations to suspend patent rules and openly share technology.<sup>4</sup> Some argue that such moves would disincentivize investment and lead to low-quality vaccines, but others have exposed the weaknesses in these arguments.<sup>5</sup> The Company has not been neutral in this debate; it supports a trade group that lobbies against patent waivers.<sup>6</sup>

To the extent our Company is increasing its own financial returns by preventing vaccine production in poorer nations, its own increased profits are coming at a severe cost to the global economy, because failure to vaccinate the world's vulnerable communities is inhibiting worldwide economic recovery and creating opportunities for more dangerous SARS-CoV-2 variants to develop.

This is a bad trade for most of the Company's shareholders, who are diversified and thus rely on broad economic growth to achieve their financial objectives. A Company strategy that increases its own financial returns but threatens global GDP is counter to the best interests of most of its shareholders: the

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<sup>1</sup> <https://www.thestreet.com/markets/pfizer-tops-q3-earnings-sees-36-billion-in-covid-vaccine-sales>

<sup>2</sup> <https://www.cnn.com/2021/09/07/who-says-wealthy-nations-are-prolonging-pandemic-by-hoarding-covid-treatments-and-vaccines.html> (citing World Health Organization).

<sup>3</sup> *Supra*, n.2.

<sup>4</sup> <https://www.oxfam.org/en/take-action/campaigns/covid-19-vaccine>

<sup>5</sup> <https://inthesetimes.com/article/pfizer-moderna-vaccine-apartheid-trips-waiver-wto-intellectual-property-patents>

<sup>6</sup> <https://www.msn.com/en-us/news/other/big-pharma-lobbyists-launch-campaign-against-biden-over-covid-vaccine-patent-waiver/ar-AAKBxDs>

potential drag on GDP created by hoarding vaccine technology will directly reduce diversified portfolio returns over the long term.<sup>7</sup>

Despite this risk, the Company has not disclosed any analysis of the trade-offs between Company profit and global public health from the perspective of its largely diversified shareholders, whose investment portfolios may be at grave risk from undue limitations on vaccine production.

The requested report will help shareholders determine whether current Company policies serve shareholders' best interests.

Please vote for: Report on public health cost of protecting vaccine technology – Proposal [4\*]

[This line and any below are *not* for publication]

Number 4\* to be assigned by the Company

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<sup>7</sup> [https://www.unepfi.org/fileadmin/documents/universal\\_ownership\\_full.pdf](https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf)



November 12, 2021

Pfizer Inc.  
235 East 42<sup>nd</sup> Street  
New York, NY 10017

Attn: Margaret M. Madden, Senior Vice President and Corporate Secretary

I hereby authorize The Shareholder Commons to file a shareholder resolution on my behalf as Trustee of the John Bishop Montgomery Trust U/A DTD 4/4/2019 for Pfizer Inc.'s ("the Company") 2022 annual shareholder meeting. The proposal specifically requests that the Company publish a report disclosing the external public health costs that arise from the Company's limited sharing of vaccine technologies, and the impact of those costs on the Company's diversified shareholders.

I specifically authorize The Shareholder Commons to engage with Pfizer Inc. on my behalf regarding the proposal and the underlying issues, and to negotiate a withdrawal of the proposal as The Shareholder Commons sees fit.

I understand that I may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

John B Montgomery  
Trustee

John B Montgomery Trust U/A DTD 4/4/2019



EXHIBIT B

(see attached)



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# Pfizer and The Medicines Patent Pool (MPP) Sign Licensing Agreement for COVID-19 Oral Antiviral Treatment Candidate to Expand Access in Low- and Middle-Income Countries

Tuesday, November 16, 2021 - 06:45am



- *Agreement builds on Pfizer's comprehensive strategy to work toward equitable access to COVID-19 vaccines and treatments for all people, particularly those living in the poorest parts of the world*
- *Agreement will enable qualified sub-licensees to supply countries comprising approximately 53% of the world's population*
- *Interim data from the Phase 2/3 EPIC-HR study demonstrated an 89% reduction in risk of COVID-19-related hospitalization or death compared to placebo in non-hospitalized high-risk adults with COVID-19 within three days of symptom onset with*

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countries, today announced the signing of a voluntary license agreement for Pfizer's COVID-19 oral antiviral treatment candidate PF-07321332, which is administered in combination with low dose ritonavir (PF-07321332; ritonavir). The agreement will enable MPP to facilitate additional production and distribution of the investigational antiviral, pending regulatory authorization or approval, by granting sub-licenses to qualified generic medicine manufacturers, with the goal of facilitating greater access to the global population.

This press release features multimedia. View the full release here:

<https://www.businesswire.com/news/home/20211116005353/en/>

Under the terms of the head license agreement between Pfizer and MPP, qualified generic medicine manufacturers worldwide that are granted sub-licenses will be able to supply PF-07321332 in combination with ritonavir to 95 countries, covering up to approximately 53% of the world's population. This includes all low- and lower-middle-income countries and some upper-middle-income countries in Sub-Saharan Africa as well as countries that have transitioned from lower-middle to upper-middle-income status in the past five years. Pfizer will not receive royalties on sales in low-income countries and will further waive royalties on sales in all countries covered by the agreement while COVID-19 remains classified as a Public Health Emergency of International Concern by the World Health Organization.

"Pfizer remains committed to bringing forth scientific breakthroughs to help end this pandemic for all people. We believe oral antiviral treatments can play a vital role in reducing the severity of COVID-19 infections, decreasing the strain on our healthcare systems and saving lives," said Albert Bourla, Chairman and Chief Executive Officer, Pfizer. "We must work to ensure that all people – regardless of where they live or their circumstances – have access to these breakthroughs, and we are pleased to be able to work with MPP to further our commitment to equity."

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medicine we know well, as we have had a license on it for many years, and we will be working with generic companies to ensure there is enough supply for both COVID-19 and HIV.”

“Unitaid, a global health agency, created MPP ten years ago for this exact purpose – to secure licenses that enable and accelerate access to affordable quality treatments for people in resource-limited settings,” said Dr Philippe Duneton, Executive Director, Unitaid. “During a pandemic, saving time means saving lives. This agreement could help us to reach more people more quickly as soon as the medicine is approved and, when coupled with increased access to testing, bring benefits to millions.”

[Access the license agreement.](#)

MPP invites Expressions of Interest (EoI) from potential sublicensees based anywhere in the world for sublicenses to manufacture and sell the co-pack of PF-07321332; ritonavir in the licensed territory:

[Access the EoI portal](#)

[More information about the EoI process](#)

Deadline for applying: 6 December 2021, 6pm CET

### **About PF-07321332; ritonavir**

PF-07321332 is an investigational SARS-CoV-2 protease inhibitor antiviral therapy, specifically designed to be administered orally so that it can be prescribed at the first sign of infection or at first awareness of an exposure, potentially helping patients avoid severe illness which can lead to hospitalization and death. PF-07321332 is designed to

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### **About Pfizer's Commitment to Equitable Access**

Pfizer is committed to working toward equitable access of PF-07321332; ritonavir for all people, aiming to deliver safe and effective antiviral therapeutics as soon as possible and at an affordable price. If authorized or approved, during the pandemic, Pfizer will offer our investigational oral antiviral therapy through a tiered pricing approach based on the income level of each country to promote equity of access across the globe. High and upper-middle income countries will pay more than lower income countries, which will pay a not-for-profit price.

Pfizer has also begun and will continue to invest up to approximately \$1 billion to support the manufacturing and distribution of this investigational treatment candidate, including exploring potential contract manufacturing options. It has entered into advance purchase agreements with several countries and has initiated bilateral outreach to approximately 100 countries around the world.

### **About the Phase 2/3 EPIC-HR Study Interim Analysis**

In July 2021, Pfizer initiated the Phase 2/3 EPIC-HR (Evaluation of Protease Inhibition for COVID-19 in High-Risk Patients) randomized, double-blind study of non-hospitalized adult patients with COVID-19, who are at high risk of progressing to severe illness. The primary analysis of the interim data set evaluated data from 1,219 adults who were enrolled by September 29, 2021. At the time of the decision to stop recruiting patients, enrollment was at approximately 70% of the 3,000 planned patients from clinical trial sites across North and South America, Europe, Africa, and Asia, with 45% of patients located in the United States. Enrolled individuals had a laboratory-confirmed diagnosis of SARS-CoV-2 infection within a five-day period and were required to have at least one characteristic or underlying medical condition associated

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cause compared to placebo in patients treated within three days of symptom onset (primary endpoint); 0.8% of patients who received PF-07321332; ritonavir were hospitalized through Day 28 following randomization (3/389 hospitalized with no deaths), compared to 7.0% of patients who received placebo and were hospitalized or died (27/385 hospitalized with 7 subsequent deaths). The statistical significance of these results was high ( $p < 0.0001$ ). Similar reductions in COVID-19-related hospitalization or death were observed in patients treated within five days of symptom onset; 1.0% of patients who received PF-07321332; ritonavir were hospitalized through Day 28 following randomization (6/607 hospitalized, with no deaths), compared to 6.7% of patients who received a placebo (41/612 hospitalized with 10 subsequent deaths), with high statistical significance ( $p < 0.0001$ ). In the overall study population through Day 28, no deaths were reported in patients who received PF-07321332; ritonavir as compared to 10 (1.6%) deaths in patients who received placebo.

The review of safety data included a larger cohort of 1,881 patients in EPIC-HR, whose data were available at the time of the analysis. Treatment-emergent adverse events were comparable between PF-07321332; ritonavir (19%) and placebo (21%), most of which were mild in intensity. Among the patients evaluable for treatment-emergent adverse events, fewer serious adverse events (1.7% vs. 6.6%) and discontinuation of study drug due to adverse events (2.1% vs. 4.1%) were observed in patients dosed with PF-07321332; ritonavir compared to placebo, respectively.

### **About MPP**

The Medicines Patent Pool (MPP) is a United Nations-backed public health organization working to increase access to, and facilitate the development of, life-saving medicines for low- and middle-income countries. Through its innovative business model, MPP partners with civil society, governments, international organizations, industry, patient groups, and other stakeholders, to prioritize and license needed medicines and pool intellectual property to encourage generic

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Unitaid, which continues to be MPP's main funder. MPP's work on access to essential medicines is also funded by the Swiss Agency for Development and Cooperation (SDC). MPP's activities in COVID-19 are undertaken with the financial support of the Japanese Government and SDC. More information at <https://medicinespatentpool.org/> and follow us on [Twitter](#), [LinkedIn](#) and [YouTube](#).

### **About Pfizer: Breakthroughs That Change Patients' Lives**

At Pfizer, we apply science and our global resources to bring therapies to people that extend and significantly improve their lives. We strive to set the standard for quality, safety and value in the discovery, development and manufacture of health care products, including innovative medicines and vaccines. Every day, Pfizer colleagues work across developed and emerging markets to advance wellness, prevention, treatments and cures that challenge the most feared diseases of our time. Consistent with our responsibility as one of the world's premier innovative biopharmaceutical companies, we collaborate with health care providers, governments and local communities to support and expand access to reliable, affordable health care around the world. For more than 150 years, we have worked to make a difference for all who rely on us. We routinely post information that may be important to investors on our website at [www.Pfizer.com](http://www.Pfizer.com). In addition, to learn more, please visit us on [www.Pfizer.com](http://www.Pfizer.com) and follow us on Twitter at [@Pfizer](#) and [@Pfizer News](#), [LinkedIn](#), [YouTube](#) and like us on Facebook at [Facebook.com/Pfizer](https://Facebook.com/Pfizer).

### **Pfizer Disclosure Notice**

The information contained in this release is as of November 16, 2021. Pfizer assumes no obligation to update forward-looking statements contained in this release as the result of new information or future events or developments.

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anticipated timing of data readouts, regulatory submissions, regulatory approvals or authorizations, planned investment and anticipated manufacturing, distribution and supply),, involving substantial risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such statements. Risks and uncertainties include, among other things, the uncertainties inherent in research and development, including the ability to meet anticipated clinical endpoints, commencement and/or completion dates for clinical trials, regulatory submission dates, regulatory approval dates and/or launch dates, as well as risks associated with preclinical and clinical data, including the possibility of unfavorable new preclinical, clinical or safety data and further analyses of existing preclinical, clinical or safety data; the ability to produce comparable clinical or other results including efficacy, safety and tolerability profile observed to date, in additional studies or in larger, more diverse populations following commercialization; the risk that preclinical and clinical trial data are subject to differing interpretations and assessments, including during the peer review/publication process, in the scientific community generally, and by regulatory authorities; whether regulatory authorities will be satisfied with the design of and results from these and any future preclinical and clinical studies; whether and when any drug applications or submissions to request emergency use or conditional marketing authorization for any potential indications for PF-07321332; ritonavir may be filed in particular jurisdictions and if obtained, whether or when such emergency use authorization or licenses will expire or terminate; whether and when regulatory authorities in any jurisdictions may approve any such applications or submissions for PF-07321332; ritonavir, which will depend on myriad factors, including making a determination as to whether the product's benefits outweigh its known risks and determination of the product's efficacy and, if approved, whether it will be commercially successful; decisions by regulatory authorities impacting labeling or marketing, manufacturing processes, safety and/or other matters that could affect the availability or commercial potential of PF-07321332; ritonavir, including development of products or therapies by other companies; risks related to the availability of raw materials for PF-07321332; ritonavir; the risk that we may not

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will be reached; the risk that demand for any products may be reduced or no longer exist; uncertainties regarding the impact of COVID-19 on Pfizer's business, operations and financial results; and competitive developments.

A further description of risks and uncertainties can be found in Pfizer's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 and in its subsequent reports on Form 10-Q, including in the sections thereof captioned "Risk Factors" and "Forward-Looking Information and Factors That May Affect Future Results", as well as in its subsequent reports on Form 8-K, all of which are filed with the U.S. Securities and Exchange Commission and available at [www.sec.gov](http://www.sec.gov) and [www.pfizer.com](http://www.pfizer.com).

View source version on [businesswire.com](https://www.businesswire.com/news/home/20211116005353/en/): <https://www.businesswire.com/news/home/20211116005353/en/>

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EXHIBIT C

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# Working To Reach Everyone, Everywhere

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# Our commitment to equitable access

Pfizer is firmly committed to equitable and affordable access to the Pfizer-BioNTech COVID-19 vaccine to help bring an end to the pandemic for everyone, everywhere.

We are extremely proud of the fact that, to-date, 161 countries around the world have already received doses of the Pfizer-BioNTech vaccine, and we are expanding that reach every day, working with governments and

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the arms of even more people.

# Pfizer and BioNTech will produce 3 billion doses in 2021 and 4 billion doses in 2022



*We have pledged:*

## 2 billion doses

to low- and middle-income countries through 2022 - at least one billion each year.



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# More than 2.1 billion doses to 161 countries



*This includes:*

## 741 million + doses

to low and middle income countries as part of our pledge, and we are hard at work, along with our partners, planning for substantial doses deliveries that will take place through the rest of 2021.



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the resources and expertise of partners who can offer support for logistics, financing and advocacy where they may be needed. This includes:

## Direct Supply Agreements

Pfizer has **64 direct supply agreements** with country governments to reach more than 140 countries worldwide. More than half of these agreements are with low- and middle-income countries.

## COVAX

Pfizer and BioNTech have an agreement to supply **40 million doses** to the COVAX facility. To date, 57 countries have received these doses.

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Pfizer is actively working with governments around the world on donation of doses to countries in need. This includes programs like the U.S. Government's agreement to purchase 1 billion doses at a not for profit price to donate to low- and lower-middle-income countries and Africa through 2022. **More than 120 million** doses have been delivered to **52 countries** to date.

In addition to doses already allocated to support refugee populations in Jordan and Lebanon, Pfizer continues to explore additional paths and is providing support to help strengthen health systems for vulnerable populations across the world.

# Strengthening healthcare systems

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Pfizer's partnerships are wide-ranging: from our COVAX collaboration on supply chain capability analysis to freezer donation to support cold chain capacity through our UPS partnership.

Pfizer has also drawn on its long-term relationship with Zipline, using innovative solutions such as drone-assisted deliveries to ensure vaccines reach hard-to-reach areas.

The Pfizer Foundation has provided \$30 million in grants to help meet the needs of front line healthcare workers during the pandemic - and we are continuing to work with NGOs, UN agencies and governments to explore the need for a targeted vaccine donation program for refugees and vulnerable populations.

# Scaling our capacity with equity in mind

To ensure all people around the world have access to a safe and effective COVID-19 vaccine as quickly as possible, we continue to make extensive investments to expand and improve our research, development and manufacturing capabilities.

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aiming to reach 4 billion in 2022.

Since we first began production, we have reduced our vaccine manufacturing timeline from approximately 110 days – from start to vial ready – to an average of 60 days – an almost 50% improvement.

We are also leveraging contract manufacturing to expand our global supply chain network, which now spans four continents and includes more than 20 manufacturing facilities. Our collaborations with local biopharmaceutical companies Eurofarma in Brazil and Biovac in South Africa will ensure doses are manufactured at scale for Latin America and Africa, and we continue to pursue opportunities to bring new partners into our supply chain network to further accelerate access to our vaccine for countries across the world.

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## How many of Pfizer's doses are going to LMICs?

---

## Where will the 2 billion doses Pfizer has pledged for LICs and MICs go?

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How will you ensure that the availability of boosters does not impact supply equity?

---

How are you addressing challenges with ultra cold chain handling requirements in low-income countries?

---

How did you ensure the vaccine was going to be suitable for use in diverse populations around the world?

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## Coronavirus disease (COVID-19) Resources

While we continue to see the devastating impact of the coronavirus pandemic around the world, we are committed to helping keep people safe and informed.

[Learn More](#)

## Distributing Our COVID-19 Vaccine to the World

Every day, I am asked about how Pfizer and our partners at BioNTech will distribute our COVID-19 vaccine now that it has begun to be authorized by regulators in different countries.

[Learn More](#)

## Albert Bourla On Equitable Access to COVID-19 Vaccines

The agreement with COVAX is an important step toward achieving our goal.

[Learn More](#)



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EXHIBIT D

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[Home](#) > [Our Science](#) > [Coronavirus disease \(COVID-19\) Resources](#) > [Vaccine Maker Pledge](#)

# COVID-19 Vaccine Maker Pledge

The CEOs of AstraZeneca, BioNTech, GlaxoSmithKline, Johnson & Johnson, Merck, Moderna, Novavax, Pfizer, and Sanofi, have made a historic pledge to the world, outlining a united commitment to uphold the integrity of the scientific process as they work towards potential regulatory filings and approvals of the first COVID-19 vaccines.

All nine CEOs signed the following pledge:

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The safety and efficacy of vaccines, including any potential vaccine for COVID-19, is reviewed and determined by expert regulatory agencies around the world, such as the United States Food and Drug Administration (FDA). FDA has established clear guidance for the development of COVID-19 vaccines and clear criteria for their potential authorization or approval in the US. FDA's guidance and criteria are based on the scientific and medical principles necessary to clearly demonstrate the safety and efficacy of potential COVID-19 vaccines. More specifically, the agency requires that scientific evidence for regulatory approval must come from large, high quality clinical trials that are randomized and observer-blinded, with an expectation of appropriately designed studies with significant numbers of participants across diverse populations.

Following guidance from expert regulatory authorities such as FDA regarding the development of COVID-19 vaccines, consistent with existing standards and practices, and in the interest of public health, we pledge to:

- Always make the safety and well-being of vaccinated individuals our top priority.
- Continue to adhere to high scientific and ethical standards regarding the conduct of clinical trials and the rigor of manufacturing processes.
- Only submit for approval or emergency use authorization after demonstrating safety and efficacy through a Phase 3 clinical study that is designed and conducted to meet requirements of expert regulatory authorities such as FDA.



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We believe this pledge will help ensure public confidence in the rigorous scientific and regulatory process by which COVID-19 vaccines are evaluated and may ultimately be approved.

[Read the Press Release](#)



Our Progress in Developing  
A Potential Covid-19  
Vaccine



How Pfizer and BioNTech  
are Moving with Safety and  
Speed to Develop a  
Potential COVID-19 Vaccine



Get the Facts on  
COVID-19 Vaccine



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infection, disease and death worldwide.

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been our guiding principle every step of the way.

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coronavirus pandemic, our experts are working determinedly with unprecedented partnership and speed, to bring forth a vaccine.

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*For additional information about Pfizer, please see our filings with the U.S. Securities and Exchange Commission, including the information provided in the sections captioned “Risk Factors” and “Forward-Looking Information and Factors That May Affect Future Results”.*



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EXHIBIT E

(see attached)

# Supporting Manufacturing, Trade and Equitable Global Access to COVID-19 Vaccines



Equitable distribution was our North Star from day one. In order to ensure that every country that chooses the Pfizer-BioNTech COVID-19 vaccine can have access to it, **two conditions** had to be met: **a price that all countries can afford** and **reliable manufacturing to enable broad global distribution**.

To date (5 December 2021), Pfizer and BioNTech have shipped **2.25 billion vaccines to 163 countries and territories in every region of the world**, including:



Based on current projections, Pfizer and BioNTech expect to produce:

**3 billion vaccine doses worldwide by the end of 2021**

and

**4 billion doses in 2022**

At the Global Health Summit in Rome in May 2021, we pledged to provide **2 billion vaccine doses to low and middle-income countries in 2021 and 2022 - at least 1 billion doses each year**. To date, we are on track to meet this commitment for 2021 and have delivered **more than 808 million doses to 95 of these countries**.



## Supply Pathways:

- Direct supply agreements to governments of countries around the world.
- A direct supply agreement with COVAX for up to 40 million doses in 2021.
- Agreement to **provide 1 billion doses to the United States at a not-for-profit price** to go to low and lower-middle income countries and the African Union.
- Targeted humanitarian donation programs where needed for vulnerable populations.



## Tiered Pricing Policy:

Starting in 2020, we offered our vaccine through **tiered pricing**:

- The price for wealthier nations would be about the cost of a takeaway meal, and would be offered at a price that enables governments to provide it to their populations for free.
- Middle-income countries were offered doses at roughly half that price.
- Low-income countries were offered doses at a not for profit price.

With our industry partners, we also share the five commitments<sup>1</sup> to urgently advance vaccine equity:



**Step up dose sharing**



**Continue to optimize production**



**Call out trade barriers to be eliminated**



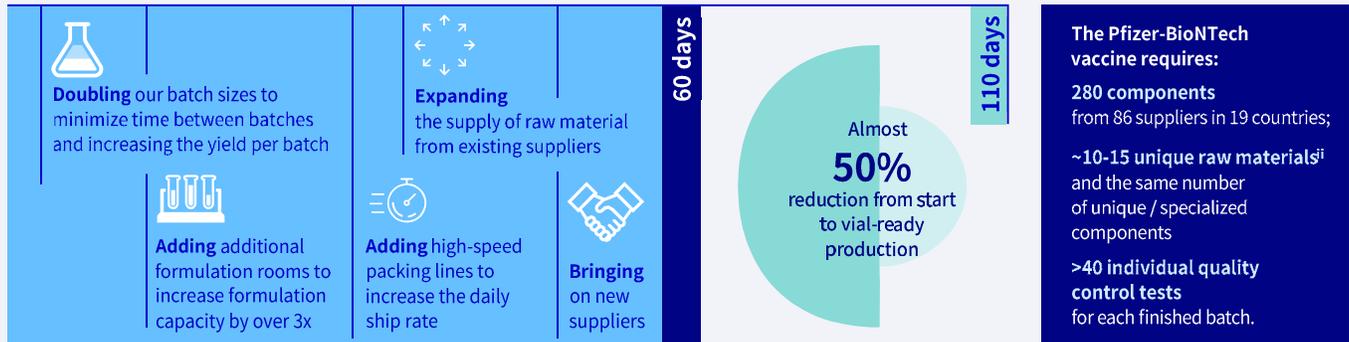
**Support country readiness**



**Drive innovation**

## Fundamental to our access strategy is work to globally scale up manufacturing.

From the outset, we have taken a **relentless focus on efficiency** to enable us to quickly scale up manufacturing. Reducing production timelines has been achieved by:



We are also **partnering to build up scale**. As of 23 November 2021, the Pfizer-BioNTech global COVID-19 vaccine supply chain and manufacturing network now spans **four continents** and includes more than **20 facilities**.



We **select partners** using a rigorous process based on several factors, including: quality, compliance safety track record, technical capability, capacity availability, highly trained workforce, project management abilities, and prior working relationship.

Steps involved in a **tech transfer** process for a new facility include: on-site development, equipment installation, engineering and process qualification tests, and regulatory approvals.

Pfizer and BioNTech will **continue to explore and pursue opportunities** to bring new partners into our supply chain network to further accelerate access to the COVID-19 vaccine.

## Recommendations for policymakers:

### Support open trade.

The vaccine manufacturing process depends on a complex global network of suppliers of raw materials and equipment, competing for materials between pharmaceutical manufacturers, and other industries. Trade bottlenecks – including export restrictions, tariffs, and customs red tape – add cost and delay vaccine manufacturing and scale up.

### Invest in resilient health systems.

Beyond manufacturing, vaccine deployment requires scale up of ultra-cold chain capacity, trained health care personnel, and more resilient health system infrastructure to broadly support delivery, particularly in low and lower-middle income countries.

### Enable innovation.

Manufacturers are engaged in unprecedented collaboration to support vaccine development and manufacturing, thanks in part to intellectual property (IP) protections and other pro-innovation policies. Additional research and collaboration continue to be needed to find solutions for special populations (e.g. children) and overcome new variants of the virus.

<sup>i</sup> <https://www.ifpma.org/wp-content/uploads/2021/05/News-Release-Five-steps-to-urgently-advance-COVID-19-vaccine-equity-19-May-2021.pdf>

<sup>ii</sup> Including plasmid DNA, nucleotides, capping agents, and lipids.

EXHIBIT F

(see attached)



November 4, 2021

**BY EMAIL AND OVERNIGHT DELIVERY**

Margaret Madden  
Vice President and Corporate Secretary, Chief Governance Counsel  
235 East 42<sup>nd</sup> Street  
New York, NY 10017  
Email: [REDACTED]

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Ms. Madden,

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

Oxfam America has continuously held, for at least three years as of the date hereof, at least \$2,000 worth of the Company’s common stock. Verification of this ownership will be forthcoming. Oxfam America intends to continue to hold such shares through the date of the Company’s 2022 annual meeting of shareholders.

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

Oxfam America welcomes the opportunity to discuss this proposal with representatives of the Company. We are available on **Tuesday, November 23 between 10 and 11am ET; Wednesday, November 24 between 11:30am and 1pm ET; and Friday, November 26 between 1:30 and 3pm ET**. I can be contacted on [REDACTED] or by email at [REDACTED] to schedule a meeting. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Silverman", on a light-colored rectangular background.

Robert Silverman  
Oxfam America

[Enclosure]

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

### SUPPORTING STATEMENT

There is broad agreement that widespread vaccination is critical to achieving herd immunity and preventing the development of more transmissible and even vaccine-resistant variants. Despite that consensus, vaccine administration has been strikingly unequal. As of October 21, 2021, high-income countries have administered 134 doses per 100 residents, while low-income countries have administered only 4 doses per 100 residents.<sup>1</sup> An August 2021 report estimated that vaccine inequity could cost the global economy over \$2 trillion and spur “[b]outs of social unrest.”<sup>2</sup>

Pfizer touts its philanthropy, including pledging to provide 40 million doses to global vaccine access initiative COVAX at a “not-for-profit” price.<sup>3</sup> Many experts believe, however, that philanthropy alone cannot ensure equitable access; instead, patent-holders must transfer the intellectual property associated with their vaccines, as well as the knowledge necessary to make them, to allow manufacture in low- and middle-income countries. Pressure is intensifying on COVID-19 vaccine makers, including Pfizer, to make such transfers promptly, to address supply shortfalls.<sup>4</sup> More than 140 Nobel laureates and former heads of state,<sup>5</sup> 110 U.S. Representatives,<sup>6</sup> the European Parliament,<sup>7</sup> and hundreds of civil society groups<sup>8</sup> urged President Biden to support waiving the World Trade Organization’s intellectual property rules, countering Pfizer’s assertion that intellectual property rights are not a barrier to vaccine access.<sup>9</sup>

Pfizer CEO Albert Bourla argues it would take years to transfer the mRNA vaccine technology to another company.<sup>10</sup> But Lonza began producing Moderna’s mRNA vaccine

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

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

<sup>3</sup> [https://www.pfizer.com/news/hot-topics/albert\\_bourla\\_on\\_ensuring\\_equitable\\_access\\_to\\_covid\\_19\\_vaccines](https://www.pfizer.com/news/hot-topics/albert_bourla_on_ensuring_equitable_access_to_covid_19_vaccines)

<sup>4</sup> <https://endpts.com/as-pressure-to-share-technology-mounts-biontech-selects-rwanda-for-latest-vaccine-site/>; <https://www.nytimes.com/2021/09/22/us/politics/covid-vaccine-moderna-global.html>

<sup>5</sup> [https://www.unaids.org/en/resources/presscentre/featurestories/2021/september/20210914\\_waive-intellectual-property-rules-for-covid-vaccines](https://www.unaids.org/en/resources/presscentre/featurestories/2021/september/20210914_waive-intellectual-property-rules-for-covid-vaccines)

<sup>6</sup>

[https://schakowsky.house.gov/sites/schakowsky.house.gov/files/TRIPS%20Waiver%20Letter\\_FINAL\\_May.pdf](https://schakowsky.house.gov/sites/schakowsky.house.gov/files/TRIPS%20Waiver%20Letter_FINAL_May.pdf)

<sup>7</sup> <https://fortune.com/2021/06/10/covid-vaccine-patent-waiver-european-parliament-commission-wto/>

<sup>8</sup> <https://msfaccess.org/letter-civil-society-organisations-us-president-biden-trips-waiver-covid-19-medical-tools>

<sup>9</sup> E.g., <https://endpts.com/pfizer-calls-proposed-ip-waiver-for-covid-vaccines-a-distraction-from-finding-real-solutions-on-access/>

<sup>10</sup> <https://www.ft.com/content/e9e0d3e9-b684-4846-a385-01c9fcfd1457>

within six months after the planned technology transfer was announced.<sup>11</sup> Suhaib Siddiqi, former Moderna director of chemistry, estimates that many modern factories should be able to start manufacturing mRNA vaccines within a few months if sufficient know-how is transferred.<sup>12</sup> The World Health Organization's mRNA Vaccine Technology Transfer Hub was recently established to facilitate technology transfer, prequalify potential manufacturers, and train personnel.<sup>13</sup>

The agreement Pfizer and BioNTech entered into with Biovac in July 2021 for sterile “fill and finish” of the mRNA vaccine falls short of what's needed to promote vaccine equity. Although doses produced under the agreement will be allocated to African countries, the arrangement does not allow Biovac to develop the expertise required to manufacture the vaccine's active ingredient or to make other mRNA vaccines to ensure adequate supply in future pandemics.<sup>14</sup> Similarly, because construction will not begin on BioNTech's planned Rwandan manufacturing facility until mid-2022, and production capacity will ramp up gradually, it will not ameliorate near-term supply challenges.

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

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

<sup>13</sup> <https://www.who.int/news-room/articles-detail/establishment-of-a-covid-19-mrna-vaccine-technology-transfer-hub-to-scale-up-global-manufacturing>

<sup>14</sup> <https://msfaccess.org/covid-19-vaccines-pfizer-biontech-and-biovac-fill-and-finish-deal-step-right-direction-much-more>

EXHIBIT G

(see attached)



Catherine M. Rowan  
Director, Socially Responsible Investments



*By E-Mail and Overnight Delivery*

November 8, 2021

Margaret M. Madden  
Vice President and Corporate Secretary, Chief Governance Counsel  
Pfizer, Inc.  
235 East 42<sup>nd</sup> Street  
New York, NY 10017



Dear Ms. Madden,

Trinity Health is submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of Pfizer, Inc. (the “Company”) for its 2022 annual meeting of shareholders. Trinity Health is the lead filer for the Proposal and will be joined by other shareholders as co-filers.

Trinity Health has continuously beneficially owned, for at least three years as of the date hereof, at least \$2,0000 worth of the Company’s common stock. Verification of this ownership is attached. Trinity Health intends to continue to hold such shares through the date of the Company’s 2022 annual meeting of shareholders.

Trinity Health is available to meet with the Company in person or via teleconference on: Nov. 22, between 11:30 AM – 5 PM EST; Nov.23; between 12:00 – 5:00 PM EST, Nov. 30; between 11:30 AM – 5 PM EST; or Dec. 2, between 2:00 PM – 5:00 PM EST. Any co-filers will either (a) be available on those dates and times or (b) in their submission letters, authorize us to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B).

Please feel free to contact me by phone [REDACTED] or by email at [REDACTED] [REDACTED] to schedule a meeting, or with any questions. We appreciate the long-time engagement we have had with Pfizer on access to medicine issues; our submission of this proposal relates to concerns about equity of vaccine access, and we hope that the issues it raises can lead to productive dialogue.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Rowan".

Catherine Rowan

enc

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

#### SUPPORTING STATEMENT

Pfizer’s COVID-19 vaccine, on which it partnered with German firm BioNTech, benefited from scientific discoveries that emerged from federally funded research. As of March 2021, the federal government committed nearly \$6 billion in funding for Pfizer and BioNTech’s vaccine as part of the Operation Warp Speed (“OWS”) program. This equates to 300 million doses and an option to buy 500 million more. Although advance purchase commitments do not directly fund vaccine development, they reduce the risk associated with it.

BioNTech benefited from significant public funding at several different stages in its development of the mRNA technology used in the vaccine and received over \$444 million from the German government to accelerate vaccine development and expand manufacturing capacity. Two public health scholars characterized Pfizer’s claim not to have taken a “single dollar from the public” as “a gross simplification of the complex ecosystem of public investment in vaccine production, which takes different forms at different stages on the road to a viable vaccine.”<sup>1</sup>

Unlike fellow OWS participants Janssen and AstraZeneca, Pfizer has not committed to provide its vaccine on a nonprofit basis during the pandemic; rather, it has taken a tiered pricing approach. In August 2021, Pfizer raised the price it charges the European Union to €19.50 from €15.50 per dose, under a new supply deal.

Despite widespread vaccination being key to ending the pandemic, vaccine access has been markedly unequal. As of November 3, 2021, 49.9% of the world’s population has received at least one vaccine dose. But only 3.9% of people in low-income countries had received at least one.<sup>2</sup> Vaccine inequity could cost the global economy over \$2 trillion.<sup>3</sup>

The World Health Organization and UN announced a strategy to achieve global vaccination by mid-2022, including priority actions for vaccines manufacturers.<sup>4</sup> We believe Pfizer will face enormous pressure to respond to these strategies. For example, Pope Francis recently asked manufacturers to “make a gesture of humanity and allow every country, every people, every human being, to have access to the

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<sup>1</sup> <https://www.internationalhealthpolicies.org/featured-article/why-does-pfizer-deny-the-public-investment-in-its-covid-19-vaccine/>

<sup>2</sup> <https://ourworldindata.org/covid-vaccinations> (downloaded 11/4/2021)

<sup>3</sup> <https://www.cnbc.com/2021/08/27/vaccine-inequality-could-cost-the-global-economy-trillions-report.html>

<sup>4</sup> <https://www.who.int/news/item/07-10-2021-who-un-set-out-steps-to-meet-world-covid-vaccination-targets>

vaccines.”<sup>5</sup>Advocates of improved access often cite government support as a reason for companies to charge lower prices or transfer technology.<sup>6</sup>

This Proposal seeks to fill a gap in Pfizer’s pricing disclosures by asking Pfizer to explain whether and how the significant contribution from public entities affects, or will affect, decisions that Pfizer makes that could affect access, such as setting prices.

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<sup>5</sup> <https://www.vatican.va/content/francesco/en/messages/pont-messages/2021/documents/20211016-videomessaggio-movimentipopolari.html>

<sup>6</sup> <https://msfaccess.org/sharethetech>; <https://www.amnesty.org/en/wp-content/uploads/2021/09/POL4046212021ENGLISH.pdf>, at 53-56;



**Frederick H. Alexander**

[info@theshareholdercommons.com](mailto:info@theshareholdercommons.com)

+1.302.485.0497

January 14, 2022

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

*RE: Shareholder proposal submitted by the John Bishop Montgomery Trust at Pfizer Inc. regarding effect of public health costs on diversified shareholders*

Division of Corporate Finance Staff Members:

The John Bishop Montgomery Trust U/A DTD 4/4/2019 (the "Proponent") is beneficial owner of common stock of Pfizer Inc. (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. The Proponent has asked me to respond to the letter dated December 22, 2021 (the "Company Letter") that Margaret M. Madden ("Company Counsel") sent to the Securities and Exchange Commission (the "SEC"). In that letter, the Company contends that the Proposal may be excluded from the Company's 2022 proxy statement.

For the reasons discussed below, we respectfully submit that the Proposal must be included in the Company's 2022 proxy materials and is not excludable under Rule 14a-8. The Proposal is attached as an Appendix to this letter. A copy of this letter is being emailed concurrently to Company Counsel.

## **SUMMARY**

The Proposal asks the Company to report on the manner in which the Company's failure to share elements of its COVID-19 vaccine technologies creates external costs that other companies internalize, thereby harming the majority of the Company's own diversified shareholders:

*RESOLVED, shareholders ask that the Board of Directors commission and publish a report on (1) the public health costs created by the limited sharing of the Company's COVID-19 vaccine technologies and any consequent reduced availability in poorer nations and (2) the manner in which such costs may affect the market returns available to its diversified shareholders.*

The Company asserts that the Proposal is excludable either because (1) it relates to the Company's ordinary business (Rule 14a-8(i)(7)), (2) it has already been substantially implemented (Rule 14a-8(i)(10)), or (3) it is duplicative of two previously submitted proposals (the "Other Proposals") (Rule 14a-8(i)(11)). Each of these assertions is based on a misreading of the Proposal, which raises a significant public policy issue that (1) transcends the Company's ordinary business, (2) has not been addressed in any of the Company's prior disclosures or actions, and (3) is not addressed by either of the Other Proposals.

The Company has never addressed the singular policy issue the Proposal raises, nor is that issue the subject of the Other Proposals. The issue is **whether the Company is increasing its own financial returns through a controversial practice that harms the economy and the Company's shareholders' diversified investments**. This question—whether a company should withhold the technology behind the vaccine for a disease that has killed more than 5,500,000 people worldwide and is likely to suppress major economies' GDP through 2025<sup>1</sup>—clearly raises a policy issue (one debated by governments around the world) that transcends the Company's ordinary business.

This issue—whether the Company should make vaccine-related decisions that degrade GDP to optimize its own financial returns—is part of a larger, hotly debated controversy—whether corporations should be optimizing their own returns, even when doing so harms the economy, diversified shareholders, and other stakeholders. Indeed, an executive from the company that manages the S&P 500 index—a critical tool for diversified investors, with \$5.4 trillion invested in products linked to it—recently described this conundrum, using vaccines as his example:

*The experiment is this: suppose Omicron turns out to be very dangerous and leads to a series of draconian economic shutdowns. Suppose further that a pharmaceutical manufacturer "X" comes up with a miracle cure—a vaccine that's easy to administer and 100% effective. How should X's shareholders want X to price its vaccine? How, in other words, should X's real-world invention produce financial "alpha" for its owners? ...*

*From a narrow perspective, X should charge quite a lot for its vaccine, since it's obviously worth a great deal. But from a [diversified investor]'s perspective, X should give the stuff away (or at least sell it for marginal variable cost, which would be close to the same thing). X might well lose money, but an effective and plentiful vaccine would arguably cause the whole market to move upward sharply. Index funds would profit far more from the beta effect on their portfolios than from the alpha on a single stock.<sup>2</sup>*

<sup>1</sup> Congressional Research Service. *Global Economic Effect of COVID-19* (Updated November 10, 2021), available at <https://crsreports.congress.gov/product/pdf/R/R46270>.

<sup>2</sup> *Alpha, Omicron: Why?*, Craig Lazzara, Indexology Blog (December 8, 2021), available at <https://www.indexologyblog.com/2021/12/02/alpha-omicron-why/>

This is the very question that the Proposal uniquely raises: are Company decisions driven by the “alpha” motive harming the global economy and thus the Company’s own diversified shareholder base? The Company’s argument to exclude the Proposal ignores this foundational element. As shown below, the Company treats the Proposal as one that simply addresses the Company’s internal decisions about COVID-19 products, without reference to those decisions’ effect on the economy and diversified portfolios. Each of its arguments for exclusion is based on this mischaracterization of the Proposal.

## ANALYSIS

### 1. The Proposal is not excludable pursuant to Rule 14a-8(i)(7)

#### A. Staff guidance

The Staff has indicated that a shareholder proposal that might otherwise be excludable as relating to ordinary business under Rule 14a-8(i)(7) may not be excludable if it raises significant social policy issues.<sup>3</sup> In explaining ordinary business, the Release noted:

*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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) 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.*

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*The determination as to whether a proposal deals with a matter relating to a company’s ordinary business operations is made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.*

Shareholder proposals involve significant social policies if they raise issues that engender widespread debate, media attention, and legislative and regulatory initiatives.<sup>4</sup> As we will discuss below, the report the Proposal requests relates to an underlying significant policy issue, namely, the question of whether

<sup>3</sup> Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018 (May 21, 1998).

<sup>4</sup> JD Supra, *SEC Staff’s Latest Guidance Presents Dilemma for Companies Seeking to Exclude Shareholder Proposals on Environmental and Social Issues* (January 4, 2018) (“In a June 30, 2016 stakeholder meeting, the Staff indicated that significant policy issues are matters of widespread public debate, which include legislative and executive attention and press attention.”)

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companies should pursue profits in a manner that degrades the global economy, with a focus on the Company's approach to managing COVID-19 vaccine technology.

*B. The specific significant policy issue: sharing the technologies behind the COVID-19 vaccines*

Pharmaceutical company conduct around COVID-19 vaccines is a highly contentious and contemporary public policy issue that transcends the Company's ordinary business and is therefore not excludable under Rule 14a-8(i)(7). Public discussion has made it clear that the question of whether companies should continue to exert their intellectual property rights relating to these vaccines even if doing so causes human and economic hardship is a significant policy issue on its own, as well as being part of the larger issue of whether companies should continue to maximize their own returns even when doing so creates significant external costs.

The International Monetary Fund has estimated that the global economy could benefit by \$9 trillion over five years if the global response to COVID-19 were optimized.<sup>5</sup> Over the last year, a controversy has erupted around whether that response should include requiring companies to share the medical technology they have developed more broadly.

One aspect of this debate has been the call for companies to waive their intellectual property rights under the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).<sup>6</sup> TRIPS requires WTO-member countries (with limited exceptions) to enforce patents and copyrights so that, for example, India cannot manufacture a vaccine for export without a license from the pharmaceutical company that holds the relevant patent.

In 2020, India and South Africa called for a waiver of TRIPS' provisions for COVID-19 technology:

*9. There are several reports about intellectual property rights hindering or potentially hindering timely provisioning of affordable medical products to the patients. It is also reported that some WTO Members have carried out urgent legal amendments to their national patent laws to expedite the process of issuing compulsory/government use licenses.*

*10. Beyond patents, other intellectual property rights may also pose a barrier, with limited options to overcome those barriers. In addition, many countries especially developing countries may face institutional and legal difficulties when using flexibilities available in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). A particular concern for countries with insufficient or no manufacturing*

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<sup>5</sup> Ruchir Agarwal and Gita Gopinath, *A Proposal to End the COVID-19 Pandemic*, IMF Staff Discussion Note (May 2021), available at <https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2021/05/19/A-Proposal-to-End-the-COVID-19-Pandemic-460263>.

<sup>6</sup> See generally, Prabhash Ranjan, *The Case for Waiving Intellectual Property Protection for Covid-19 Vaccines*, Observer Research Foundation (April 6, 2021) available at <https://www.orfonline.org/research/the-case-for-waiving-intellectual-property-protection-for-covid-19-vaccines/>.

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*capacity are the requirements of Article 31bis and consequently the cumbersome and lengthy process for the import and export of pharmaceutical products.*

*11. Internationally, there is an urgent call for global solidarity, and the unhindered global sharing of technology and know-how in order that rapid responses for the handling of COVID-19 can be put in place on a real time basis.*

*12. In these exceptional circumstances, we request that the Council for TRIPS recommends, as early as possible, to the General Council a waiver from the implementation, application and enforcement of Sections 1, 4, 5, and 7 of Part II of the TRIPS Agreement in relation to prevention, containment or treatment of COVID-19.<sup>7</sup>*

This call has generated significant public controversy, with pharmaceutical companies (including the Company) objecting.<sup>8</sup> U.S. Senators have weighed in on both sides of the argument, with some claiming strict intellectual property enforcement enhances drug development:

*Sen. Chris Coons (D.-Del.), said in Thursday's webinar that IP is "under both external and internal attack." But rather than being a barrier during the pandemic, Coons said everything he has seen indicates IP has been "a facilitator of critical cutting edge innovation."<sup>9</sup>*

In contrast, ten U.S. Senators wrote a letter to President Biden (the "Senators' Letter") one week before the statement from Sen. Coons, urging support for the TRIPS waiver.<sup>10</sup> The Senators' Letter made the case that the waiver was not simply an act of altruism that would save lives, but was necessary to revive the global economy:

*From a global public health perspective, this waiver is vital to ensuring sufficient volume of and equitable access to COVID19 vaccines and therapeutics around the world, which is why the waiver is supported by more than 100 nations. The TRIPS waiver is also essential to ensure all global economies, including the United States' economy, can recover from the pandemic and thrive. Simply put, we must make vaccines, testing, and treatments accessible everywhere if we are going to crush the virus anywhere. ...*

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<sup>7</sup> Waiver From Certain Provisions of the TRIPS Agreement For the Prevention, Containment and Treatment of Covid-19, Communication from India and South Africa, IP/C/W/669, 2 October 2020.

<sup>8</sup> Ian Lopez and Matthew Bultman, *Pfizer, J&J Balk at Calls to Loosen Grip on COVID Vaccine Rights*, Bloomberg Law (April 22, 2021) available at <https://news.bloomberglaw.com/health-law-and-business/pfizer-j-j-balk-at-calls-to-loosen-grip-on-covid-vaccine-rights>.

<sup>9</sup> *Id.*

<sup>10</sup> Letter available at <https://aboutblaw.com/W25>.

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*Delaying vaccine deployment in the developing world to lock in profit boosting patent protections threatens the safety of the American public...*

*We need to make public policy choices, both in the U.S. and at the WTO that put lives first. This temporary, targeted TRIPS waiver is a critical tool in overcoming this once-in-a-lifetime pandemic; the benefits vastly outweigh the red herring arguments used by the pharmaceutical industry against the approval of this targeted, time-limited waiver.<sup>11</sup>*

The Company itself entered the public debate:

*"The IP system is critical in ensuring that these various technologies on different platforms all can be leveraged to create a portfolio of Covid-19 vaccines to be deployed all over the world," Bryan Zielinski, chief patent counsel at Pfizer, said during a webinar hosted by the Center for Strategic and International Studies.<sup>12</sup>*

On May 5, 2021, the Biden Administration announced its support for a TRIPS Waiver, adding the United States to the more than 100 nations referenced in the Senators' letter.<sup>13</sup> In contrast, the European Union has opposed a broad waiver.<sup>14</sup>

Members of the pharmaceutical industry such as the Company are aware that this is an important public policy issue and have retained more than 100 lobbyists in their campaign to preserve intellectual property rights.<sup>15</sup> Indeed, the Company's own lobbyists have entered the public debate on the matter:

*"Pharmaceutical lobbyists working against the proposal include Mike McKay, a key fundraiser for House Democrats, now working on retainer for Pfizer.<sup>16</sup>*

The Company also participates in trade groups taking part in the public debate:

*Several trade groups funded by pharmaceutical firms have also focused closely on defeating the [TRIPS waiver] proposal, new disclosures show. The U.S. Chamber of Commerce, the Business Roundtable, and*

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<sup>11</sup> *Id.*

<sup>12</sup> *Pharmaceutical Industry Dispatches Army of Lobbyists to Block Generic Covid-19 Vaccines*, The Intercept (April 23, 2021) available at <https://theintercept.com/2021/04/23/covid-vaccine-ip-waiver-lobbying/>.

<sup>13</sup> *Statement from Ambassador Katherine Tai on the Covid-19 Trips Waiver*, Office of the United States Trade Representative (May 5, 2021) available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/statement-ambassador-katherine-tai-covid-19-trips-waiver>.

<sup>14</sup> See, e.g., *The EU Proposed COVID Waivers of Certain TRIPS Rules Are Mostly Meaningless*, Medicines Law & Policy (October 14, 2021) available at <https://medicineslawandpolicy.org/2021/10/the-eu-proposed-covid-waivers-of-certain-trips-rules-are-mostly-meaningless/>.

<sup>15</sup> See *supra*, n.12.

<sup>16</sup> *Id.*

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*the International Intellectual Property Alliance, which all receive drug company money, have dispatched dozens of lobbyists to oppose the initiative.<sup>17</sup>*

Whether and when pharmaceutical companies such as the Company should use intellectual property rights over vaccine technology to protect their own profits, even when such protection threatens the global health system and the global economy (thus threatening diversified portfolios), is the subject of an ongoing public-policy debate at both national and international levels. This policy question transcends the Company's ordinary business.

*C. The significant policy issue writ large: externalizing costs to stakeholders*

As discussed in the preceding section, COVID-19 intellectual property treatment is, standing alone, a significant public policy issue: should individual companies be prioritizing their own financial returns when doing so threatens the world's capacity to address a pandemic that threatens the global economy?

This question is part of a broader debate: whether companies should continue practices that maximize their own financial returns even while exacerbating threats to social and environmental systems. This broader framing of the question also transcends the Company's ordinary business, rendering the Proposal non-excludable under Rule 14a-8(i)(7). See *PepsiCo, Inc.*, (March 12, 2021) (Staff declined to concur in exclusion under Rule 14a-8(i)(7) when proposal requested a study of public health costs associated with the company's business and the manner in which such costs affect diversified shareholders who rely on overall market returns); *CVS Health Corp.*, recon. denied (Mar.30, 2021) ("a proposal related to the external public health costs... may raise a significant policy issue that transcends a company's ordinary business operations"). There is an urgent need to address business practices that enhance individual corporations' financial returns but harm social and environmental systems and, by extension, diversified portfolios—the Company's close protection of its vaccine-related intellectual property is a quintessential example of this phenomenon. Below, we explain how this issue has become a central feature of the policy debate in the United States and beyond.

*i. Corporate law and shareholder primacy*

U.S. corporate directors have long focused their efforts on improving their individual corporations' financial return to their shareholders. While there has been a fierce debate as to whether corporations should in fact be managed for the benefit of only shareholders or a broader group of stakeholders,<sup>18</sup> the concept of shareholder primacy has dominated corporate law. This doctrine eschews consideration of the external costs of business activity unless those costs affect the corporation's own financial return to its shareholders. A series of Delaware court decisions cemented the place of shareholder primacy in the United States.<sup>19</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> Frederick Alexander, *BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE* (2018) at 21-26.

<sup>19</sup> Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 *Seattle Univ. L. Rev.* 611, 613 (2017) ("Delaware decisional law is arguably particularly unfriendly to for-profit corporate boards that fail to place shareholder financial wealth maximization first in every decision they make.")

The most important of these was the famous *Revlon* case the Delaware Supreme Court decided in 1985.<sup>20</sup> Other Delaware authority has established that corporations exist primarily to generate shareholder value.<sup>21</sup> *eBay Domestic Holdings, Inc. v. Newmark*<sup>22</sup> is a more recent example of the focus on shareholder wealth maximization, even outside the sale context. The court embraced shareholder primacy, finding that it was a violation of the directors' fiduciary duties to make decisions primarily for the benefit of the corporation's platform's users:

*Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The "Inc." after the company name has to mean at least that. Thus, I cannot accept as valid... a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders.*<sup>23</sup>

Shareholder primacy has caused great consternation regarding the harm it imposes on stakeholders and the public.<sup>24</sup> In response, the benefit corporation option was proposed to provide a corporate form under which directors could prioritize interests other than the corporation's internal financial return to shareholders.<sup>25</sup> This form allows corporate managers to consider broader shareholder interests:

*[F]or widely held public corporations, most shareholders are broadly diversified investors who are dependent on a stable society and environment to support all of their investments and would be financially injured if some corporations create extra profits by externalizing social and environmental costs.*<sup>26</sup>

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<sup>20</sup> *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) (holding that when a corporation is to be sold in a cash-out merger, the directors' duty is to maximize the cash value to shareholders, regardless of the interests of other constituencies, because there is no long term for the shareholders).

<sup>21</sup> See *Katz v. Oak Indus. Inc.*, 508 A.2d 873, 879 (Del. Ch. 1986) ("It is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders; that they may sometimes do so 'at the expense' of others [e.g., debtholders] . . . does not . . . constitute a breach of duty."); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any "There" There?*, 75 S. Cal. L. Rev. 1169, 1170 (2002) ("The predominant academic answer is that corporations exist primarily to generate stockholder wealth, and that the interests of other constituencies are incidental and subordinate to that primary concern.")

<sup>22</sup> 16 A.3d 1 (Del. Ch. 2010).

<sup>23</sup> *Id.* at 34-35 (referring to corporate justification for a shareholder rights plan meant to forestall a change in control that might threaten platform users' interests).

<sup>24</sup> See generally, Lynn Stout, *THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS AND THE PUBLIC* (2012).

<sup>25</sup> See generally Andrew Kassoy, Bart Houlahan and Jay Coen-Gilbert, *Impact governance and management: Fulfilling the Promise of Capitalism to Achieve a Shared and Durable Prosperity*, Center for Effective Public Management at Brookings (July 2016).

<sup>26</sup> Frederick Alexander, *How to Leverage Benefit Governance*, in Katayun Jaffari and Stephen Pike, *ESG IN THE BOARDROOM: A GUIDEBOOK FOR DIRECTORS* (American Bar Association, forthcoming).

ii. Legislative action signals significant public policy issue

The clearest signal of the significance of the policy issue at stake in corporate financial return prioritization is the legislative action taken to address the issue across the nation and around the world. Beginning in 2010, U.S. jurisdictions began to adopt benefit corporation provisions, which created a corporate form that required directors to consider broader interests. Legislatures have acted in 39 U.S. jurisdictions, the Canadian province of British Columbia, and the countries of Italy, Colombia, and Ecuador over the last decade to make this new form available. In addition, legislation was introduced in both houses in the last U.S. Congress that would have imposed benefit corporation duties on all billion-dollar companies' directors.<sup>27</sup> The issue even surfaced in the most recent U.S. presidential election, as one candidate decried "the era of shareholder capitalism."<sup>28</sup> In response, critics argued that favoring shareholders was the best recipe for a successful economy:

*In reality, corporations do enormous social good precisely by seeking to generate returns for shareholders.<sup>29</sup>*

The founders of B Lab, a nonprofit organization that focuses on creating tools for companies to measure and manage their social and environmental impacts explained:

*In a relatively short period of time, due to the effective advocacy of the community of Certified B Corporations, laws have been passed in two-thirds of U.S. states to create a new corporate structure called a benefit corporation. Importantly, Delaware passed benefit corporation legislation in 2013, creating a pathway to effective impact governance in the public capital markets. The then-chair of the Corporations Law Council of the Delaware State Bar Association called the benefit corporation a "seismic shift in U.S. corporate law."<sup>30</sup>*

iii. Trust law

This policy issue has also appeared in recent regulatory and legislative activity relating to trustees for retirement plans and other investment advisors. The Department of Labor recently proposed a Rule that would have made it more difficult for trustees to account for environmental and social costs but, after receiving public comments, revised the final rule in a manner that gives trustees the ability to address corporate activity that imposes the type of social costs described in the Proposal when the trustees

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<sup>27</sup> Copies of the legislation are available here: <https://www.congress.gov/bill/116th-congress/senate-bill/3215?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=1&r=1> (Senate) and here: <https://www.congress.gov/bill/116th-congress/house-bill/6056?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=2&r=2> (House)

<sup>28</sup> *Biden says investors 'don't need me,' calls for end of 'era of shareholder capitalism,'* (CNBC) (July 9, 2020), available at <https://www.cnbc.com/2020/07/09/biden-says-investors-dont-need-me-calls-for-end-of-era-of-shareholder-capitalism.html>.

<sup>29</sup> Andy Pudzer, *Biden's Assault on 'Shareholder Capitalism,'* (Wall Street Journal) (August 17, 2020), available at <https://www.wsj.com/articles/bidens-assault-on-shareholder-capitalism-11597705153>.

<sup>30</sup> See *supra*, n.25 at 11.

believe that those costs would affect their diversified portfolios—exactly the type of costs on which the Proposal seeks a report:

*In addition, Final Rules should also permit stewardship that discourages portfolio companies from engaging in behavior that harms society and the environment, and consequently the value of shareholders' diversified portfolios (For example, plan fiduciaries might vote to encourage all companies to lower their carbon footprint, not because it will necessarily increase return at each and every company, but because it will promote a strong economy and thus increase the return of their diversified portfolio).<sup>31</sup>*

Further evidencing the widespread debate around this issue, the President of the United States suspended those Final Rules by executive order on inauguration day<sup>32</sup> and put a new set of proposed rules in their place.<sup>33</sup>

Moreover, in 2020, a bill was introduced in the U.S. House of Representatives that included an express finding that plan fiduciaries should consider the costs corporations in their portfolios impose on the financial system:

*The Congress finds the following:*

*Fiduciaries for retirement plans should...*

*(D) consider the impact of plan investments on the stability and resilience of the financial system; ...<sup>34</sup>*

While the bill related to costs to the financial system, rather than public health, it was clearly focused on the same policy concern: costs that a company's profit-seeking activities impose on stakeholders.<sup>35</sup>

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<sup>31</sup> Frederick Alexander, *The Final DOL Rules Confirm That Fiduciary Duty Includes 'Beta Activism,'* RESPONSIBLE INVESTOR (December 15, 2020) available at <https://www.responsible-investor.com/articles/the-final-dol-rules-confirm-that-fiduciary-duty-includes-beta-activism>.

<sup>32</sup> *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*, (January 20, 2021), available at <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>

<sup>33</sup> Proposed Rule RIN 1210-AC03, 85 FR 57272 (2021).

<sup>34</sup> H.R. 8959 (116th): Retirees Sustainable Investment Policies Act of 2020

<sup>35</sup> See also Frederick Alexander, Holly Ensign-Barstow, Lenore Palladino, and Andrew Kassoy, *From Shareholder Primacy to Stakeholder Capitalism: A Policy Agenda for Systems Change* (arguing that fiduciary duties of trustees should incorporate external costs of individual companies that harm portfolios).

D. *The no-action responses cited in the Company Letter do not support the Company's arguments under Rule 14a-8(i)(7)*

- i. The 2006 letters do not involve the policy concerns raised in the Proposal regarding the Company profiting through business strategies that harm the ability of people and the economy to recover from a pandemic disease

In an effort to support its request, the Company cites instances in which the Staff concurred in the exclusion of proposals under Rule 14a-8(i)(7) that related to global pandemics and intellectual property. *Abbott Laboratories* (March 9, 2006); *Pfizer Inc.* (January 24, 2006); *Marathon Oil* (January 23, 2006). However, those proposals did not involve the policy issue the Proposal implicates, or any analogous issue. Instead, each involved a request for a report on the effect of certain diseases “on our company’s business strategy.” The proposals expressed concern that the companies were not doing enough to enhance their businesses in light of the threat these diseases posed. The thrust of the Proposal is the opposite—the concern is that by protecting its intellectual property, the Company is focusing *too much on its own business and not enough on its effect on the overall crisis, and thus the economy and its diversified shareholders’ portfolios*. As detailed above, this precise issue is part of a significant policy debate, as evidenced by “widespread public debate, which include[s] legislative and executive attention and press attention,”<sup>36</sup> over the TRIPS waiver, which has received attention from Senators and the President of the United States, among others. The three cited letters from 2006 do not involve any such public debate over the company conduct the proposals implicated.

- ii. Previous Staff concurrence in exclusion of proposals addressing cost externalization policy issue relied on failure to meet nexus requirement, which has been eliminated; the Staff has rejected a request to concur in the exclusion of a cost-externalization proposal when the nexus requirement was satisfied

The Company Letter also relies on two concurrences provided by the Staff in the 2021 Proxy season. *JPMorgan Chase & Co.* (March 26, 2021); *Goldman Sachs Group, Inc.* (March 9, 2021, *reconsideration denied*, March 19, 2021). The Company claims that these letters support exclusion because in each case the Staff permitted exclusion of a proposal requesting a report on the impact of the respective company’s actions on overall market returns, as does the Proposal. A full review of those letters and subsequent Staff guidance, as well as the results of other proposals focused on a company’s effects on overall market returns, shows just the opposite—the exclusion in those cases was based on a different requirement, and the Staff has declined to concur in excluding a proposal seeking a report on the effect a company has on total market return when the proposal otherwise satisfied Rule 14a-8.

In *Goldman 2021*, the Staff permitted exclusion of a proposal seeking a report on the cost to overall market returns of the company’s practice of underwriting multi-class initial public offerings under the ordinary business exclusion. However, at the time *Goldman 2021* was issued, Staff policy was to concur in the exclusion of a proposal that did not have sufficient nexus to the company, *even if the proposal addressed a significant policy issue*. Thus, a determination that a proposal could be excluded under clause (i)(7) did not necessarily mean the Staff had determined that the cost externalization issue raised was not a significant policy issue. Indeed, the Company had argued that the proposal addressed in

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<sup>36</sup> See *supra*, n.4.

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*Goldman 2021* should be excluded for that very reason, claiming the proposal was too focused on other companies, and not on the Company itself:

*Rather, the Proponents postulate that the Company's act of offering underwriting services to a company that elects to have multiple classes or high-voting stock somehow equates to the "facilitation of poor corporate governance" broadly, which the Proponents further contend has negative impacts on the economy at large and may impact "diversified shareholders" investing in "overall stock market return." In this regard, it is clear that the Proposal is not focused on corporate governance practices or policies internal to or impacting the Company and its shareholders, but rather on how the offering of a particular service to particular customers may create "external costs" that may have a tangential effect on other stakeholders. Importantly, the Proposal does not ask the Company to examine or alter its own governance structure or corporate governance policies.<sup>37</sup>*

However, since the issuance of *Goldman 2021*, the Staff issued SLB L, explaining it would no longer impose the nexus requirement: if a proposal raises a significant policy issue and it otherwise satisfies Rule 14a-8, it will no longer be excluded merely because it does not have sufficient nexus to the company:

*Going forward, the staff will realign its approach for determining whether a proposal relates to "ordinary business" with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement, while also recognizing the board's authority over most day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.*

*Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise **a policy issue of significance for the company** may no longer be viewed as excludable under Rule 14a-8(i)(7). For example, proposals squarely raising human*

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<sup>37</sup> (Emphasis added) available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/mcritchieyounggoldman030921-14a8.pdf>.

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*capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company. (Emphasis added.)*

Thus, the reason for the exclusion of the *Goldman 2021* overall market return proposal last year—that it was too “external” facing—is no longer a viable argument for exclusion under Rule 14a-8(i)(7).

While *Goldman 2021* did not specify that it was decided based on nexus, the Staff’s exclusion of a second similar proposal last year did, with the Staff specifically stating that the overall market return proposal could be excluded “because it was not a **significant policy issue for the Company.**” *JPMorgan Chase & Co. 2021* (emphasis added). *SLB L* explicitly establishes that this will no longer be a reason for exclusion. A recent essay on the changes *SLB L* made explains that the exclusion in *JPMorgan Chase & Co. 2021* was precisely the type of exclusion the Staff meant to end, because it was counter to the Rule’s purpose:

*Instead, the Staff exclusion appears to have focused only on the direct economic importance to JP Morgan, rather than other issues of proper concern to shareholders, namely the systemic impact of the company on its industry, society, and capitalism at large.<sup>38</sup>*

Thus, the Company Letter’s reliance on *Goldman 2021* is mistaken.

Two other no-action requests from 2021 further illustrate that the Staff does not concur in excluding external cost proposals where they are otherwise eligible under Rule 14a-8, showing that a report regarding cost externalization to increase profits does raise a significant policy issue. See *CVS Health Corp.* (March 22, 2021, recon. denied, Mar. 30, 2021) and *PepsiCo, Inc.* (March 12, 2021).

In *CVS 2021*, the Staff concurred in the exclusion of a proposal that focused on the issue of profiting by externalizing costs. While the Staff permitted exclusion as ordinary business, it is apparent that, as was the case with *Goldman Sachs 2021* and *JPMorgan Chase 2021*, the Staff was relying on the nexus test, and not on the nature of the proposals themselves. This is clear because in *PepsiCo 2021*, the Staff did not concur with exclusion of a proposal that was nearly identical to the excluded *CVS* proposal (asking for a study of public health costs associated with the company’s food and beverage business). It is apparent that the reason for the different outcome was that the food and beverage business was almost the entire business for *PepsiCo*, while it played a much smaller role in the *CVS* business. The Staff made this distinction clear by using the same “to the Company” language as was used in *JPMorgan 2021* and the *SLB L* in explaining why the *CVS* proposal (but not the *PepsiCo* proposal) could be excluded:

*Indeed, a proposal related to the external public health costs created by the food and beverage business of a company may raise a significant policy issue that transcends a company’s ordinary business operations*

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<sup>38</sup> Sanford Lewis, *SEC Resets the Shareholder Proposal Process*, Harvard Law School Forum on Corporate Governance (December 23, 2021).

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(see, e.g., *PepsiCo, Inc. (March 12, 2021)*). However, in our view, the Proposal does not demonstrate how external public health costs created by the Company's retail food business are **sufficiently significant to the Company**, such that they transcend the Company's ordinary business operations and would be appropriate for a shareholder vote.<sup>39</sup>

Thus, rather than demonstrating that proposals concerning the externalization of costs and the effect of such costs on diversified shareholders are excludable as ordinary business, *Goldman 2021* and *JPMorgan Chase & Co. 2021*—when read together with the *SLB L* and other relevant precedent—show that such proposals do represent significant policy issues, and thus can no longer be excluded on nexus grounds.

Finally, the Company's citation of *PetSmart, Inc. (March 24, 2011)*, *CIGNA Corp. (February 23, 2011)*, and *Capital One Financial Corp. (February 3, 2005)* is unavailing of its position. The Company letter conflates requests for reports that cover matters outside the scope of significant policy issues with reports on significant social policies that may ultimately effect ordinary business matters. For example, in *PepsiCo 2021*, the Staff declined to concur in the exclusion of a proposal that addressed the public health costs of the company's food and beverage business and the effect of those costs on overall market performance. The fact that those public health costs arose from the company's ordinary business could not, of course be a reason for exclusion: any effect a Company has on a significant policy issue is going to arise from ordinary business. That is why the policy exception is, in fact, an "exception" to the ordinary business exclusion. The rule the Company proposes—that proposals concerning public policy matters can be excluded because they ultimately have a relationship to the business of the company—would swallow the entire exception.

## 2. The Proposal is not excludable pursuant to Rule 14a-8(10)

The Company argues that the Proposal may be excluded under Rule 14a-8(10) as having been "substantially implanted by the Company." As with its argument that the Proposal does not satisfy the public policy exception, the only way it can make this argument is by ignoring the fact that the proposal is not simply about the effect of its opposition to a particular form of technology-sharing on the Company's business, but rather about the effect that opposition has on the economy and, consequently, on diversified shareholders.

The Company cites multiple instances in which the Staff concurred with exclusion because "the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal." It cites other instances of concurrence for the proposition that exclusion is permitted "where the company already addressed the underlying concerns and satisfied the essential objectives of the proposal, even if the proposal had not been implemented exactly as proposed."

We agree with this standard. However, the Company then references disclosures and other matters that do not relate to the cost externalization issue that is at the heart of the proposal. For example:

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<sup>39</sup> Available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/youngcvrecon033021-14a8.pdf>.

- The Company Letter states that “Pfizer already has published information on its approach to improving access to COVID-19 vaccines and treatments, and related technology licensing.”
  - In other words, the Company has discussed the licenses it does grant, but this provides no information about the effect of all the licenses it does not grant or the other technology it does not share.
- The Company Letter states that “In addition, Pfizer maintains a portion of its corporate website dedicated to providing updates on its COVID-19 related initiatives and statements, including a webpage titled ‘Coronavirus Disease (COVID-19) Resources,’ which includes information detailing Pfizer’s approach to making its COVID-19 vaccine widely available.”
  - Again, this is a page that celebrates actions the Company has taken with respect to COVID-19. This is essentially an opportunity for the Company to take a bow for “working tirelessly” and being “extremely proud” and “accelerat[ing] access.” Nothing purports to address the effect of resisting the TRIPS Waiver that multiple governments and the U.S. president have proposed.
- The Company Letter states that “Pfizer signed a pledge with eight other biopharmaceutical companies to [w]ork to ensure a sufficient supply and range of vaccine options, including those suitable for global access.”
  - But as the background discussed above makes clear, that pledge apparently does not contemplate the TRIPS waiver or certain other technology-sharing arrangements, and the Company has not pointed to any disclosure that explains how that decision affects global efforts regarding COVID-19 or the effect of those decisions on overall market returns.
- The Company Letter states that “Pfizer’s public disclosures already have satisfied the essential objective of the Proposal by explaining how Pfizer has improved access to COVID-19 vaccines and treatments, and related technology licensing.”
  - Of course, the “essential objective of the Proposal” is decidedly not an explanation of how Pfizer has improved access—it is just the opposite: a reckoning of the external costs arising from areas where the Company has denied access to its technologies.

### **3. The Proposal is not excludable pursuant to Rule 14a-8(i)(11)**

The Company argues that the Proposal is duplicative of the Other Proposals. The Company argues that the Other Proposals have the same “thrust and focus” because they each concern COVID-19. But an examination of the Other Proposals quickly reveals that they have entirely different focuses. The proposal referred to in the Company Letter as the First Proposal requests an analysis of the “feasibility” of transferring certain COVID-19 technology to additional manufacturers, reading in its entirety as follows:

*RESOLVED that shareholders of Pfizer ask the Board of Directors to*

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

The proposal referred to in the Company Letter as the Second Proposal asks for a report on the effect of the receipt of government support when setting prices or taking other actions that affect access to COVID-19 vaccines or therapeutics:

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

These proposals ask questions about the Company and its technology, but do not even mention the thrust of the Proposal: the effects the Company’s limited sharing of COVID-19 vaccine technology could have on public-health costs and financial market returns. As the Staff recognized in *CVS 2021*, a proposal related to “external public health costs” created by a company’s business can raise a transcendent policy issue. Since the Proposal raises just such an issue, it cannot be duplicative of the Other Proposals, which do not touch upon that transcendent policy question.

The Proposal is about the effect a current Company policy (technology protection) has on two matters (public health and market performance). The First and Second Proposals ask whether it is feasible to transfer certain technology and how certain Company decisions about such technologies (e.g., pricing) account for a historical fact (government support for research and development). The factual inquiry requested in the Proposal simply does not involve these questions.

In other words, a report on certain inputs (feasibility and the receipt of subsidies) into decisions that may or may not involve the protection of technology will not satisfy a request for an inquiry into those decisions’ impact. For example, the Company might account for subsidies by deciding to surrender value through pricing or other decisions to be “fair,” but continue to protect its vaccine technology in a manner that harms public health and market returns. Similarly, the Company may be declining to share technology that can feasibly be transferred in order to optimize its returns. Thus, it would be possible to respond comprehensively to the First and Second Proposals without providing any information about the questions raised in the Proposal, including the economic cost of opposing the TRIPS waiver.

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## CONCLUSION

The Proposal addresses a significant policy issue: whether companies should continue to maximize financial returns when doing so harms critical systems in a manner that harms diversified investors. It addresses that issue with respect to the Company's management of COVID-19 vaccine technology. Both the general issue and the specific case have been prominently debated in the public sphere recently, as politicians, nations, and businesses argue over the need to encourage innovation and to protect public health and the global economy. The Company itself has taken a public stand on its own and through hired lobbyists who represent it—it essentially argues that the Proposal does not involve a significant policy issue even as the Company tries to influence the policy.

Nor has the Company shown that it has implemented the Proposal. None of the disclosure or other items the Company Letter refers to address external public-health costs or their effect on market returns.

Finally, the Proposal in no way duplicates the Other Proposals, which do not raise any question about the relationship between limiting Company vaccine technology use, external public-health costs, and market returns.

Based on the foregoing, it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2022 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff deny the Company's no-action letter request. If you have any questions, please contact me at [rick@theshareholdercommons.com](mailto:rick@theshareholdercommons.com) or 302-485-0497.

Sincerely,



Frederick Alexander  
CEO

cc: Margaret M. Madden  
John Montgomery

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## APPENDIX: THE PROPOSAL

**RESOLVED**, shareholders ask that the Board of Directors commission and publish a report on (1) the public health costs created by the limited sharing of the Company's COVID-19 vaccine technologies and any consequent reduced availability in poorer nations and (2) the manner in which such costs may affect the market returns available to its diversified shareholders.

### Supporting Statement:

A recent headline emphasizes the financial rewards accruing to the Company for being an early developer of a COVID-19 vaccine: "Pfizer Stock Leaps after Q3 Earnings Beat; Sees \$36 Billion in COVID Vaccine Sales."<sup>40</sup>

But while the Company is boosting earnings with vaccine sales, many countries struggle to obtain vaccines for their most susceptible communities. The imbalance in COVID-19 vaccination between rich and poor countries is striking: As of early September 2021, more than 50 percent of U.S. and European Union populations were fully vaccinated, compared with just 3 percent of Africa's population.<sup>41</sup>

This vaccine inequality is caused in part by the enforcement of patents and limitations on technology transfer designed to prevent competition.<sup>42</sup> Civil society and government leaders—including U.S. President Biden—have called for waivers of intellectual property rights to vaccine technology. Human rights organization Oxfam has called for governments and corporations to suspend patent rules and openly share technology.<sup>43</sup> Some argue that such moves would disincentivize investment and lead to low-quality vaccines, but others have exposed the weaknesses in these arguments.<sup>44</sup> The Company has not been neutral in this debate; it supports a trade group that lobbies against patent waivers.<sup>45</sup>

To the extent our Company is increasing its own financial returns by preventing vaccine production in poorer nations, its own increased profits are coming at a severe cost to the global economy, because failure to vaccinate the world's vulnerable communities is inhibiting worldwide economic recovery and creating opportunities for more dangerous SARS-CoV-2 variants to develop.

This is a bad trade for most of the Company's shareholders, who are diversified and thus rely on broad economic growth to achieve their financial objectives. A Company strategy that increases its own financial returns but threatens global GDP is counter to the best interests of most of its shareholders: the

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<sup>40</sup> <https://www.thestreet.com/markets/pfizer-tops-q3-earnings-sees-36-billion-in-covid-vaccine-sales>

<sup>41</sup> <https://www.cnbc.com/2021/09/07/who-says-wealthy-nations-are-prolonging-pandemic-by-hoarding-covid-treatments-and-vaccines.html> (citing World Health Organization).

<sup>42</sup> *Supra*, n.2.

<sup>43</sup> <https://www.oxfam.org/en/take-action/campaigns/covid-19-vaccine>

<sup>44</sup> <https://inthesetimes.com/article/pfizer-moderna-vaccine-apartheid-trips-waiver-wto-intellectual-property-patents>

<sup>45</sup> <https://www.msn.com/en-us/news/other/big-pharma-lobbyists-launch-campaign-against-biden-over-covid-vaccine-patent-waiver/ar-AAKBxDs>

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potential drag on GDP created by hoarding vaccine technology will directly reduce diversified portfolio returns over the long term.<sup>46</sup>

Despite this risk, the Company has not disclosed any analysis of the trade-offs between Company profit and global public health from the perspective of its largely diversified shareholders, whose investment portfolios may be at grave risk from undue limitations on vaccine production.

The requested report will help shareholders determine whether current Company policies serve shareholders' best interests.

Please vote for: Report on public health cost of protecting vaccine technology – Proposal [4\*]

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<sup>46</sup> [https://www.unepfi.org/fileadmin/documents/universal\\_ownership\\_full.pdf](https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf)



**Margaret M. Madden**  
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Chief Governance Counsel

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**BY EMAIL** (shareholderproposals@sec.gov)

February 11, 2022

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

RE: Pfizer Inc. 2022 Annual Meeting  
Supplement to Letter dated December 22, 2021  
Relating to Shareholder Proposal of  
the John Bishop Montgomery Trust

Ladies and Gentlemen:

We refer to our letter, dated December 22, 2021 (the “No-Action Request”), pursuant to which we requested that the Staff of the Division of Corporation Finance of the Securities and Exchange Commission (the “Staff”) concur with our view that Pfizer Inc. (“Pfizer”) may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by The Shareholder Commons (“TSC”) on behalf of the John Bishop Montgomery Trust U/A DTD 4/4/2019 (the “Trust”) from the proxy materials to be distributed by Pfizer in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”).

This letter supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to TSC and the Trust.

In the No-Action Request, Pfizer requested, among other things, that the Staff permit exclusion of the Proposal pursuant to Rule 14a-8(i)(11) because the Proposal substantially duplicates two shareholder proposals previously submitted to Pfizer. However, the proposal submitted by Trinity Health and referred to as the “Second Proposal” in the No-Action Request was withdrawn on February 11, 2022. Accordingly, Pfizer is rescinding the portion of the No-Action Request relating to the withdrawn proposal. Pfizer continues to seek the Staff’s concurrence that it may exclude the Proposal from the 2022 proxy materials for the other bases contained in the No-Action Request, including that the Proposal substantially duplicates the proposal received from Oxfam America, Inc.

Office of Chief Counsel

February 11, 2022

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If you have any questions with respect to this matter, please do not hesitate to contact me at (212) 733-3451 or Marc S. Gerber of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,

A handwritten signature in black ink, appearing to read "Margaret M. Madden". The signature is written in a cursive style with a long horizontal flourish at the end.

Margaret M. Madden

Enclosure

cc: Sara E. Murphy  
Chief Strategy Officer  
The Shareholder Commons

John B. Montgomery  
Trustee  
The John Bishop Montgomery Trust U/A DTD 4/4/2019