March 11, 2022

Kristina V. Fink
American Express Company

Re: American Express Company (the “Company”) 
Incoming letter dated December 17, 2021

Dear Ms. Fink:

This letter is in response to your correspondence concerning the shareholder proposal (the “Proposal”) submitted to the Company by the National Center for Public Policy Research for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders.

The Proposal, in relevant part, asks the board to publish annually the written and oral content of employee-training materials offered to the Company’s employees by the Company or with its consent, as well as any such materials that were sponsored by the Company in whole or part.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal micromanages the Company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company’s employment and training practices. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

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: Scott Shepard 
National Center for Public Policy Research
December 17, 2021

Via Electronic Mail to shareholderproposals@sec.gov

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

Re: Shareholder Proposal Submitted by the National Center for Public Policy Research

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), American Express Company, a New York corporation (the “Company”), hereby gives notice of the Company’s intention to omit from its proxy statement for its 2022 annual meeting of shareholders (the “2022 Proxy Statement”) a shareholder proposal (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) under cover of letter dated November 5, 2021. A copy of the Proposal, together with the supporting statement included in the Proposal (the “Supporting Statement”), is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if the Company omits the Proposal from the 2022 Proxy Statement pursuant to Rule 14a-8(i)(3) under the Exchange Act because the Proposal is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules; Rule 14a-8(c) under the Exchange Act because the Proposal violates the regulatory limit of no more than one proposal per shareholder for a particular meeting of shareholders; Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company; and Rule 14a-8(i)(10) under the Exchange Act because the Company has substantially implemented the Proposal.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2022 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and the related correspondence from the Proponent to the Commission via email to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal from the 2022 Proxy Statement to be proper.

THE PROPOSAL

The proposed resolution included in the Proposal provides as follows:
Resolved: We, shareholders of the American Express Company (“the company”), ask the Board of Directors to publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of employee-training materials offered to the company’s employees by the company or with its consent, as well as any such materials that were sponsored by the company in whole or part. In the alternative we request the Board commission a workplace non-discrimination audit analyzing the company’s impacts, including the impacts arising from company-sponsored or-promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business. In the latter instance, a report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company’s website.

On November 16, 2021, within 14 days of the Company’s receipt of the Proposal, the Company sent to the Proponent via email a notification of eligibility and procedural deficiencies with respect to the Proposal (the “Deficiency Letter”). The Proponent provided additional documentation in response to the Deficiency Letter on November 19, 2021. Copies of the Deficiency Letter and all related correspondence are attached hereto as Exhibit B.

BASIS FOR EXCLUSION

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company’s view that the Proposal may be excluded from the 2022 Proxy Statement for the following reasons:

A. The Proposal may be omitted pursuant to Rule 14a-8(i)(3) under the Exchange Act, because the Proposal is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules;

B. The Proposal may be omitted pursuant to Rule 14a-8(c) under the Exchange Act, because the Proposal violates the regulatory limit of no more than one proposal per shareholder for a particular meeting of shareholders;

C. The Proposal may be omitted pursuant to Rule 14a-8(i)(7) under the Exchange Act, because the Proposal deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company; and

D. The Proposal may be omitted pursuant to Rule 14a-8(i)(10) under the Exchange Act, because the Company has substantially implemented the Proposal.
U.S. Securities and Exchange Commission, p. 3

ANALYSIS

A. Under Rule 14a-8(i)(3), the Proposal may be omitted because it is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules.

1) Rule 14a-8(i)(3) background

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials “if the proposal or supporting statement is contrary to any of the Commission’s proxy rules…which prohibits materially false or misleading statements in proxy soliciting materials.” The Staff has interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with exclusion of shareholder proposals on the basis that “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” SEC Staff Legal Bulletin No. 14B (Sept. 15, 2004).

Under this standard, the Staff has routinely allowed proposals to be excluded if a proposal fails to define key terms of, or otherwise fails to provide guidance on, the implementation of the proposal. See, e.g., International Paper Co. (Feb. 3, 2011) (allowing exclusion of a proposal requesting the adoption of a particular executive stock ownership policy because it did not sufficiently define “executive pay rights”); General Electric Company (Jan. 21, 2011) (allowing exclusion of a proposal requesting implementation of more long-term incentives because it was impermissibly vague in explaining how the program would work in practice, including the financial metrics that would be used in implementing the proposal); and Verizon Communications Inc. (Feb. 21, 2008) (allowing exclusion of a proposal where the proposal failed to define certain critical terms, such as “Industry Peer Group” and “relevant time period”).

2) The Proposal is inherently vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules.

The Proposal requests that the Board “publish annually, without incurring excessive costs or disclosing genuinely confidential or propriety information, the written and oral content of employee-training materials offered to the [Company]’s employees by the [Company] or with its consent, as well as any such materials that were sponsored by the [Company] in whole or part.” However, while the Proponent attempts to limit the scope of the request by excluding confidential and proprietary materials and suggesting that the Company avoid incurring excessive cost, it is clear that the requested information is so broad, vague and indefinite that no reasonable certainty can exist as to how the Company may carry out the requested actions. The vague and indefinite nature of the proposal also stands out in the context of the nature of the Company’s business and size of its operations, the number of countries in which it operates, as well as its offerings of thousands of trainings and programs and its countless guidelines, resources and forums that may or may not be considered “training” materials by the Proponent, who fails to define that term in its Proposal. While the Proponent purports to be concerned with “civil rights and non-discrimination in the workplace,” the Proposal’s request that all employee training materials be
published would result in publication of training materials on a wide range of topics related to all areas of our operations, as well as with professional and personal development, rather than solely the publication of employee training materials related to civil rights and non-discrimination. For example, the LinkedIn Learning program that the Company makes available for its employees provides access to thousands of online courses and videos, and the Company’s employees viewed more than 90,000 of such videos in 2021. Implementation of the Proposal would require publication of all 90,000 videos, since they were offered “with [the Company’s] consent,” and these videos would still constitute only a small portion of the materials that would potentially be required to be produced under the Proposal.

The vagueness of the Proposal is further exacerbated by the fact that the Proposal provides no clear guidance as to which materials should be published and in what form. For example, it is unclear what the Proposal means by “written and oral contents” of employee training materials (i.e., whether the Company is being requested to provide full copies or summaries, and whether it is also being requested to provide written transcripts of all oral trainings), nor does it provide guidance on what it means by materials “sponsored by the [Company] in whole or in part.” This lack of clarity would not only create uncertainty for the Company when trying to implement the Proposal, but, perhaps more importantly, would generate significant uncertainty and confusion for shareholders when voting for or against the Proposal. In addition, it will be difficult for shareholders to reconcile the vast scope of the Proposal’s documentary request against its call to the Company to avoid excessive costs, and, as a result, to ascertain exactly what measures the Proposal requires. Even if shareholders wanted more detail about the Company’s training programs than it currently makes available (as described in Section D below), they presumably would not want the Company’s resources to be committed to the publication of millions of pages of training materials and transcripts every year.

Finally, the Proposal is also inherently vague and indefinite due to how it is constructed, i.e., how it is framed as a proposal of two alternatives. The Proposal offers, as an alternative to publication of employee training materials, a “workplace non-discrimination audit analyzing the [Company]’s impacts, including the impacts arising from [Company]-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the [Company]’s business.” However, given that the Proposal provides two distinct options, shareholders will have difficulty determining whether they are in fact voting for the publication of training materials or for the non-discrimination audit, and it is also possible that they may be in favor of one option but not the other. Similarly, if adopted, the Board will not be able to determine with reasonable certainty which measure to take in order to implement the Proposal, as it is unclear whether the Board has discretion to choose between the two options. As a result, any option that the Board ultimately chooses could result in actions different from what any shareholders who voted for the Proposal may have envisioned.

Accordingly, the Proposal is inherently vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules, and therefore may be excluded under Rule 14a-8(i)(3).

B. Under Rule 14a-8(c), the Proposal may be omitted because it violates the regulatory limit of no more than one proposal per shareholder for a particular meeting of shareholders.
Under Rule 14a-8(f), a company may exclude from its proxy materials proposals that fail to satisfy the procedural requirements of Rule 14a-8(c), which provides that a shareholder may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting. As the Staff explained at the time Rule 14a-8(c) was adopted, the submission of multiple proposals by a single proponent “constitute[s] an unreasonable exercise of the right to submit proposals at the expense of other shareholders” and also may “tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents.” See 1976 Release.

The Staff has routinely excluded proposals with multiple components when the components are not “closely related and essential to a single well-defined unifying concept.” See 1976 Release. For example, in PG&E Corp. (March 11, 2010), the Staff found that a proposal relating to license renewal involved a separate and distinct matter from a proposal relating to mitigating risks and production levels. Here, the Proposal presents two separate and distinct requests: (i) that the Board publish all employee training materials that it uses or sponsors, and (ii) that the Board commission a workplace non-discrimination audit. In fact, the Proponent recently submitted each request as a separate proposal to two different companies; the first was sent to Deere & Company on September 2, 2021 requesting that the Board publish all employee training materials, and the second was sent to The Walt Disney Company on September 17, 2021 requesting that the Board commission a workplace non-discrimination audit. This is reflective of the fact that each of these requests constitutes a distinct proposal on its own, even to the Proponent. By presenting the two requests in the alternative here, the Proponent has provided two recommendations of action for the Board, and therefore two proposals as defined under Rule 14a-8(a). As a result, the Proponent seeks to circumvent the procedural limit of one proposal per shareholder for any given shareholders’ meeting. Moreover, on November 16, 2021, within 14 days of the Company’s receipt of the Proposal, the Proponent was notified of this procedural deficiency by the Company. The Proponent provided additional documentation in response on November 19, 2021 to address one defect but did not revise the Proposal to address the violation of Rule 14a-8(c). Accordingly, the Proposal may be omitted.

C. Under Rule 14a-8(i)(7), the Proposal may be omitted because it deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company.

1) Rule 14a-8(i)(7) Background

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it “deals with a matter relating to the company’s ordinary business operations.” According to the Commission’s prior guidance, the term “ordinary business” refers to matters that are not necessarily “ordinary” in the common meaning of the word, but instead the term “is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company’s business and operations.” See Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to
management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The 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.”

More recently, in Staff Legal Bulletin No. 14L (November 3, 2021) (“SLB No. 14L”), the Staff rescinded prior guidance that a company may exclude a shareholder proposal in respect of its ordinary business operation if the proposal did not raise a significant policy issue of the company. The Staff stated that it will instead look to whether the policy issue may have broad societal impact such that it transcends the ordinary business of the company, regardless of nexus between the issue and the company’s business. In explaining the change, the Staff noted, “[W]e have found that focusing on the significance of a policy issue to a particular company has drawn the Staff into factual considerations that do not advance the policy objectives behind the ordinary business exception,” which “did not yield consistent, predictable results.”

In addition, in SLB No. 14L, the Staff provided guidance on its position on micromanagement when evaluating requests to exclude a proposal on that basis under the ordinary business exception. The Staff stated that it will no longer view proposals that seek detail or seek to promote timeframes or methods as per se micromanagement. Instead, the Staff will focus on the level of detail and granularity sought in the proposal and may look to well-established frameworks or references in considering what level of detail may be too complex for shareholder input. The Staff also noted that it will look to the sophistication of investors generally, the availability of data and the robustness of public discussion in considering whether a proposal’s matter is too complex for shareholders, as a group, to make an informed judgment.

2) The Proposal may be excluded because it relates to the Company’s day-to-day management of its workforce and, therefore, does not raise a significant social policy issue that transcends the Company’s ordinary business operations.

The Proposal relates to the relationship between the Company and its employees, which is a fundamental element of the day-to-day management of the Company’s business. It is well established that such matters relating to the Company’s workforce are ordinary business matters generally excludable under Rule 14a-8(i)(7). In United Technologies Co. (February 19, 1993), the Staff explained that “[a]s a general rule, the [S]taff views proposals directed at a company’s employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company’s ordinary business operations. Examples of the categories of proposals that have been deemed to be excludable on this basis are:…employment hiring and firing…and employment training and motivation” (emphasis added). Subsequently, in the 1998 Release, the Staff stated that “the management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” In Merck & Co., Inc. (February 16, 2016), the Staff reiterated that “Proposals concerning a company’s management of its workforce are generally excludable under rule 14a-8(i)(7).” Consistent with this standard, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(7) addressing such matters as
the establishment of employee training programs relating to HIV/AIDS (AT&T, Inc. (December 28, 2015)), employee training based on U.S. citizenship (Starwood Hotels & Resorts Worldwide, Inc. (February 14, 2012)), employee leaves of absence (Walmart Inc. (April 8, 2019)), employee retirement plans (FedEx Corp. (July 7, 2016)) and employee compensation (Baxter International, Inc. (January 6, 2016)). Similar to the proposals addressed in the Staff letters cited above, the Proposal relates to the conduct of the Company’s day-to-day management activities, i.e., training of its employees, and may be excluded under Rule 14a-8(i)(7).

While the Staff reiterated in the recently published SLB No. 14L that proposals that otherwise concern ordinary business matters may nonetheless be appropriate for a shareholder vote if the proposal raises a policy issue that is sufficiently significant to transcend day-to-day business matters, prior Staff letters have also made clear that the mere mention of an issue with a broad societal impact is insufficient to transform a proposal that is otherwise about ordinary business issues. For example, in CVS Health Corporation (February 27, 2015), the Staff permitted exclusion of a proposal requesting that “CVS Health amend its equal employment opportunity policy…to explicitly prohibit discrimination based on political ideology, affiliation or activity.” In its submission to the Staff, CVS argued that “a proposal seeking to protect against discrimination based on political participation affects a company’s management of business operations by involving the relationship of employees and management.” The Staff concurred, noting that “the proposal relates to CVS Health’s policies concerning its employees.” Similarly, in The Walt Disney Co. (November 24, 2014), the Staff found that a proposal requesting that the company modify its antidiscrimination policies to protect employee participation in political processes and activities interfered with the ordinary business of the company’s relationship with its employees. See also Papa John’s International, Inc. (February 13, 2015) (concurring with the exclusion of a proposal encouraging the company to include vegan options on its menu because the proposal relates to “the products offered for sale by the company and does not focus on a significant policy issue”) and McDonald’s Corp. (March 22, 2019) (concurring with the exclusion of a proposal requesting disclosure of economic risk relating to concerns of animal cruelty because it “focuses primarily on” the company’s ordinary business operations). Similar to the proposals addressed in the prior Staff letters above, this Proposal, while purporting to concern “civil rights and nondiscrimination in the workplace” and the Company’s “deeply racist and otherwise discriminatory” training programs, focuses primarily on the ordinary business matter of the Company’s relationship and interaction with its employees and the type of training that it provides employees.

Finally, although the Proposal presents a workplace non-discrimination audit as an alternative to publication of training materials, it is evident from the Proposal and the accompanying Supporting Statement that the Proponent’s true focus is on the contents of the Company’s training materials, in particular, how its anti-racism program “stigmatizes white employees and white culture as uniquely evil, while implicitly robbing other groups of personal responsibility and authority” and treats “employees or class of employees as inferior to any others.” Such focus demonstrates that the Proposal and both prongs of its proposed resolution relate to the Company’s ordinary business operations and may be excluded under Rule 14a-8(i)(7). A shareholder proposal being framed in the form of a request for a report also does not change the nature of the proposal, and the Commission has stated in the 1998 Release that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer, as is the case with the Proposal.
3) The Proposal may be excluded because it seeks to micromanage the Company.

The Proposal may also be excluded under Rule 14a-8(i)(7) because it seeks to micromanage the Company “by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” See 1998 Release. In SLB No. 14L, the Staff clarified that in evaluating companies’ micromanagement arguments, it will “focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” The Staff further noted that this approach is “consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters” (emphasis added).

The Proposal here attempts to probe too deeply into the judgment of management and the Company’s Board of Directors (the “Board”) by questioning the Company’s employment training policies and practices, as well as on the relationship between the Company and its employees. The design and implementation of the Company’s employee training policies and programs are a multi-faceted endeavor guided by numerous factors, including but not limited to legal and regulatory requirements, business considerations and the Company’s focus on its diversity, equity and inclusion efforts, which is reflected in its Environmental, Social and Governance Strategy and Framework, discussed in detail in the Company’s annual Environmental, Social and Governance Report (the “ESG Report”). All of these considerations are complicated and outside the knowledge and expertise of shareholders, and require management and the Board to have the discretion to exercise their independent judgment in making determinations appropriate for the Company and its employees. In requesting that the Company publish all written and oral content of employee training materials offered to the Company’s employees, as well as any such materials that were sponsored by the Company in whole or part, the Proposal is seeking precisely the level of granularity that the Staff highlighted in SLB No. 14L, and thus may be excluded under Rule 14a-8(i)(7).

In addition, as discussed in Section C.2 above, while the Proposal purports to be concerned about civil rights and non-discrimination in the workplace, a mere mention of such social issues is insufficient to transform the Proposal, which relates to a quintessential management concern of employee training, into one that pertains to “high-level direction on large strategic corporate matters” that the Staff recently confirmed in SLB No. 14L as deserving shareholder oversight and vote. Regardless of the Proponent’s efforts to frame the Proposal in these terms, the Proposal and Supporting Statement demonstrate that they ultimately pertain to the Proponent’s objection to what the Proponent believes is the content of the Company’s training materials, i.e., how the Company has allegedly been “caught producing and distributing to employees facially discriminatory training,” a view based on partisan coverage by certain news media. The specific actions requested by the Proposal also bear only a tangential relationship to the social issues that it purports to concern, as the Proponent is requesting disclosure of all training materials without regard to whether such materials actually relate to these issues. Moreover, while the Proponent also seeks to cast the Proposal as relating to a significant policy issue by presenting a workplace non-discrimination audit as an alternative, such approach is insufficient to change the underlying ordinary business character of the Proposal.
D. Under Rule 14a-8(i)(10), the Proposal may be omitted because the Company has substantially implemented the Proposal.

1) Rule 14a-8(i)(10) background

Pursuant to Rule 14a-8(i)(10), a company is permitted to exclude a shareholder proposal if the company has already substantially implemented the proposal. The purpose of this rule, as set forth by the Commission, is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” See Exchange Act Release No. 34-20091 (Aug. 15, 1983) (the “1983 Release”); Exchange Act Release No. 34-12598 (July 1976) (the “1976 Release”). The Commission has clarified that the proposal’s requested actions do not need to be “fully effected” or implemented exactly as presented for a company to exclude the proposal under Rule 14a-8(i)(10); instead, the actions called for by the proposal need only be “substantially implemented.” See 1983 Release. Whether a proposal has been “substantially implemented” by a company “depends on whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal.” Texaco, Inc. (Mar. 28, 1991).

The Staff has routinely concurred with the exclusion of proposals requesting reports if the company has already provided the requested information in existing public disclosures, and as a result, substantially addressed the “essential objective” and underlying concerns of the proposal. For example, in Mondelēz International Inc. (Mar. 7, 2014), the Staff concurred with the exclusion of a proposal requesting a report on the company’s process for identifying and analyzing human rights risks of its operations, because the company had achieved the proposal’s essential objective by publicly disclosing its risk management processes in existing reports. Similarly, in PPG Industries, Inc. (Jan. 16, 2020), the Staff concurred with the exclusion of a proposal requesting a report on the company’s processes for implementing its human rights commitments, given the existing disclosures in its various corporate governance documents. See also Hess Corp. (Apr. 11, 2019) and Entergy Corp. (Feb.14, 2014) (both allowing exclusion of a proposal requesting a report on policies the company could adopt to reduce its greenhouse gas emissions because the company had existing disclosure on this topic in its annual sustainability report).

2) The Proposal has been substantially implemented by the Company’s existing public disclosures of information regarding the contents of the Company’s employee training.

The Proposal calls for information about the contents of the Company’s employee training materials in order to, in the Proponent’s words, analyze their impacts on “civil rights and non-discrimination in the workplace.” Given that the Proposal’s underlying concern is with employee training materials as they relate to civil rights and non-discrimination, rather than with all employee training materials as it could be read to suggest, the Company has substantially implemented the Proposal with its existing public disclosure on employee training materials related to diversity, equity and inclusion.

The Company recently published its inaugural Diversity, Equity & Inclusion Report (the “DE&I Report”) as well as an annual ESG Report, both of which are available on the...
Company’s website and provide substantial details on its employee training policies and practices. For example, in the DE&I Report, the Company discusses the in-depth training it provides to recruiters, interviewers and hiring leaders to ensure diversity of candidates for employment, to identify unconscious bias and to develop a diverse pipeline of candidates for promotion, as well as its new required trainings on its culture of inclusion and inclusive leadership. The DE&I Report also explains that in 2021 the Company introduced workshops in order to help employees understand when and how to speak up and advocate on behalf of others to create a more inclusive culture. Similarly, the ESG Report provides robust details about the Company’s current workforce diversity and EEO-1 data, many of which are also publicly disclosed in its Annual Report on Form 10-K.

Given the Company’s existing public disclosures in its DE&I Report, ESG Report and Annual Report on Form 10-K regarding its employee training policies and practices, the Company has substantially implemented the Proposal by satisfying its essential objective. Accordingly, the Proposal may be omitted under Rule 14a-8(i)(10).

[Remainder of page intentionally left blank.]
CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company omits the Proposal from its 2022 Proxy Statement.

If you have any questions or require any additional information, please do not hesitate to contact Kristina V. Fink at (212) 640-2000 or corporatesecretaryoffice@aexp.com. If the Staff is unable to agree with our conclusions without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Sincerely,

Kristina V. Fink
Kristina V. Fink
Corporate Secretary and Chief Governance Officer

Enclosure

cc: Scott Shepard, via email at sshepard@nationalcenter.org
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP
Mary E. Alcock, Cleary Gottlieb Steen & Hamilton LLP
Exhibit A

The Proposal

See attached.
November 5, 2021

Via email (corporatesecretarysoffice@aexp.com) to

Kristina V. Fink
Deputy Corporate Secretary
American Express Company
200 Vesey Street
New York, New York 10285

Dear Ms. Fink,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the American Express Company (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2022 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal November 29, 2021 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at sshepard@nationalcenter.org so that we can determine the mode and method of that discussion.
Copies of correspondence or a request for a “no-action” letter should be sent to me at the National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to sshepard@nationalcenter.org.

Sincerely,

Scott Shepard

Enclosure: Shareholder Proposal
Employee Training Disclosure Proposal

Resolved: We, shareholders of the American Express Company (“the company”), ask the Board of Directors to publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of employee-training materials offered to the company’s employees by the company or with its consent, as well as any such materials that were sponsored by the company in whole or part. In the alternative we request the Board commission a workplace non-discrimination audit analyzing the company’s impacts, including the impacts arising from company-sponsored or-promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business. In the latter instance, a report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company’s website.

Supporting Statement: Tremendous public attention has focused recently on workplace practices and employee training. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit. Where adopted, however, such programs raise significant objection, including concern that the “anti-racist” programs are themselves deeply racist and otherwise discriminatory.

Many companies have been found to sponsor and promote overtly and implicitly discriminatory employee-training programs, including Bank of America, Verizon, Pfizer, CVS and AT&T.

American Express has itself been caught producing and distributing to employees facially discriminatory training that encourages some employees, on the basis of race, sex, sexual orientation and ethnicity, to defer to other employees of different groups. In particular it stigmatizes white employees and white culture as uniquely evil, while implicitly robbing other groups of personal responsibility and authority.4

This concern, disagreement and controversy creates massive reputational, legal and financial risk. Companies should disclose to shareholders the materials that they use in employee-training programs so that shareholders can appropriately gauge executives’ responses to and management of those risks. Training materials that are too controversial or toxic to release to shareholders are necessarily inappropriate for use with employees, so that publication will increase executive thoughtfulness and decrease overall company risk, to the benefit of all stakeholders.

Should the Board elect to perform an audit and render a report, it is encouraged to assess whether Company employee-training programs treat any employees or class of employees as inferior to any others, as by indications that some employees will receive non-merit-related preferential treatment in hiring, promotion or professional development; that some employees are encouraged to speak about their lived experiences and feelings – including their impressions of the employee-training itself – while others are constrained; or otherwise.

Exhibit B

Deficiency Letter and Related Correspondence

See attached.
November 16, 2021

Via email and overnight mail to:

Scott Shepard  
Director, Free Enterprise Project  
National Center for Public Policy Research  
20 F Street, NW, Suite 700  
Washington, D.C. 20001

Email: sshepard@nationalcenter.org

Re: Shareholder Proposal Regarding  
Employee Training Materials and/or Non-Discrimination Audit

Dear Mr. Shepard:

On behalf of American Express Company (the “Company”), we formally acknowledge receipt, on November 5, 2021, of the shareholder proposal by the National Center for Public Policy Research (“NCPPR”) relating to a publication of employee-training materials offered to the Company’s employees or, in the alternative, the undertaking of a workplace non-discrimination audit (the “Submission”).

Rule 14a-8(b)(1): Proof of Ownership

Since the Company’s records do not indicate that NCPPR is a registered holder of the Company’s stock, you are required to submit to the Company a written statement from the record holder of NCPPR’s shares verifying NCPPR’s eligibility pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934. A copy of the Rule 14a-8(b)(1), which was amended by the SEC on September 23, 2020 for annual meetings held on or after January 1, 2022, is enclosed.¹ The Rule requires that shareholder proponents continuously hold the company’s shares, constituting at least (i) $2,000 in market value for at least three years, (ii) $15,000 in market value for at least two years, or (iii) $25,000 in market value for at least one year, in each case preceding and including the date the proposal was submitted to the company. Alternatively, if the shareholder proponent held at least $2,000 of the company’s shares for at least one year as of January 4, 2021, and the shareholder proponent has continuously maintained a minimum investment of at least $2,000 of such shares from January 4, 2021 through the date the proposal was submitted to the company, the proponent would need to submit sufficient proof of its continuous ownership of the requisite number of the company’s shares for at least one year as of

¹ An electronic version of Rule 14a-8 is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c517290a19689f72f6355a8d66&node=se17.4.240_114a_68&rgn=div8#.
January 4, 2021, and from that date through and including the date the proposal was submitted to
the company.

Since the Company’s records do not indicate that NCPPR is a registered holder, you are
required by Rule 14a-8(b)(1) to submit to the Company a written statement from the record
holder of NCPPR’s shares of the Company’s common stock (usually a broker or bank) verifying
that at the time the proposal was submitted, NCPPR had continuously held the requisite amount
of shares.

The SEC Staff published Staff Legal Bulletins No. 14F (“SLB 14F”) and No. 14G
(“SLB 14G”)3 to provide guidance in helping shareholders comply with the requirement to prove
ownership by providing a written statement from the “record” holder of the securities. In SLB
14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company
(“DTC”) participants (clarified in SLB 14G to include affiliates thereof) will be viewed as
“record” holders for purposes of Rule 14a-8. You can confirm whether NCPPR’s broker or bank
is a DTC participant by checking DTC’s participant list, which is currently available on the
Internet at: http://www.dtcc.com/client-center/ dtc-directories. If NCPPR’s shares are held
through a broker or bank that is not a DTC participant, you will need to obtain proof of
ownership from the DTC participant through which the bank or broker holds NCPPR’s Company
shares. You should be able to find out the name of the DTC participant(s) by asking NCPPR’s
broker or bank.

If the DTC participant that holds NCPPR’s shares knows its broker or bank’s holdings,
but does not know NCPPR’s holdings, you may satisfy the proof of ownership requirements by
submitting two proof-of-ownership statements: one from NCPPR’s broker or bank confirming
NCPPR’s ownership and the other from the DTC participant confirming the broker or bank’s
ownership. The SEC Staff recently issued Staff Legal Bulletin 14L (“SLB 14L”),4 which
provides the following as a suggested format for a broker or bank statement providing the
required proof of ownership as of the date of the proposal’s submission for purposes of Rule 14a-
8(b):

“As of [date the proposal is submitted], [name of shareholder] held, and has held
continuously for at least [one year] [two years] [three years], [number of
securities] shares of [company name] [class of securities].”

Alternatively, if applicable, you may provide us with a copy of a Schedule 13D, Schedule
13G, Form 3, Form 4 and/or Form 5 filed with the SEC, or amendments to those documents or
updated forms, reflecting NCPPR’s ownership of the required amount of Company shares as of
the date on which the one-year eligibility period begins, along with a written statement that

---

2 An electronic version of SLB 14F is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14f-shareholder-
proposals.
3 An electronic version of SLB 14G is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14g-
shareholder-proposals.
4 An electronic version of SLB 14L is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-
proposals.
NCPPR continuously held the required number or amount of shares for the requisite period as of the date of the statement.

To date, the Company has not received proof that NCPPR has satisfied Rule 14a-8’s ownership requirements as of the date of the Submission.

**Rule 14a-8(c): One Proposal**

Rule 14a-8(c) of the Securities Exchange Act of 1934, as amended, provides that no more than one proposal per shareholder may be submitted to a company for a particular shareholders’ meeting. A copy of Rule 14a-8(c) is enclosed (and the website address for an electronic version of the rule is included in footnote 1 above). We believe the Submission contains more than one shareholder proposal. Specifically, the proposed resolution in the Submission requests the Company’s board of directors do one of two things – either publish the employee-training materials offered to the Company’s employees or commission a workplace non-discrimination audit. Further support for the fact that the Submission includes two separate requests is the fact that the second sentence of the proposed resolution begins, “[i]n the alternative we request . . . .” Accordingly, we believe that the Submission constitutes two proposals because shareholders would not know exactly which action they are voting on given the alternative actions proposed, and a shareholder might support one, but not both, of the alternatives presented. To remedy this deficiency, you must reduce the Submission to no more than one proposal in order for it to be considered by the Company’s shareholders.

The SEC rules require you to remedy the procedural defects by providing the required ownership information and reducing the Submission to no more than one proposal in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defects discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2022 Annual Meeting and from the Company’s proxy statement for the 2022 Annual Meeting.

Please direct all correspondence to Kristina V. Fink, Vice President, Deputy Corporate Secretary, American Express, kristina.v.fink@aexp.com.

Very truly yours,

Kristina V. Fink
Vice President, Deputy Corporate Secretary

Enclosure
§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to “you” are to a shareholder seeking to submit the proposal.

(a) Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company’s shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word “proposal” as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company’s securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company’s securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company’s securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders’ meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or
(B) Identify a single lead filer who will provide dates and times of the lead filer’s availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company’s records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company’s securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders’ meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter),
or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) Question 3: How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) Question 5: What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy
statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) **Question 6:** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) **Question 7:** Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) **Question 8:** Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) **Question 9:** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

**NOTE TO PARAGRAPH (I)(1):**
Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most
proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) **Violation of law:** If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

**NOTE TO PARAGRAPH (I)(2):**
We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) **Violation of proxy rules:** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) **Personal grievance; special interest:** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) **Relevance:** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) **Absence of power/authority:** If the company would lack the power or authority to implement the proposal;

(7) **Management functions:** If the proposal deals with a matter relating to the company's ordinary business operations;

(8) **Director elections:** If the proposal:

   (i) Would disqualify a nominee who is standing for election;

   (ii) Would remove a director from office before his or her term expired;

   (iii) Questions the competence, business judgment, or character of one or more nominees or directors;

   (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

   (v) Otherwise could affect the outcome of the upcoming election of directors.

(9) **Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

**NOTE TO PARAGRAPH (I)(9):**
A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) **Substantially implemented:** If the company has already substantially implemented the proposal;

**NOTE TO PARAGRAPH (I)(10):**
A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a “say-on-pay vote”) or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) **Duplication:** If the proposal 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;

(12) **Resubmissions.** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

   (i) Less than 5 percent of the votes cast if previously voted on once;

   (ii) Less than 15 percent of the votes cast if previously voted on twice; or

   (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) **Specific amount of dividends:** If the proposal relates to specific amounts of cash or stock dividends.

(j) **Question 10:** What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

   (i) The proposal;

   (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

   (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) **Question 11:** May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) **Question 12:** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?
The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

The company is not responsible for the contents of your proposal or supporting statement.

**Question 13**: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.


**Effective Date Note:**
At 85 FR 70294, Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.
Kristina V. Fink  
Deputy Corporate Secretary  
American Express Company  
200 Vesey Street  
New York, New York 10285  

November 17, 2021  

Confimation: Information regarding the account of The National Center for Public Policy Research  

Dear Ms. Fink,  

The following client has requested UBS Financial Services Inc. to provide you with a letter of reference to confirm its banking relationship with our firm.  

The National Center for Public Policy Research has been a valued client of ours since October 2002 and as of the close of business on 11/5/2021, the National Center for Public Research held, and has held continuously for at least three years, more than $2,000 of American Express common stock. UBS continues to hold the said stock  

Please be aware this account is a securities account not a "bank" account. Securities, mutual funds, and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation.  

Questions  
If you have any questions about this information, please contact Benjamin Valdes at (877) 827-7870.  

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).  

Sincerely  

Benjamin Valdes  

Benjamin Valdes  
Financial Advisor  
UBS Financial Services Inc.
January 12, 2022

Via email: shareholderproposals@sec.gov

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


Ladies and Gentlemen,

This correspondence is in response to the letter of Kristina V. Fink on behalf of The American Express Company (the “Company”) dated December 17, 2021, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

RESPONSE TO THE AMERICAN EXPRESS COMPANY’S CLAIMS

Our Proposal asks the Board of Directors to:

publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of employee-training materials offered to the company’s employees by the company or with its consent, as well as any such materials that were sponsored by the company in whole or part. In the alternative we request the Board commission a workplace non-discrimination audit analyzing the company’s impacts, including the impacts arising from company-sponsored or-promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business. In the latter instance, a report on the audit, prepared at
reasonable cost and omitting confidential or proprietary information, should be
publicly disclosed on the company’s website.

The Company seeks to exclude this Proposal pursuant to Rule 14a-8(i)(3), claiming the Proposal
is impossibly vague, indefinite and susceptible to various interpretations so as to be inherently
misleading in violation of the proxy rules; Rule 14a-8(c), claiming the Proposal violates the
regulatory limit of no more than one proposal per shareholder for a particular meeting of
shareholders; Rule 14a-8(i)(7), claiming that the Proposal deals with matters relating to the
ordinary business operations of the Company and seeks to micromanage the Company; and Rule
14a-8(i)(10), claiming the Company has substantially implemented the Proposal.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our
Proposal. The Company has failed to meet that burden.

Analysis

Part I. The non-omissibility of our Proposal is established by the Staff’s decision in
Amazon.com, Inc. (avail. April 7, 2021).

Our Proposal is essentially the same, for Staff-review purposes, as the proposal that was found
non-omissible in Amazon.com, Inc. (avail. April 7, 2021). The resolution of our Proposal is based
on and is materially indistinguishable from the Amazon.com proposal. The supporting statements
of each proposal cover similar territory in explaining the very similar concerns that animated
submission of the proposals. The only relevant distinction between our Proposal and the one
submitted in Amazon.com is that in addition to the results sought by the Amazon.com proposal,
ours gives the Board an alternative option of publishing relevant employee-training materials
instead.

Our Proposal would commission a workplace non-discrimination audit looking into concerns
about discrimination against groups that the relevant company has not honored with the label
“diverse,” while the Amazon.com proposal sought the same products looking into concerns about
discrimination against groups that it and the relevant company had honored with that label. But
the Staff may not permit or deny omission of proposals on the grounds of the Staff’s personal
attitude toward the focus of otherwise identical proposals. As a result, Amazon.com is
determinative in this case.

As we have noted, the resolution of our Proposal asks the Company’s Board of Directors to:

  to publish annually, without incurring excessive costs or disclosing genuinely
  confidential or proprietary information, the written and oral content of employee-
  training materials offered to the company’s employees by the company or with its
  consent, as well as any such materials that were sponsored by the company in whole
  or part. In the alternative we request the Board commission a workplace non-
discrimination audit analyzing the company’s impacts, including the impacts arising from company-sponsored or-promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business. In the latter instance, a report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company’s website.

The proposal in Amazon.com, Inc. asked that Amazon.com:

commission a racial equity audit analyzing the Company’s impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company’s business. The audit may, in the board’s discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

Although our Proposal contains an option to instead publish relevant employee-training materials rather than commissioning the audit, when it comes to that audit the proposals are otherwise effectively identical. Each raises issues of workplace discrimination on protected grounds. Each implicates the very same issues of substantial social policy that transcend ordinary business. The Amazon.com proposal having been found non-omissible; so must our Proposal be.

Additionally, each supporting statement explains the concerns that motivate the proposal in materially equivalent ways. Like our Proposal, the Amazon.com proposal cited potential illegalities arising from company conduct. Like our Proposal, the Amazon.com proposal cited specific problematic company behaviors and activities. And like our Proposal, the Amazon.com proposal provided guidance about how a proper audit and report should be conducted. Yet none of this content was deemed to have intruded into ordinary business operations in a way that rendered the proposal inadmissible. And nor can it in this proceeding.

**Part II. The Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading.**

A. **Rule 14a-8(i)(3).**

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal in its entirety “if the language of the proposal or the supporting statement render the proposal so vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”1 When only portions of a proposal merit exclusion

---

1 *See* Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB 14B”) (emphasis added).
for causing vagueness or other difficulties, companies are only permitted “to exclude portions of the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded.”  

2  

B. The plain language of the Proposal is unambiguous.  

While we respond here to the claims made by the Company that our offer that it might publish relevant training materials for shareholder review as a means of satisfying the proposal is ambiguous, we underscore that these arguments relate only to one of the options offered in our Proposal, an option that – by itself – has at all events been found omissible by the Staff in Deere & Co. (avail. Jan. 3, 2022) (on separate grounds). But neither this argument nor that decision have any final bearing on whether our Proposal will survive Staff review, because the other option, the audit, has not been and cannot be found omissible under controlling Staff precedent. 

None of the terms used in the Proposal are vague or indefinite on their own or in the aggregate such that, pursuant to Rule 14a-8(i)(3), stakeholders or the Company are unable to determine with reasonable certainty exactly what actions or measures the Proposal requires. While the Company claims confusion over the plain language of the Proposal – and over certain terms in particular – there is nothing about the terminology in the Proposal that appears out of context or in such a way as to render it vague or indefinite. For instance, the Company claims it is confused as to what constitutes “training” materials under our Proposal and protests the Proposal’s lack of definition for this term; however, it is unclear why the ordinary term “training” would have required a specific definition or what term other than “training” would be preferable to the Company when requesting publication of “employee-training materials” as our Proposal does (as one of two options). The Company similarly alleges ambiguity surrounding the phrase “written and oral contents,” claiming it is unclear whether the Proposal intends full copies, summaries, or transcripts of such trainings, and also takes issue with the phrase “sponsored by the [C]ompany in whole or in part.” Although reasonable opinions may exist as to the use of equally appropriate terms or phrases (e.g., the use of the term “contents” instead of, perhaps, “copies” or “transcripts”), the applicable standard is whether the company implementing the proposal “would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” (emphasis added). Absolute certainty is not required, and even the Company acknowledges that it has reasonable certainty about what the Proposal requires. 

Curiously, even while arguing its vagueness, the Company notes that the Proposal purports “to be concerned with civil rights and non-discrimination in the workplace” 3 This makes it difficult to understand how the Company then can go on to assert the vague and indefinite nature of the Proposal. Indeed, if the Company decided simply to publish, in response to our Proposal, training materials that impinge upon those considerations, then it would clearly have satisfied our Proposal. Similarly, the Company again admits there is no ambiguity as to scope of the Proposal later on its request while arguing that the Proposal should be excluded because it has already

2 Id.  
3 See Company’s no action request letter at section A.2, p.3 (Dec. 17, 2021).
been substantially implemented. That relevant section reads, “Given that the Proposal’s underlying concern is with employee training materials as they relate to civil rights and nondiscrimination, rather than with all employee training materials as it could be read to suggest, the Company has substantially implemented the Proposal with its existing public disclosure on employee training materials related to diversity, equity and inclusion.”

The Company cannot have the Proposal both ways—vague as a means to exclude on that ground, yet clear as means for substantial implementation. The Company through its own admissions, therefore, fails to demonstrate that the language in the Proposal is of such vague or indefinite nature that it cannot “determine with any reasonable certainty” what is required by it. To the contrary, the Company admits—more than once—that it knows exactly what the Proposal requests.

The real issue appears not to be that the terms of the Proposal are vague and indefinite, but that the Company has concerns regarding the volume of materials it would potentially be required to produce should the Proposal be accepted given the size of the Company. However, the Proposal does not violate Rule 14a-8(i)(3) simply because the Company’s size may make it inconvenient for the Company to execute it, though that is exactly the point the Company attempts to make in its no action request:

The vague and indefinite nature of the proposal also stands out in the context of the nature of the Company’s business and size of its operations, the number of countries in which it operates, as well as its offerings of thousands of trainings and programs and its countless guidelines, resources and forums….

The Company even goes on to state that “[i]mplementation of the Proposal would require publication of all 90,000 [LinkedIn Learning program] videos” used by the Company to train its employees, contradicting its previous point regarding its uncertainty about what would be required to fulfill the proposal in the first place. Again, the standard is whether the company implementing the proposal “would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Speculated level of convenience or difficulty in executing a particular proposal based on the nature of a company’s business and size of its operations is not part of that analysis.

Moreover, the Company knows, as all participants in the shareholder-proposal process know, that the inclusion of the phrase “without incurring excessive costs,” “prepared at reasonable cost and omitting confidential or proprietary information,” or some similar formulation, works to give a company additional discretion in exactly situations like this. In other words, the inclusion of those terms grants the Company license; it doesn’t make a proposal harder to understand or enact. At all events, if the Company is arguing that the promulgation of all of these suspect-classification-based programs are perfectly reasonable in cost, but that the cost of simply posting the relevant materials online is prohibitively expensive, we can reasonably conclude that the Company wants to hide those materials because it agrees with us that they do carry reputational

---

4 Id. at section D.2, p. 9. (emphasis added).
C. *The structure of the Proposal does not somehow make it inherently vague and indefinite.*

The Company alleges the Proposal is inherently vague and indefinite due to its construction permitting two alternatives. The option between two alternatives, however, does not make the Proposal inherently vague and indefinite under Rule 14a-8(i)(3).

In support of its claim that our Proposal is vague and indefinite, the Company claims that shareholders will have difficulty understanding what they are voting for and worries that they may be in favor of one alternative but not the other. But this suggests that the Company thinks that its shareholders do not know what “or” means, or what it means to authorize or require someone to pick from two possible options. In deciding how to vote on this measure, shareholders will have to decide if they are willing, or not, to allow the Company to decide between these two alternatives. If they are willing, they will vote for it; if they are unwilling, for whatever reason, they will vote against it. That’s hardly complicated.

The Company further claims that should the Proposal be adopted, the Board will not be able to determine with reasonable certainty which measure to take, as it is unclear whether the Board possesses the discretion to choose between the two alternatives presented in the Proposal. But this is also absurd. We presume that the Board of Directors – all of whom the Company has assured us are appropriate candidates for re-election this year – are able to understand simple language and basic propositions. They will understand that should shareholders vote for this proposal, they will have instructed the Board to pick one of two options, and have given the Directors discretion about which of the two to pick.

If the Directors cannot understand this intensely simple proposition, then the Company fails in its duty of care by recommending that they be re-elected to their positions. (And if the Company and its counsel really were unable to understand such propositions, they would have been unable to craft the very no-action letter to which we now reply.)

At all events, the Supporting Statement of our Proposal puts confusion wholly beyond the bounds of possibility, as it states unambiguously that the Board does indeed have a choice. It reads, “*should the Board elect* to perform an audit and render a report, it is encouraged to...” (emphasis added). It is therefore clear that the Board does have the ability to choose between the two alternatives presented, making claims to the contrary incompatible with the language of our Proposal as a whole.

Accordingly, the Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of Rule 14a-8(i)(3).
Part III. The Proposal contains a single, unified proposal.

A. Rule 14a-8(c).

Under Rule 14a-8(c), “a person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting.” Staff does not consider a single proposal with multiple components to constitute more than one proposal for purposes of Rule 14a-8(c) unless the components fail to be “closely related and essential to a single well-defined unifying concept.” Moreover, the Staff has never suggested that offering a single proposal with an alternative of choices rather than a succession of separate instructions all of which are to be required of the company to constitute “more than one proposal.”

B. Offering an alternative does not constitute a plural proposal.

As evidence that our Proposal constitutes two separate proposals, the Company notes that our Proposal’s components were submitted as singular proposals to two different companies. First the Company cites a proposal we sent to Deere & Company requesting the Board publish employee-training materials; then the Company cites a proposal we sent to the Walt Disney Company requesting the Board commission a workplace non-discrimination audit.

This is irrelevant. In raising this argument, the Company incorrectly conflates the inclusion of an alternative with a proposal that would require a company to do two separate things. By providing the Board with an option—the alternative to commission a workplace non-discrimination audit or to publish employee-training materials—the Proposal is clearly disjunctive rather than conjunctive. There is only ever one outcome resulting from our Proposal—either publication of employee-training materials or in the Board’s discretion, a workplace non-discrimination audit—not both.

The single precedent cited by the Company underscores the fatal flaw in its argument here. In PG&E Corp. (avail. March 11, 2010), the proposal recommended:

that Board of Directors adopt and implement a new policy that pending PG&E’s completion of all Diablo Canyon studies required and recommended by the State of California, PG&E will mitigate all potential risks encompassed by those studies, will defer any request for or expenditure of public or corporate funds for license renewal, and will not increase production of high level radioactive wastes at Diablo beyond the current capacity of existing spent-fuel pools and approved on-site storage.

In finding some basis for PG&E’s exclusion of the proposal under rule 14a-8(c), the Staff “note[d] that the proposal relating to license renewal involves a separate and distinct matter from

---

5 17 C.F.R. § 240.14a-8(c).
the proposals relating to mitigating risks and production levels.” Indeed, that proposal included requests for the Board to execute three separate and distinct tasks: 1) mitigate potential risks; 2) defer license renewals; and 3) refuse to increase production levels.

Our Proposal just doesn’t do that at all. Rather than asking for A, B and C, we ask for A or B, just one, at the discretion of the Board. This isn’t a composite request, it’s a single request that allows the Board a choice between two options in order to do one, single, discrete thing.

Accordingly, the Company is incorrect in its claim that our Proposal constitutes more than one proposal in violation of Rule 14a-8(c).

Part IV. The Proposal does not relate to the Company’s ordinary business operations.

A. Rule 14a-8(i)(7).

The Company seeks to prevent action on our Proposal via Rule 14a-8(i)(7), the ordinary business exception. The exception, in its entirety, permits exclusion of a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.”

The initial rule does not flesh out this provision at all. It has, though, been amended. One of those amendments, made in 1998, was restated and explained in a Staff Legal Bulletin (SLB) in 2002. There the Staff explained that:

[t]he fact that a proposal relates to ordinary business matters does not conclusively establish that a company may exclude the proposal from its proxy materials. …[P]roposals that relate to ordinary business matters but that focus on ‘sufficiently significant social policy issues … would not be considered to be excludable because the proposals would transcend the day-to-day business matters.’

As the amendment itself explained, in detail particularly relevant to our considerations here:

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. 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

7 17 C.F.R. § 240.14a-8(i)(7).
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.\textsuperscript{9}

There matters stood until 2017. That fall, Staff issued a bulletin ("SLB 14I") recognizing that corporate boards would likely have some insight into whether issues raised in shareholder proposals were of sufficiently substantial importance to transcend the category of ordinary business operations.\textsuperscript{10} It therefore invited corporations, in arguing for an ordinary business exception, to include in support of their claims details of their boards’ analyses of the shareholder proposals and the underlying policy significance of those proposals.\textsuperscript{11} Staff expanded this guidance further in 2018 ("SLB 14J") and suggested that in demonstrating its board’s analysis of the substantiality of an issue, a company should be expansive in its communications with the Staff.\textsuperscript{12} In doing so, Staff welcomed details about particulars such whether the company had already addressed the issue in some manner, including the difference – or the delta – between the proposal’s specific request and the actions the company has already taken, and an analysis of whether the delta presented a significant policy issue for the company.\textsuperscript{13} Additional Staff guidance appeared again in the fall of 2019 ("SLB 14K"), wherein Staff underscored the value of the 2018 “delta analysis.”\textsuperscript{14}

Then most recently, on November 3, 2021, Staff reverted to the aforementioned 1998 guidance by rescinding SLB 14I, SLB 14J, and SLB 14K following “a review of staff experience applying the guidance in them.”\textsuperscript{15} Relevantly, of the rescinded bulletins, Staff said an “undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy….” Staff went on to explain that it was prospectively realigning its “approach for determining whether a proposal


\textsuperscript{10} See Staff Legal Bulletin No. 14I (Nov. 17, 2017), available at https://www.sec.gov/interps/legal/cfslb14i.htm (Feb. 20, 2020) (“A board acting in this capacity and with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.”).

\textsuperscript{11} See id. (“Accordingly, going forward, we would expect a company’s no-action request to include a discussion that reflects the board’s analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.”).


\textsuperscript{13} Id.


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.” \(^{16}\) The Staff explained that it:

> 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. \(^{17}\)

The staff in particular emphasized that “proposals squarely raising human 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.” \(^{18}\) Our proposal raises exactly such an issue: whether current employee training raises risks as a result of racially or otherwise discriminatory content.

**B. The Proposal does not relate to the day-to-day management of the Company’s workforce.**

Our Proposal requests the Company publish “the written and oral content of employee-training materials.…[or] commission a workplace non-discrimination audit analyzing the Company’s impacts…on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business.” Nowhere, despite the Company’s claims to the contrary, does the Proposal seek to manage the Company’s workforce by instructing how it must conduct its employee training (or anything else). If following the publication of the employee-training materials or the commission of an audit the Company elects to change certain practices, that is a wholly separate matter left up to the Company. The mere practice of publishing already established information or otherwise ascertaining information on the impact of the Company’s actions on civil rights and non-discrimination does not seek to direct business operations themselves, but rather seeks a review of the impacts or effects thereof. Our Proposal simply asks the company to publish or report on what it is already doing, and the potential risks and effects associated with that behavior.

In further arguing that our Proposal unduly interferes with the management of the Company’s workforce, the Company relies on *United Technologies Corp.* (avail. Feb. 19, 1993), but that proceeding is irrelevant to this one. The proposal in *United* contained a laundry list of “nine MacBride Principles” that the Board would have had to either implement or increase activity on. These “principles” included very specific management dictates such as “[i]ncreasing the

\(^{16}\) Id.


\(^{18}\) Id.
representation of individuals from underrepresented religious groups in the workforce…banning of provocative religious or political emblems from the workplace…[and] the development of training programs that will prepare substantial numbers of current minority employees for skilled jobs…” Upon reviewing the proposal and arguments presented in United, Staff set forth the view that “proposals directed at a company’s employment policies and practices with respect to its non-executive workforce [are] uniquely matters related to the conduct of the company’s ordinary business operations.” Then Staff proceeded to list several examples of such ordinary business categories (e.g., employee health benefits, management of the workplace, and employee training and motivation, to name a few). Our Proposal, however, does not seek to interfere with any employment policy or practice; it merely seeks, in the Board’s discretion, publication of the Company’s already established employee-training materials or an audit of the impact of actions already taken by the Company.

Moreover, the Staff decision in United Technologies Corp. belies SLB 14L when it comes to the question of social policy significance. Staff in that case took the now-defunct position that social policy concerns cannot override the ordinary business exception and instead determined that the employment-based nature of the proposal is alone controlling. The Staff decision in that case reads:

[T]he Division has determined that the fact that a shareholder proposal concerning a company’s employment policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant. Rather, determinations with respect to any such proposals are properly governed by the employment based nature of the proposal.

The conclusion reached in United Technologies Corp., therefore, is inapplicable to the Proposal at hand, as it has been abrogated by the plain language of SLB 14L – as well as the 1998 Amendments that SLB 14L is premised upon. Similarly, the additional precedent cited by the Company—Merck & Co., Inc. (avail. Feb. 16, 2016); AT&T, Inc. (avail. Dec. 28, 2015); Starwood Hotels & Resorts Worldwide, Inc. (avail. Feb. 12, 2012); Walmart, Inc. (avail. Apr. 8, 2019); FedEx Corp. (July 7, 2016); and Baxter International, Inc. (Jan. 6, 2016)—were likewise issued before the substantial changes instituted by SLB 14L, changes which significantly privilege proposals that seek to address concerns of workforce management and potential discrimination such as those raised in our Proposal.

Moreover, several of the additional proceedings cited by the Company would have required very specific training or employment-related dictates, further making them wholly distinguishable from – and inapplicable to – our Proposal. For instance, the proposal in Merck & Co. (Feb. 16, 2016), would have assigned only new employees to entry-level positions and only long-time employees to higher-level research and management positions. The proposal in AT&T, Inc. (Dec. 28, 2015), would have required the company to set up an HIV/AIDS education training program. And the proposal in Starwood Hotels & Resorts Worldwide, Inc. (Feb. 12, 2012) would have required verified U.S. citizenship for employees, effectively banning future foreign workers from
the company. The proposals in these proceedings are therefore nothing like our Proposal. Neither option in our Proposal tells the Company who it can hire nor instructs it on a particular training program; it merely seeks disclosures on how it is already doing these things.

C. **SLB 14L revises the Staff’s micromanagement analysis, which even under the prior rules did not provide no-action grounds in this proceeding.**

As a threshold matter, when it comes to our offer that the Company might publish relevant training materials for shareholder review as an optional means of wholly satisfying our Proposal, we note again that that option – but only that option – has been found omissible by the Staff in *Deere & Co.* (avail. Jan. 3, 2022) under 14a-8(i)(7) (micromanagement). But that decision does not have any final bearing on whether our Proposal will survive Staff review in this proceeding, because the other option, the audit, has not been and cannot be found omissible under controlling Staff precedent in *Amazon, Inc.* (Apr. 7, 2021). We focus on the application of the micromanagement argument to that option below.

With regard to the question of whether a proposal seeks to micromanage a company, the Staff returned in its analysis to the Commission’s clarification “in the 1998 Release that specific methods, timelines or details do not necessarily amount to micromanagement and are not dispositive of excludability.” It explained:

> Consistent with Commission guidance, the staff will take a measured approach to evaluating companies’ micromanagement arguments – recognizing that proposals seeking detail or seeking to promote time-frames or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.19

The staff quoted the 1998 Release to establish that “some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to ‘ordinary business.’ We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.”

SLB 14L thus renders the precedent cited by the Company relating to micromanagement nugatory. But even if that precedent had not been so rendered, the precedent would not have helped the Company’s cause, because our Proposal for an audit does not seek to manage the company in any way. It simply asks the company to commission an audit analyzing what it is

19 *Id.* at B.3.
already doing. And, again, our Proposal deals with an issue that the staff bulletin recognized as particularly appropriate for shareholder scrutiny, that of “human capital management.”20 We have sought only analysis necessary to determine whether the Company, in the name of equity, is in fact discriminating against groups of employees on constitutionally suspect and morally abhorrent bases.

And, as we also noted above, the matter of whether the workplace audit option in our Proposal raises issues of significant social policy is already settled precedent. In the Amazon.com proceeding, the Staff established that proposals that raise issues of workplace discrimination – certainly on the grounds of race and other federally suspect characteristics – implicate issues of substantial social policy that transcend ordinary business. There, the proponents offered a proposal that sought that Amazon:

commission a racial equity audit analyzing the Company’s impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company’s business. The audit may, in the board’s discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

Our Proposal likewise seeks disclosures to shareholders that will allow them to evaluate whether the Company is engaging in racially discriminatory or otherwise discriminatory behavior in its human capital management policies and programs. In fact, the workplace non-discrimination audit option in our Proposal was explicitly modeled on the language and the import of the Amazon.com proposal that the Staff found non-excludable even under the review regime that was in place prior to the issuance of Staff Bulletin 14L.

Accordingly, the Proposal may not be omitted under Rule 14a-8(i)(7) as it does not relate to the ordinary business operations of the Company and otherwise deals with an issue of social policy significance that the Staff has previously found non-excludable.

20 The Company does cite one precedent that is at least in theory not entirely superseded by Staff Bulletin 14L. In United Technologies Corp. (Feb. 19, 1993), the Staff suggested the following as justifiable exclusions under Rule 14a-8(i)(7): “employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.” We suspect that this precedent has largely been superseded by the explicit endorsement, in the new staff bulletin, of proposals that focus on human-capital management. But to the extent that it has not: our Proposal does not raise either minute or general questions about employee training. Rather we are, on the basis of clear evidence, raising the fundamental and substantial social-policy question of whether the Company, in the name of “anti-bias” training, is in fact grossly discriminating against groups of employees on the basis of race and other suspect grounds.
Part V. The Company has not substantially implemented the Proposal.

A. Rule 14a-8(i)(10) & Relevant Precedent.

The Company argues that the Proposal may be excluded as substantially implemented pursuant to Rule 14a-8(i)(10). In order for the Company to meet its burden of proving substantial implementation it must show that its activities meet the guidelines and essential purpose of the proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company’s particular policies, practices, and procedures compare favorably with the guidelines of the proposal. Texaco, Inc. (avail. Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed both the proposal’s guidelines and its essential objective. See, e.g., Exelon Corp. (avail. Feb. 26, 2010) (emphasis added).

Thus, when a company can demonstrate that it has already taken actions that meet most of the guidelines of a proposal and the proposal’s essential purpose, the Staff has concurred that the proposal has been “substantially implemented.” In the current instance, the Company has substantially fulfilled neither the guidelines nor the essential purpose of the Proposal.

This fact is laid particularly bare by more recent precedent. Just a few months ago, the proponents in Nike, Inc. (avail. Aug. 2, 2021) defeated a no-action effort by the company when it demonstrated that in the matter of civil-rights reporting it is not sufficient for exclusion under the substantial-implementation standard if companies have generated some civil-rights-related reporting but the reporting is not responsive to the guidelines and the essential object of the proposal.

B. The Company has failed to substantially implement our Proposal.

The Company alleges it has already substantially implemented our Proposal via publication of its inaugural Diversity, Equity & Inclusion Report (“DEI Report”) as well as an annual ESG Report on its website, claiming these materials “provide substantial details on its employee training policies and practices.” But this is a far cry from publishing the relevant training programs themselves, making the reports unresponsible to that option.

Nor are the reports responsive to the guidelines or the essential object of the other option of our Proposal, far less a substantial implementation of it. As we noted at the beginning of this letter, our Proposal concerns itself with vital issues of non-discrimination and civil rights in exactly the same way that the Amazon.com proposal does, but ours asks the Company in particular to expand its DEI reporting and reviews to attend to whether it is discriminating against groups that it has not honored with the label of “diverse,” given that discrimination against any employees or other stakeholders on the basis of protected classifications is both morally repugnant and an issue raising profound risks for the Company.
While it cites in passing to its DEI Report, the Company points to nothing in that report that does the very thing we seek because it has not done that thing, and is even now struggling mightily to get the Staff to permit it to refuse even to contemplate thinking about and reporting on its treatment of the civil rights of “non-diverse” groups, or their right to be free from discrimination on suspect grounds.

Therefore, similar to the recent Nike, Inc. decision, even if the Company generated some civil-rights-related reporting in its DEI and ESG reports, these reports are not responsive to the guidelines and the essential object of the Proposal and is thereby not substantially implemented under Rule 14a-(i)(10).

Accordingly, the Company’s claim it has substantially implemented our Proposal is simply incorrect and therefore our Proposal may not be omitted under Rule 14a-8(i)(10).

**Conclusion**

Despite claims by the Company to the contrary, the Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of proxy rules. Rather, as admitted by the Company on more than one occasion in its request, the Proposal deals with non-discrimination in the workplace.

The structure of the Proposal also does not render it in violation of proxy rules despite allegations by the Company, as all aspects of the Proposal concern a unitary concept and the Company erroneously conflates the inclusion of an alternative with a separate proposal altogether.

Moreover, given the new guidance offered by SLB 14L, the Company’s grounds for exclusion on the basis of the ordinary business exception have been superseded. Our Proposal seeks only disclosures, not in any way the management of the Company, and it does so about matters that the Staff has unquestionably declared of significant social policy interest.

Finally, the Company’s argument that it has already substantially implemented the Proposal is simply false, as it has not published the actual written or oral contents of the relevant employee training materials in any of the reports it cited.

As such, the Company has failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject American Express’ request for a no-action letter concerning our Proposal.
A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at srehberg@nationalcenter.org.

Sincerely,

[Signature]

Sarah Rehberg
National Center for Public Policy Research

cc: Scott Shepard (sshepard@nationalcenter.org)
Kristina V. Fink (corporatesecretarysoffice@aexp.com)
February 15, 2022

Via email: shareholderproposals@sec.gov

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


Ladies and Gentlemen,

This letter is in supplement to our no-action reply of January 12, 2022. That no-action reply was in response to the letter of Kristina V. Fink on behalf of The American Express Company (the “Company”) dated December 17, 2021, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

RESPONSE TO THE AMERICAN EXPRESS COMPANY’S CLAIMS


Our Proposal is essentially the same, for Staff-review purposes, as the proposals in these proceedings. The resolution of our Proposal is materially indistinguishable from the Disney Co. and Levi Strauss proposals. And the supporting statements of each proposal cover similar territory in explaining the very similar concerns that animated submission of the proposals. Indeed, both of the supporting statements frame the issues of concern to us – discrimination, particularly against groups that the companies do not honor with the label “diverse.”
In each proposal we set up the background concern about such discrimination, and provided evidence that it is occurring throughout corporate America. Then we made reference to the Company’s own facially discriminatory behavior. The only relevant distinction between our Proposal and the proposals submitted in these two proceedings is that in addition to the results sought by the Disney Co. and Levi Strauss proposals, ours gives the Board an alternative option of publishing relevant employee-training materials instead. As such, the decisions in these proceedings further establish the non-omissibility of our Proposal.

We address the applicability of each proceeding in turn below.

1. The Walt Disney Co. (Jan. 19, 2022)

The proposal we introduced in Disney Co. is virtually identical to our Proposal with the exception of the Company’s name and the option of publishing relevant employee-training materials. The proposal in Disney Co. asked the company to:

commission a workplace non-discrimination audit analyzing Disney’s impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on Disney’s business. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Disney’s website.

Our Proposal to the Company asks the Board to:

to publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of employee-training materials offered to the company’s employees by the company or with its consent, as well as any such materials that were sponsored by the company in whole or part. In the alternative we request the Board commission a workplace non-discrimination audit analyzing the company’s impacts, including the impacts arising from company-sponsored or-promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business. In the latter instance, a report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company’s website. (emphasis added).

Each proposal raises issues of workplace discrimination on protected grounds, and each implicates the very same issues of substantial social policy that transcend ordinary business. In its January 19, 2022 decision the Staff determined that “[w]e 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 and does not seek to micromanage the Company.” Given
the identical nature of these two proposals, the result must now be the same in this proceeding as in *Disney Co.*

**II. *Levi Strauss & Co. (Feb. 10, 2022)***

Our Proposal is materially identical to the proposal we introduced in *Levi Strauss* except that our Proposal to American Express includes the option of publishing relevant employee-training materials instead of commissioning the report. The *Levi Strauss* proposal requested that the Board:

commission a racial-equity audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees, communities in which the Company operates and other stakeholders, of all viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website. (emphasis added).

As noted above, our Proposal requests the Board commission a workplace non-discrimination audit analyzing the company’s impacts on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business, and requires a report on the audit be publicly disclosed.

The proposal in *Levi Strauss* is therefore indistinguishable in both language and spirit to our Proposal. (And, as we discussed in our initial reply, the matter of whether the workplace audit option in our Proposal raises issues of significant social policy is already settled precedent in the *Amazon.com* proceeding.) On February 10, 2022, Staff determined that when it comes to *Levi Strauss* “[w]e 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.” Therefore, just as Staff found our proposal in *Levi Strauss* to be non-omissible, it must similarly find our Proposal to be non-omissible.

**III. Conclusion**

Accordingly, the Proposal may not be omitted under Rule 14a-8(i)(7) as it does not relate to the ordinary business operations of the Company and otherwise deals with an issue of social policy significance that the Staff has previously found non-omissible in the three prior proceedings cited herein: *Amazon.com, Disney & Co., and Levi Strauss.*
A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at srehberg@nationalcenter.org.

Sincerely,

Sarah Rehberg  
National Center for Public Policy Research

cc: Scott Shepard (sshepard@nationalcenter.org)  
    Kristina V. Fink (corporatesecretaryoffice@aexp.com)