



DIVISION OF
CORPORATION FINANCE

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

April 4, 2022

Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP

Re: BlackRock, Inc. (the "Company")
Incoming letter dated January 24, 2022

Dear Mr. Gerber:

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 requests that the Company issue a public report detailing the potential risks associated with omitting "viewpoint" and "ideology" from its written equal employment opportunity (EEO) policy.

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 relates to, and does not transcend, ordinary business matters. 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 basis 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

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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BY EMAIL (shareholderproposals@sec.gov)

January 24, 2022

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

RE: BlackRock, Inc. – 2022 Annual Meeting
Omission of Shareholder Proposal of the
National Center for Public Policy Research

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, we are writing on behalf of our client, BlackRock, Inc., a Delaware corporation (“BlackRock”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with BlackRock’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) from the proxy materials to be distributed by BlackRock in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”).

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

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

I. The Proposal

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

RESOLVED

Shareholders request that BlackRock, Inc. (“BlackRock”) issue a public report detailing the potential risks associated with omitting “viewpoint” and “ideology” from its written equal employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information.

II. Bases for Exclusion

We hereby respectfully request that the Staff concur in BlackRock’s view that it may exclude the Proposal from the 2022 proxy materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to BlackRock’s ordinary business operations; and
- Rule 14a-8(i)(10) because BlackRock has substantially implemented the Proposal.

III. Background

BlackRock received the Proposal, accompanied by a cover letter, from the Proponent on December 15, 2021. On December 29, 2021, BlackRock sent a letter via email to the Proponent requesting a written statement from the record holder of the Proponent’s shares verifying that the Proponent beneficially owned the requisite number of shares of BlackRock common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal. On December 29, 2021, BlackRock received via email a letter from UBS Financial Services Inc. verifying the Proponent’s continuous ownership of at least the requisite amount of stock for at least the requisite period. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.

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

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

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

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff consistently has permitted exclusion of proposals under Rule 14a-8(i)(7) that relate to management of a company's workforce. *See* 1998 Release (excludable matters "include the management of the workforce, such as the hiring, promotion, and termination of employees"); *see also, e.g., Walmart, Inc.* (Apr. 8, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board prepare a report evaluating discrimination risk from the company's policies and practices for hourly workers taking medical leave, noting that the proposal "relates generally to the [c]ompany's management of its workforce"); *Yum! Brands, Inc.* (Mar. 6, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought to prohibit the company from engaging in certain employment practices, noting that "the [p]roposal relates generally to the [c]ompany's policies concerning its employees").

In particular, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(7) that are substantially similar to the Proposal. For example, in *American Express Company* (Feb. 26, 2021)*, the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal submitted by the Proponent that asked for a report detailing the potential risks associated with omitting “viewpoint” and “ideology” from the company’s written equal employment opportunity policy. This was consistent with *Apple Inc.* (Dec. 20, 2019, *recon. denied* Jan. 17, 2020), where the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal submitted by the Proponent that asked for a report detailing the potential risks associated with omitting “viewpoint” and “ideology” from the company’s written equal employment opportunity policy, noting that the proposal “does not transcend the [c]ompany’s ordinary business operations.” See also, e.g., *Alphabet Inc.* (Apr. 9, 2020, *recon. denied* Apr. 22, 2020)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report detailing the potential risks associated with omitting “viewpoint” and “ideology” from the company’s written equal employment opportunity policy); *salesforce.com, Inc.* (Apr. 9, 2020, *recon. denied* Apr. 22, 2020)* (same); *CVS Health Corp.* (Feb. 27, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company amend its equal employment opportunity policy (or equivalent policy) to “explicitly prohibit discrimination based on political ideology, affiliation or activity” because the proposal “relates to [the company’s] policies concerning its employees.”); *The Walt Disney Company* (Nov. 24, 2014, *recon. denied* Jan. 5, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company’s board consider the possibility of adopting anti-discrimination principles protecting employees’ right to “engage in legal activities relating to the political process, civic activities and public policy without retaliation in the workplace” as relating to the ordinary business matter of “policies concerning [the company’s] employees.”).

In this instance, the Proposal focuses on BlackRock’s management of its workforce and policies concerning employees, both of which are ordinary business matters. In particular, the Proposal requests a report “detailing the potential risks associated with omitting ‘viewpoint’ and ‘ideology’ from [BlackRock’s] written equal employment opportunity (EEO) policy.” In addition, the Proposal’s supporting statement claims that “shareholders are unable to evaluate how BlackRock prevents discrimination towards employees based on their ideology or viewpoint, mitigates employee concerns of potential discrimination, and ensures a respectful and supportive work atmosphere that bolsters employee performance.” When read together, the Proposal’s resolved clause and supporting statement clearly articulate a concern with the ordinary business matters of how BlackRock manages its workforce through employee policies. Decisions with respect to the management of employees and the substance of policies relating to the relationship between BlackRock and its employees

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

are at the heart of BlackRock's business as a global asset manager and employer, and are so fundamental to its day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight. Notably, BlackRock has approximately 18,000 employees spread across more than 30 countries and managing this workforce is fundamentally ordinary business. Therefore, consistent with the precedent described above, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to BlackRock's ordinary business operations.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. See 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *PetSmart, Inc.* (Mar. 24, 2011), the proposal requested that the company's board require suppliers to certify that they had not violated certain laws regulating the treatment of animals. Those laws affected a wide array of matters dealing with the company's ordinary business operations beyond the humane treatment of animals, which the Staff has recognized as a significant policy issue. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted the company's view that "the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" See also, e.g., *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, even if the Proposal were to touch on a potential significant policy issue, the Proposal's overwhelming concern with how BlackRock manages its workforce through employee policies demonstrates that the Proposal's focus is on ordinary business matters. Moreover, the Staff previously has determined that a nearly identical proposal did not transcend the company's ordinary business operations in *Apple Inc.* (Dec. 20, 2019). Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

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

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

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

Applying this standard, the Staff has consistently permitted the exclusion of a proposal under Rule 14a-8(i)(10) when it has determined that the company’s policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., Eli Lilly and Co.* (Feb. 26, 2021)*; *Devon Energy Corp.* (Apr. 1, 2020)*; *Johnson & Johnson* (Jan. 31, 2020)*; *Pfizer Inc.* (Jan. 31, 2020)*; *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. For example, in *The Boeing Company* (Feb. 17, 2011), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company “review its policies related to human rights” and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship. *See also, e.g., The Wendy’s Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company’s operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment’s results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *MGM Resorts Int’l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company’s sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report disclosing policies and procedures for political contributions and monetary and non-

monetary political contributions where the company had adopted corporate political contributions guidelines).

In this instance, BlackRock has substantially implemented the Proposal, the essential objective of which is to prevent discrimination towards employees based on political ideology. Specifically, the Proposal's resolved clause requests that BlackRock disclose the "potential risks associated with omitting 'viewpoint' and 'ideology'" from BlackRock's EEO policy. The Proposal's supporting statement asserts that BlackRock "does not explicitly prohibit discrimination based on viewpoint or ideology in its written EEO policy" and notes that "half of Americans live and work in a jurisdiction with no legal protections if their employer takes action against them for their political activities." The supporting statement further alleges that "individuals with conservative viewpoints may face discrimination at BlackRock."

BlackRock, however, already prohibits discrimination of employees on the basis of their political affiliation. In this regard, BlackRock's Equal Employment Opportunity and Harassment and Retaliation Prevention Policy (the "EEO Policy"), which is applicable to all employees in the Americas and is attached hereto as Exhibit B, states that:

BlackRock is an equal employment opportunity employer and does not discriminate against any employee or applicant because of race, color, creed, religion, sex, pregnancy status, pregnancy-related conditions, national origin, ancestry, mental or physical disability, medical condition, age, veteran status, military status, citizenship status, marital status, familial status, sexual orientation, gender, gender identity or expression, genetic information, **political affiliation**, unemployment status, or any other characteristic protected by law (referred to as "Protected Status"). All of BlackRock's activities, including, but not limited to, recruiting and hiring, recruitment advertising, promotions, performance appraisals, training, job assignments, compensation, demotions, transfers, terminations (including layoffs), benefits, and other terms, conditions, and privileges of employment, are and will be administered on a non-discriminatory basis, consistent with all applicable federal/national, state, and local requirements. [emphasis added]

Moreover, as described in BlackRock's Code of Business Conduct and Ethics ("Code of Conduct"), which is available on BlackRock's website, BlackRock is "firmly committed to providing equal opportunity in all aspects of employment" without regard

to, among other things, “political affiliation.”¹ This commitment is also reflected in BlackRock’s “Careers” website, which discloses that BlackRock is “committed to equal employment opportunity to all applicants and existing employees” and BlackRock evaluates applicants “without regard to race, creed, color, national origin, sex (including pregnancy and gender identity/expression), sexual orientation, age, ancestry, physical or mental disability, marital status, political affiliation, religion, citizenship status, genetic information, veteran status, or any other basis protected under applicable federal, state, or local law.”²

Given the fact that BlackRock’s EEO Policy already protects employees from being discriminated against because of their political affiliations and that this policy is summarized in the Code of Conduct, which is available on BlackRock’s website, and reflected on BlackRock’s Careers website, BlackRock already satisfies the Proposal’s essential objective. Thus, BlackRock has substantially implemented the Proposal.

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

VI. Conclusion

Based upon the foregoing analysis, BlackRock respectfully requests that the Staff concur that it will take no action if BlackRock excludes the Proposal from the 2022 proxy materials.

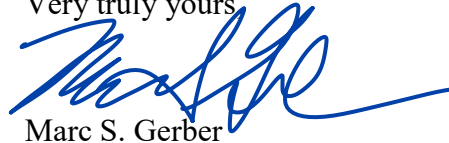
¹ See BlackRock’s Code of Business Conduct and Ethics, available at https://s24.q4cdn.com/856567660/files/doc_downloads/governance_documents/2021/12/Code-of-Business-Conduct-and-Ethics-Dec-2021-v5.5.pdf, relevant excerpts of which are attached hereto as Exhibit C.

² See BlackRock’s Careers website, available at <https://careers.blackrock.com>.

Office of Chief Counsel
January 24, 2022
Page 9

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of BlackRock's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: R. Andrew Dickson, III
Managing Director & Corporate Secretary
BlackRock, Inc.

Scott Shepard
National Center for Public Policy Research

EXHIBIT A

(see attached)



December 14, 2021

Via FedEx to

R. Andrew Dickson, III
Corporate Secretary
BlackRock, Inc.
40 East 52nd Street
New York, New York 10022

Mr. Dickson,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the BlackRock, Inc. (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 held at least \$2,000 in market value of BlackRock, Inc. stock since January 4, 2020 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 January 6, 2022 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 [REDACTED] so that we can determine the mode and method of that discussion.

EEO Policy Risk Report

RESOLVED

Shareholders request that BlackRock, Inc. (“BlackRock”) issue a public report detailing the potential risks associated with omitting “viewpoint” and “ideology” from its written equal employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information.

SUPPORTING STATEMENT

BlackRock does not explicitly prohibit discrimination based on viewpoint or ideology in its written EEO policy.

BlackRock’s lack of a company-wide best practice EEO policy sends mixed signals to company employees and prospective employees and calls into question the extent to which individuals are protected due to inconsistent state policies and the absence of a relevant federal protection. Approximately half of Americans live and work in a jurisdiction with no legal protections if their employer takes action against them for their political activities or discriminates on the basis of viewpoint in the workplace.

Companies with inclusive policies are better able to recruit the most talented employees from a broad labor pool, resolve complaints internally to avoid costly litigation or reputational damage, and minimize employee turnover. Moreover, inclusive policies contribute to more efficient human capital management by eliminating the need to maintain different policies in different locations.

There is ample evidence that individuals with conservative viewpoints may face discrimination at BlackRock.

CEO Larry Fink and BlackRock’s executive suite make no secret not only of their own leftwing commitments, but of their intent to use their power to make other American corporations bow to their personal policy preferences. In his 2021 Letter to CEOs,¹ Fink took stark political sides, characterizing behavior by the left as “historic protests,” but the same behavior from the right as “political alienation – fueled by lies and political opportunism – erupt[ing] into violence.” More recently he has called for American taxpayers to fund the developing world’s (including presumably China’s) elimination of carbon production on partisan-politically driven timelines at a time of world energy crisis and skyrocketing energy prices.²

If Fink is willing to enforce his politics on all of corporate America, he is surely willing to do it to his own employees. They deserve to be protected against Fink’s bullying, just as shareholders and investors deserve a company at which all viewpoints are respected, as this will keep

¹ <https://www.blackrock.com/us/individual/2021-larry-fink-ceo-letter>

² <https://www.nytimes.com/2021/10/13/opinion/climate-change-imf-carbon.html>

BlackRock from making potentially costly mistakes because of an unwonted narrowness of perspective.

Presently, shareholders are unable to evaluate how BlackRock prevents discrimination towards employees based on their ideology or viewpoint, mitigates employee concerns of potential discrimination, and ensures a respectful and supportive work atmosphere that bolsters employee performance.

Without an inclusive EEO policy, BlackRock may be sacrificing competitive advantages relative to peers while simultaneously increasing company and shareholder exposure to reputational and financial risks.

We recommend that the report evaluate risks including, but not limited to, negative effects on employee hiring and retention, as well as litigation risks from conflicting state and company anti-discrimination policies.

Copies of correspondence or a request for a "no-action" letter should be forwarded to Scott Shepard, National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to [REDACTED]

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard

Enclosure: Shareholder Proposal

EXHIBIT B

(see attached)



AMRS Equal Employment Opportunity and Harassment and Retaliation Prevention Policy

Effective Date: January 15, 2020

Version 6.01

Document Owner(s):

- Human Resources- Employee Relations
- Legal and Compliance

1. Executive Summary

BlackRock is committed to providing equal employment opportunities and a workplace that is respectful, productive, and free from harassing, disruptive, unlawful, or retaliatory conduct. The purpose of this Policy is to establish BlackRock's expectations for a productive and positive work environment, alert employees to their legal rights under applicable laws, and provide information on options for raising any concerns either internally or externally.

2. Scope

This policy applies to BlackRock employees, applicants, interns, and non-employees in the Americas (excluding Canada). A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace, including persons commonly referred to as independent contractors, temporary workers, and volunteers. Also included are persons providing equipment repair, cleaning, or any other services provided to BlackRock.

3. Equal Employment Opportunity and Harassment and Retaliation Prevention Policy

3.1. Equal Employment Opportunity ("EEO")

BlackRock is an equal employment opportunity employer and does not discriminate against any employee or applicant because of race, color, creed, religion, sex, pregnancy status, pregnancy-related conditions, national origin, ancestry, mental or physical disability, medical condition, age, veteran status, military status, citizenship status, marital status, familial status, sexual orientation, gender, gender identity or expression, genetic information, political affiliation, unemployment status, or any other characteristic protected by law (referred to as "Protected Status"). All of BlackRock's activities, including, but not limited to, recruiting and hiring, recruitment advertising, promotions, performance appraisals, training, job assignments, compensation, demotions, transfers, terminations (including layoffs), benefits, and other terms, conditions, and privileges of employment, are and will be administered on a non-discriminatory basis, consistent with all applicable federal/national, state, and local requirements.

This includes, but is not limited to, prohibiting supervisors and managers working in New York from discriminating against an employee based on the employee's or the employee's dependent's reproductive health decision making.¹

¹ Applicable rights and remedies, as well as additional information, may be found in New York Labor Law Section 203 e. Available remedies include compensatory damages, injunctive relief, reinstatement, and/or liquidated damages.

Limited



3.2. Harassment Prevention

BlackRock is committed to maintaining a productive and respectful work environment. Harassment in the workplace, including sexual harassment and harassment based on a person's Protected Status, is strictly prohibited.

3.2.1. Harassment Generally Defined

Harassment is any unwelcome verbal, visual, written or physical conduct that occurs with the purpose or effect of creating an intimidating, hostile, degrading, humiliating, or offensive environment. Harassment based on an individual's Protected Status is unlawful. The following are examples of types of behavior that may constitute harassment:

- verbal or physical abuse;
- threats;
- suggestive comments or gestures;
- offensive gestures or language intended to intimidate or humiliate;
- insulting or abusive comments;
- bullying;
- isolation or exclusion; or
- misuse of power or position for the purpose of intimidating or humiliating.

BlackRock's prohibition on harassment is not limited to the physical workplace itself. The prohibition applies while employees are traveling for business or at BlackRock-sponsored events or parties or at social gatherings. Calls, texts, emails, and social media activity by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises or outside of work hours.

Computers, computer files, software, email systems, and voice mail furnished to employees may not be used for any improper purpose. For example, any use, display, or transmission of sexually explicit images, messages, or cartoons is strictly prohibited. Use of BlackRock's property to maintain or communicate material or information of a sexual or discriminatory nature will not be tolerated.

3.2.2. Sexual Harassment Defined

Sexual harassment includes harassment on the basis of sex, sexual orientation, gender identity or the status of being transgender. Sexual harassment is a form of sex discrimination and is unlawful under federal/national, state, and/or applicable local law.

Sexual harassment is defined by law as any unwelcome sexual advances, requests for sexual favors, and other visual, verbal, or physical conduct of a sexual nature or which is directed at an individual because of that individual's sex when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of employment;

Limited

2. submission or rejection of the conduct is used as a basis for making employment decisions; or
3. the conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.

By way of example, sexual harassment occurs when a person in authority or any other employee threatens or insinuates, either explicitly or implicitly, that another individual's refusal to submit to sexual advances will adversely affect that person's employment, work status, evaluation, compensation, advancement, assigned duties, shifts, or any other term, condition, or privilege of employment or career development. Similarly, no employee shall promise, imply, or grant any preferential treatment or employment opportunities in return for sexual favors.

Other examples of sexual harassment may include, but are not limited to:

- unwelcome sexual flirtations, advances, or propositions;
- verbal abuse of a sexual nature;
- subtle pressure or requests for sexual activities;
- physical acts of a sexual nature, including groping or brushing against another person or any other physical assault;
- inappropriate touching or intimacy;
- graphic or verbal commentaries about an individual's body;
- sexually degrading words used to describe an individual;
- a display in the workplace or to any employee or applicant of sexually suggestive objects or pictures;
- negative stereotyping based upon gender, sexually explicit or offensive jokes; or
- sexually oriented remarks, epithets, gestures, or slurs.

Sexual harassment can occur between any individuals, regardless of their sex or gender and does not have to be motivated by sexual desire. A perpetrator of sexual harassment can be a superior, a subordinate, a coworker or anyone in the workplace including a non-employee, client, or visitor. Sexual harassment can also occur via non-verbal and non-physical activity, such as via text message, email, or social media.

4. Internal Procedures for Reporting Violations of This Policy and Disciplinary Action

If you believe that you have been the victim of discrimination or retaliation (see Section 6 below), or the object of sexual or other harassment or inappropriate behavior, you should inform any of the following: your manager, HR Business Partner, ER Advisor, EEO Officer, or [contactHR](#). In addition, anyone who witnesses or becomes aware of instances of discrimination, harassment, including sexual harassment, or retaliation, should report such behavior to any of the following: their manager, HR Business Partner, ER Advisor, EEO Officer, or [contactHR](#). Alternatively, employees may use (on an anonymous basis if desired) the Business Integrity Hotline for reporting concerns under this Policy. BlackRock takes complaints of discrimination, harassment, and retaliation very seriously and does not require that you follow any formal chain of command when reporting a violation of this Policy.

Limited

Any manager who witnesses or becomes aware of possible discrimination, retaliation, or sexual or other harassment *must immediately* contact their HR Business Partner, ER Advisor, the EEO Officer, or [contactHR](#) so the matter can be investigated in a timely manner. A manager who fails to make such a report or who knowingly allows such behavior to continue may be subject to disciplinary action, up to and including termination of employment.

In the event that a concern relates to a member of Human Resources or an employee is otherwise uncomfortable reporting a concern directly to Human Resources, such concern may be reported to a Managing Director in Legal and Compliance.

Complaints may be made verbally or in writing but should be made in a timely manner following the incident so that a prompt investigation can occur. Written complaints may be submitted by using a [complaint form](#).

BlackRock will conduct a prompt, thorough, fair and impartial investigation whenever it receives a complaint concerning a violation of this policy, or otherwise becomes aware of a violation. The investigation will be coordinated by HR and/or Legal and will be conducted in as confidential a manner as is practical and appropriate under the circumstances, recognizing that some disclosure may be necessary to effectively investigate the complaint. The investigation process will be documented and tracked for reasonable progress and give persons accused of prohibited conduct notice of the nature of the allegations and a meaningful opportunity to respond, as appropriate. Upon completing its investigation, BlackRock will make findings and conclusions based on the evidence. Appropriate corrective action, as determined by BlackRock, will be taken whenever it is determined that conduct or actions are in violation of, or inconsistent with, this Policy. BlackRock will communicate the final determination of any investigation to both the individual who reported the concern as well as any individual who is the subject of the alleged conduct. BlackRock will implement any corrective action.

All employees, including managers, are required to cooperate with any internal investigation of discrimination, retaliation, or harassment. Anyone interfering with, providing information that the individual knows to be inaccurate or misleading, or knowingly omitting key information during an investigation will be subject to disciplinary action up to and including termination of employment.

Discrimination based on any Protected Status, sexual harassment or other harassment, and retaliation are forms of misconduct and violations of our policies, and may subject BlackRock, as well as the individual(s) who engaged in the misconduct, to liability.

Employees at all levels are expected to comply with this Policy. If BlackRock determines that an employee has engaged in activities that are in violation of, or inconsistent with, this Policy, such employee will be subject to remedial and/or disciplinary action, up to and including termination of employment.

4.1. Prohibition of Retaliation

All BlackRock employees and non-employees are strongly encouraged to raise good faith concerns regarding violations of this Policy. BlackRock's commitment to equal employment opportunity and a workplace that is free of discrimination, harassment, including sexual harassment, and retaliation ensures that individuals, including any employee, paid or unpaid intern, or non-employee working in the workplace, may raise concerns under this Policy without fear of retaliation. BlackRock prohibits any form of retaliation against an employee or non-employee for raising a good faith complaint about discrimination, unlawful harassment, including sexual harassment, or retaliation, either with BlackRock or with any administrative agency or in a court or arbitration proceeding, or for cooperating in an investigation of such concerns. Retaliation includes any adverse action with respect to an individual's terms and conditions of employment or any other action intended to discourage

Limited

an individual from making a claim or cooperating in the investigation of a claim. Such retaliation is unlawful under federal/national, state, and/or applicable local law.

Appendix

Appendix A – Additional Legal Protections and External Remedies

Unlawful discrimination, harassment, including sexual harassment, and retaliation are not only prohibited by BlackRock but are also prohibited by federal/national, state, and applicable local law. Aside from BlackRock's internal process, individuals may also choose to pursue legal remedies with relevant governmental entities.

1. U.S. Federal Protections

The United States Equal Employment Opportunity Commission ("EEOC") enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.

An individual who believes they have been discriminated against at work can file a "Charge of Discrimination" with the EEOC. You may contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), by visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

2. Mandatory State/Local Notifications

Certain state and local laws require the following disclosures to employees working in their jurisdictions. Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual may contact the county, city or town, in which they work to find out if such a law exists. The absence of a jurisdiction in the following list does not mean that there are not state or local agencies that enforce laws relevant to this Policy.

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sexual acts, the conduct may constitute a crime. In such circumstances, you may contact the appropriate law enforcement agency.

California

Employees in California may contact the California Department of Fair Employment and Housing ("DFEH") by calling 1-800-884-1684 (1-800-700-2320 (TTY)), by visiting its website at www.dfeh.ca.gov, or via email at contact.center@dfeh.ca.gov.

Delaware

Employees in Delaware may view the Delaware Sexual Harassment Notice [here](#).

Massachusetts

Employees in Massachusetts may contact the Massachusetts Commission Against Discrimination:

Limited

Boston Office	Springfield Office	Worcester Office	New Bedford Office
One Ashburton Place Room 601 Boston, MA 02108 (617)-994- 6000	424 Dwight Street Room 220 Springfield, MA 01103 (413) 739- 2145	484 Main Street Room 320 P.O. Box 8038 Worcester, MA 01641 (508) 453-9630	800 Purchase St., Rm 501 New Bedford, MA 02740 (508) 990-2390

New York State

The Human Rights Law (“HRL”), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the HRL may be filed either with the Division of Human Rights (“DHR”) or in New York State Supreme Court.

Complaints may be filed any time within one year of the alleged harassment, discrimination, or retaliation, except claims of sexual harassment may be filed within three years of the alleged harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged harassment, discrimination, or retaliation. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to BlackRock does not extend your time to file with DHR or in court. The one year or three years is counted from the date of the most recent incident of discrimination, harassment, or retaliation.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination, harassment, or retaliation has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination, harassment, or retaliation is found after a hearing, the DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the conduct, or redress the damage caused, including paying of monetary damages, attorney’s fees and civil fines.

DHR’s main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR’s regional offices across New York State.

Employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. You may contact its main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml. New York City’s sexual harassment fact sheet is located [here](#).

Illinois

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Illinois employees may find additional information relating to Illinois Human Rights Act located [here](#). Employees in Illinois may contact the Illinois Department of Human Rights ("IDHR") at any of the offices shown below or by completing the form at <http://www.illinois.gov/dhr>.

Chicago Office	Springfield Office	Marion Office
100 W. Randolph St.	222 South College	2309 West Main St.
10th Floor	Room 101-A	Suite 112
Intake Unit	Intake Unit	Intake Unit
Chicago, IL 60601	Springfield, IL 62704	Marion, IL 62959
(312) 814-6200	(217) 785-5100	(618) 993-7463

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EXHIBIT C

(see attached)



Code of Business Conduct and Ethics

Effective Date: December 7, 2021

1. Introduction

This global Code of Business Conduct and Ethics (“Code”) governs the general commitment by BlackRock, Inc. and its subsidiaries (collectively, “BlackRock”) to conduct its business activities in the highest ethical and professional manner and to put client interests first. BlackRock’s reputation for integrity is one of its most important assets and is instrumental to its business success. While this Code covers a wide range of business activities, practices, and procedures, it does not cover every issue that may arise in the course of BlackRock’s many business activities. Rather, it sets out basic principles designed to guide BlackRock’s employees and directors. Consultants and contingent, contract, or temporary workers are expected to comply with the principles of this Code and policies applicable to their location, function, and status.

Every BlackRock employee and director — whatever his or her position — is responsible for upholding high ethical and professional standards and must seek to avoid even the appearance of improper behavior. Any violation of this Code may result in disciplinary action to the extent permitted by applicable law. Any employee who becomes aware of an actual or potential violation of this Code or other BlackRock policy is required to follow the reporting process described in the [Global Policy for Reporting Illegal or Unethical Conduct](#) and in Section 10 below.

2. Compliance with Laws and Regulations

BlackRock’s global business activities are subject to extensive governmental regulation and oversight and it is critical that BlackRock and its employees comply with applicable laws, rules, and regulations, including those relating to insider trading. Employees are expected to refer to the guidance contained in the [Compliance Manual](#) and the various policies and procedures contained in the [Policy Library](#) in compliance with these laws and regulations and to seek advice from supervisors and Legal & Compliance (“L&C”) as necessary.

3. Conflicts of Interest

Conflicts of interest may arise when a person’s private interest interferes, or appears to interfere, with the interests of BlackRock, or where the interests of an employee or the firm are inconsistent with those of a client or potential client, resulting in the risk of damage to the interests of BlackRock or one or more of its clients. A conflict may arise, for example, if an employee takes an action or has an interest that could appear to make it difficult for the employee to conduct the employee’s responsibilities to BlackRock and/or the client objectively and effectively, or if such employee or any person associated with the employee, including but not limited to members of the employee’s family or household, receives an improper personal benefit, such as money or a loan, as a result of the individual’s position at BlackRock. BlackRock has adopted policies, procedures, and controls designed to manage conflicts of interest, including the [Global Conflicts of Interest Policy](#) and the [Global Outside Activity Policy](#). Employees are required to comply with these and other compliance related policies, procedures, and controls and to help mitigate potential conflicts of interest by adhering to the following standard of conduct:

- Act solely in the best interests of clients;
- Uphold BlackRock’s high ethical and professional standards;
- Identify, report, and manage actual, apparent, or potential conflicts of interest; and
- Make full and fair disclosure of any conflicts of interests, as may be required.

Public



- inducing disclosure of proprietary information or trade secret information by past or present employees of other companies; and
- taking unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other intentional unfair-dealing practice.

9. Confidentiality

BlackRock's employees and directors have an obligation of confidentiality to BlackRock and its clients. Confidential information includes non-public information that might be of use to competitors or that might harm BlackRock or its clients, if disclosed, and non-public information that clients and other parties have entrusted to BlackRock. The obligation to preserve confidential information continues even after employment ends. This obligation does not limit employees from reporting possible violations of law or regulation to a regulator or from making disclosures under whistleblower provisions, as discussed in greater detail in the [Global Policy for Reporting Illegal or Unethical Conduct](#) and relevant confidentiality policies and agreements.

10. Reporting Any Illegal or Unethical Behavior

Every employee is required to report any illegal or unethical conduct about which they become aware, including those concerning accounting or auditing matters. Employees may report concerns to L&C by contacting a Managing Director in L&C directly or by contacting the Business Integrity Hotline, contact details for which are available via the intranet homepage. BlackRock will not retaliate or discriminate against any employee because of a good faith report. Employees have the right to report directly to a regulator and may do so anonymously; employees may provide protected disclosures under whistleblower laws and cooperate voluntarily with regulators, in each case without fear of retaliation by BlackRock. Please consult the [Global Policy for Reporting Illegal or Unethical Conduct](#) and local compliance manuals for additional detail.

11. Protection and Proper Use of BlackRock Assets

Employees and directors should make every effort to protect BlackRock's assets and use them efficiently. This obligation extends to BlackRock's proprietary information, including intellectual property such as trade secrets, patents, trademarks, and copyrights, as well as business, marketing and service plans, engineering and manufacturing ideas, systems, software programs, designs, databases, records, salary information, and any unpublished financial data and reports. Unauthorized use or distribution of proprietary information constitutes a violation of BlackRock policy and could result in civil and/or criminal penalties. Employees should refer to the [Intellectual Property Policy](#) and the [Corporate Information Security and Acceptable Use of Technology Policy](#) for additional information on the obligation to protect BlackRock's property.

12. Bribery and Corruption

BlackRock employees and directors are prohibited from making payments or offering or giving anything of value, directly or indirectly, to public officials of any country, or to persons in the private sector, if the intent is to influence such persons to perform (or reward them for performing) a relevant function or activity improperly or to obtain or retain business or an advantage in the course of business conduct.

Employees should refer to the [Global Anti-Bribery and Corruption Policy](#) for additional information.

13. Equal Employment Opportunity and Harassment

The diversity of BlackRock's employees is a tremendous asset. BlackRock is firmly committed to providing equal opportunity in all aspects of employment and will not tolerate any illegal discrimination or harassment of any kind. In particular, it is BlackRock's policy to afford equal opportunity to all qualified applicants and existing employees without regard to race, ethnicity, religion, color, national origin, sex, pregnancy status, pregnancy-related medical conditions, gender, gender identity or expression, sexual orientation, age, ancestry, physical or mental disability, familial or marital status, political affiliation, citizenship status, genetic information, or protected veteran or military status or any other basis that would be in violation of any applicable ordinance or law. In addition, BlackRock will not tolerate harassment, bias, or other inappropriate

Public

conduct on the basis of any of the above protected categories. BlackRock's [Global Diversity, Equity and Inclusion Guidelines](#), which outline the firm's Equal Employment Opportunity policies, and other employment policies are available in the [Policy Library](#).

14. Recordkeeping

BlackRock requires honest and accurate recording and reporting of information in order to conduct its business and to make responsible business decisions. BlackRock, as a financial services provider and a public company, is subject to extensive regulations regarding maintenance and retention of books and records. BlackRock's books, records, accounts, and financial statements must be maintained in reasonable detail, must appropriately reflect BlackRock's transactions, and must conform both to applicable legal requirements and to BlackRock's system of internal controls. Please consult the [Global Records Management Policy](#) and other record retention policies, available in the [Policy Library](#), for additional information.

15. Waivers of the Code

Any waiver of this Code for an executive officer or director must be made only by BlackRock's Board of Directors or a Board committee and must be promptly disclosed as required by law or stock exchange regulation.



February 22, 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

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the letter of Marc Gerber on behalf of BlackRock, Inc. (the “Company”) dated January 24, 2022, 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 BLACKROCK, INC.’S CLAIMS

Our Proposal asks the Board of Directors to:

issue a public report detailing the potential risks associated with omitting “viewpoint” and “ideology” from its written equal employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information.

The Company seeks to exclude this Proposal pursuant to Rule 14a-8(i)(7), claiming that the Proposal deals with matters relating to the ordinary business operations of the Company; and Rule 14a-8(i)(10), claiming that it has substantially implemented the Proposal. Neither claim is correct.

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. Our Proposal does not implicate the ordinary business operations of the company, and/or it is a matter of substantial policy concern so that it transcends ordinary-business analysis.

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

The Company seeks permission to omit our Proposal on the ground of 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.”¹

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.’²

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 focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals*

¹ 17 C.F.R. § 240.14a-8(i)(7).

² *Staff Legal Bulletin* No. 14A (July 12, 2002) (quoting *Amendments to Rules on Shareholder Proposals, Exchange Act Release* No. 40018 (May 21, 1998), available at <https://www.sec.gov/rules/final/34-40018.htm>) (last accessed Jan. 3, 2022).

*would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.*³

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.⁴ 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.⁵ 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.⁶ 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.⁷ Additional Staff guidance appeared again in the fall of 2019 (“SLB 14K”), wherein Staff underscored the value of the 2018 “delta analysis.”⁸

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.”⁹ 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

³ *Amendments to Rules on Shareholder Proposals*, Exchange Act Release No. 40018 (May 21, 1998) (emphasis added) (“*Amendments to Rules*”), available at <https://www.sec.gov/rules/final/34-40018.htm> (last accessed Jan. 3, 2022).

⁴ 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.”).

⁵ 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.”).

⁶ See *Staff Legal Bulletin* No. 14J (Oct. 23, 2018), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals> (last accessed Jan. 3, 2022).

⁷ *Id.*

⁸ See *Staff Legal Bulletin* No. 14K (Oct. 16, 2019), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals> (last accessed Jan. 3, 2022).

⁹ See *Staff Legal Bulletin* No. 14L (Nov. 3, 2021), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals> (last accessed Jan. 3, 2022).

was prospectively realigning its “approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.”¹⁰ 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.¹¹

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.”¹² Our proposal raises exactly such an issue: whether current Company policies and practices raise risks as a result of a discriminatory workplace.

B. The Proposal does not relate to the management of the Company’s workforce or otherwise implicate the Company’s ordinary business, and/or raises matters of significant policy impact so as to exempt it from omission on such grounds.

Our Proposal requests the Company to “issue a public report detailing the potential risks associated with omitting ‘viewpoint’ and ‘ideology’ from its written equal employment opportunity (EEO) policy.” Nowhere, despite the Company’s claims to the contrary, does the Proposal seek to manage the Company’s workforce. It instead seeks the issuance of a report gauging the risk of not prohibiting discrimination – a request that has been consistently recognized by the Staff as an appropriate request that either does not inappropriately interfere with workforce management or implicates such important social policy issues as to transcend that concern. *See, e.g., Levi Strauss & Co.* (avail. Feb. 10, 2022), *The Walt Disney Co.* (avail. January 19, 2022), *Amazon.com, Inc.* (avail. April 7, 2021).

These decisions are manifestly correct. If following the issuance of the report the Company elects to change certain practices, that is a wholly separate matter left up to the Company. The mere practice of ascertaining information on the risk of the Company’s failure to protect its workforce against discrimination does not seek to direct business operations themselves, but rather seeks a review of the impacts or effects thereof.

¹⁰ *Id.*

¹¹ *See Staff Legal Bulletin No. 14L* (Nov. 3, 2021), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals> (last accessed Jan. 3, 2022).

¹² *Id.*

The precedent cited by the company in favor of its proposition does not aid it. In support of its claim that our Proposal seeks inappropriately to manage the Company's workforce, it cites *PetSmart, Inc.* (avail. Mar. 24, 2011), *CIGNA Corp.* (avail. Feb. 23, 2011), and *Capital One Financial Corp.* (avail. Feb. 3, 2005). But even in citing these cases the Company itself underscores their inapplicability. Inappropriate management was found in *PetSmart* because the Proposal sought to have the board demand that suppliers certify certain behaviors. In *CIGNA*, the Proposal sought specific details about expense management. In *Capital One* it asked for specific disclosures about details of workforce management. We ask for none of these specific disclosures and make no specific demands. We just ask for a risk-management review of a failure to forbid discrimination – a report of just the sort found non-omissible in *Levi Strauss*, *Disney Co.*, *Amazon.com* and *CorVel Corp.* (avail. June 5, 2019) (the proposal in this proceeding being the one upon which our Proposal here was explicitly modeled – indistinguishable except for the type of discrimination on which the proposals focus) and many other proceedings in recent years.

Most importantly, all of this precedent arose before the significant shift in Staff review policy embodied in SLB 14L. That bulletin is particularly relevant here. In it, the Staff particularly 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,”¹³ thus underscoring the special propriety of “raising human capital management issues with broad societal impact.”

That is exactly what our Proposal does – and in fact all that our proposal does. We seek an audit and report that will let shareholders know whether and to what extent the Company has recognized the importance to the Company of including a wide diversity of opinion and viewpoint, and of protecting employees from discrimination because of their willingness to express unpopular (to company management) viewpoints at the Company – the most valuable viewpoints exactly because they are non-dominant, and therefore insightful and challenging – and protecting their freedom to hold them outside of the Company without retaliation or harassment.

The Company rightly notes that our Proposal is essentially identical to proposals that we submitted before the changes wrought by SLB 14L, and that before those changes our proposal was considered “not [to] transcend the [c]ompany's ordinary business operations.” *Apple Inc.* (Dec. 20, 2019, *reconsid. denied* Jan. 17, 2020). But the analysis under which that and similar determinations were made has been swept away by SLB 14L.

Whatever the merit of that decision then, it surely cannot stand under the rules established by SLB 14L. As we have noted, SLB 14L especially privileges proposals that raise concerns of “human capital management issues with a broad societal impact,”¹⁴ while Rule 14a-8(i)(7)

¹³ *Id.*

¹⁴ *Id.*

challenges have been particularly disfavored when brought against proposals that raise “significant discrimination matters” for more than 20 years.¹⁵ That’s exactly what, and only what, our Proposal raises. The Company does not argue, because it could not, that discrimination on the basis of race or sex or sexual orientation – whether for or against groups that companies honor with the label “diverse” – implicates substantial policy concerns while viewpoint discrimination does not. And it does not, because it cannot, argue that viewpoint discrimination is not now an issue of significant public concern; in fact, it is an issue of overwhelming concern for the approximately half of the country experiencing that discrimination throughout their lives.

The Company, then, has offered no Rule 14a-8(i)(7) grounds on which the Staff may omit our Proposal, and there are none. The only distinction between our Proposal and the proposals in *Levi Strauss*, *Disney Co.*, *Amazon.com*, and *CorVel* is that our Proposal focuses on discrimination on the basis of viewpoint while those earlier proposals focused on discrimination on other, also pernicious, grounds. The Staff cannot allow or refuse to allow omission of materially indistinguishable proposals on the grounds that the Staff itself dislikes discrimination on some grounds, but doesn’t mind that same discrimination on other grounds. And as there is no other way to distinguish these proposals, our Proposal is not omissible.

Part II. 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 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

¹⁵ *Amendments to Rules, supra* note 3.

demonstrated that in the matter of reporting about the risks of discrimination it is not sufficient for exclusion under the substantial-implementation standard if companies have acted against *some* discrimination, but not the discrimination at issue in the proposal.

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

The Company has failed to substantially implement our Proposal. More than that, it not only knows that it has so failed, but implicitly admitted it in its no-action request.

Our Proposal seeks a report considering the risks that arise from BlackRock's failure to protect against viewpoint and ideology discrimination in its EEO policy. BlackRock mischaracterizes and narrows this request, asserting that the focus of our proposal is instead discrimination on the basis of "political ideology." But even this minimizing characterization reveals the yawning gap – which the Company has itself admitted – between what it has done and what our Proposal seeks, even under its own incomplete reading of that Proposal.

BlackRock's claim substantially to have implemented our Proposal rests exclusively on the fact that, at various places, including its EEO policy, the Company prohibits discrimination on the basis of "political affiliation." But this doesn't even come close to prohibiting discrimination against "political ideology" alone, much less "viewpoint and ideology," which is, after all, the discrimination about which we seek a report.

The distinctions are easily seen by considering a hypothetical. Posit a BlackRock employee who expresses at work, in a meeting at which the invited employees have been asked for input, an opinion that differs from one or more of CEO Larry Fink's many unique contentions – such as, for instance, his claim that his aggressive push to force a menu of highly partisan social and environmental policies on American corporations is non-political, non-partisan, and in fact not even related to social policy, as Fink in fact asserted in his most recent Letter to CEOs.¹⁶ Fink objects to being challenged in his claim that his agenda is non-partisan, despite having asked for input, and so the employee finds himself faced with dismissal. The employee challenges the dismissal, arguing that "BlackRock protects against discrimination on the basis of political affiliation, we were asked to contribute, and lots of employees did contribute. I was just the only one to dare to point out that Fink's assertion is demonstrably untrue, as everyone on my side of the political divide can attest. You're improperly singling me out." The response, under current BlackRock policy, would be that "we're not firing you because you're a registered Republican.

¹⁶ See Larry Fink, 2022 Letter to CEOs (Jan. 18, 2022), available at <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter> (last accessed Feb. 10, 2022).

We're firing you because you expressed an unapproved opinion. We only protect against political *affiliation* discrimination."

Protection against discrimination on the basis of political affiliation, then, simply does not meaningfully implement a protection against discrimination on the basis of political ideology, far less "viewpoint and ideology," and so achieve the protection that BlackRock, by the evidence of Fink's own pronouncements, so sorely needs. But the inclusion of protection against political-affiliation discrimination also does not fulfill the guidelines and essential purpose of our Proposal because it doesn't include the risk-report portion of our Proposal's request. We think that it's vital that BlackRock take a hard look at itself and at the risks of reputational, regulatory, litigational, legislative and myriad other types of harm it runs by failing to protect against viewpoint and ideology discrimination. Companies need strong and fulsome viewpoint diversity to be successful and to avoid the type of potentially serious errors that can come from a lack of viewpoint diversity. BlackRock in particular appears in need of this realization, a realization that the review and report we seek might – in BlackRock's entire discretion – foster.

None of the Company's precedent in support of its claim that it has already substantially implemented our Proposal is relevant, because in each of those proceedings the companies actually had substantially performed. Here, in contrast, the Company has admitted that our Proposal is focused on (at least) political ideology non-discrimination (though, as we have noted, this is an incomplete characterization), while its protections extend only to political affiliation, which is a largely empty protection that simply means "we won't discriminate according to party registration." If the Company already protected against discrimination on the basis of political *ideology* it might at least have a coherent claim to have substantially implemented, but here, by its own implicit admission, it both has not and knows it has not substantially implemented.

We note as an aside that protections against viewpoint or ideology discrimination would not result in turning American corporations into talking shops or dens of controversy. They would only require companies to apply the same rules to employees regardless of their intellectual vantage point. So, for instance, a company could establish a rule: "No one will talk about politics or social issues at work, and the company will make no pronouncements about political or social issues." Or it might permit robust general discussion, but establish a rule that "all employees will be respectful of all other employees and refrain from negative characterizations of other employees or of any racial, cultural, sex or sexual-orientation, or other affinity groups." It would be hoped that all business-relevant communications from all viewpoints would be encouraged – but that is to be hoped already, and is manifestly not occurring at many companies. The fundamental point, though, is that protections against viewpoint discrimination don't tie a company's hands in any way – except the profoundly important way of not constraining the companies' prospects and fundamental moral propriety by imposing the c-suite's personal policy preferences companywide.

Conclusion

Given the precedent in *Levi Strauss*, *Disney Co.*, *Amazon.com* and *CorVel Corp.*, as well as the new guidance offered by SLB 14L, the Company's proposed grounds for exclusion on the basis of the ordinary business exception fall short. Our Proposal seeks only a report about the risks associated with a failure to prohibit discrimination, not in any way the management of the Company, and the Staff has unquestionably declared discrimination against employees to be of significant social policy interest.

Additionally, the Company has itself admitted that we seek a report about discrimination on the basis of (at very least) political *ideology*, while it protects only against discrimination on the basis of political *affiliation*. As we have demonstrated, this only stops the Company from discriminating against employees on the basis of how they register to vote, which not only fails to substantially implement our proposal but only goes about five percent of the way.

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 the Company's 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 sshepard@nationalcenter.org.

Sincerely,



Scott Shepard
Director
Free Enterprise Project
National Center for Public Policy Research

cc: Marc Gerber (marc.gerber@skadden.com)

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BY EMAIL (shareholderproposals@sec.gov)

March 9, 2022

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

RE: BlackRock Inc. – 2022 Annual Meeting
Supplement to Letter dated January 24, 2022
Relating to Shareholder Proposal of the
National Center for Public Policy Research

Ladies and Gentlemen:

We refer to our letter dated January 24, 2022 (the “No-Action Request”), submitted on behalf of our client, BlackRock, Inc., a Delaware corporation (“BlackRock”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with BlackRock’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) may be excluded from the proxy materials to be distributed by BlackRock in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”).

This letter is in response to the letter to the Staff, dated February 22, 2022, submitted by the Proponent (the “Proponent’s Letter”), and supplements the

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

The Proponent's Letter misinterprets the Staff's guidance and precedent with regard to the ordinary business exclusion. In particular, the Proponent's Letter asserts that the Proposal is comparable to other proposals where the Staff denied requests for relief under the ordinary business exclusion. However, this comparison is severely misplaced. The examples cited in the Proponent's Letter relate to racial discrimination and gender and sexual orientation discrimination and were determined by the Staff to transcend ordinary business matters.¹

In contrast, the Proponent does not cite any instances where the Staff has determined the issue raised by the Proposal transcends ordinary business matters for purposes of Rule 14a-8(i)(7). In fact, and as explained in the No-Action Request, the Staff has consistently permitted the exclusion of proposals raising these issues as relating to ordinary business. The Proponent's Letter attempts to argue that recent Staff decisions reiterating this view should be reversed due to the publication of Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), which rescinded certain Staff guidance from 2017 through 2019 relating to the ordinary business exclusion. The Staff's position on the matters raised by the Proposal, however, pre-dates the rescinded guidance. For example, in *Costco Wholesale Corporation* (Nov. 14, 2014), the Staff permitted the exclusion of a proposal requesting the board adopt a company-wide policy to include an anti-discrimination policy in its company-wide code of conduct "that protects employees' human right to engage in the political process, civic activities and government of his or her country without retaliation." In its no-action response letter, the Staff noted that the proposal related to the company's ordinary business operations. Accordingly, the publication of SLB 14L does not alter this long-standing position and the Proposal should be excluded from

¹ See, e.g., *Levi Strauss & Co.* (Feb. 10, 2022) (declining to permit exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board commission a racial-equity audit analyzing the company's impacts on civil rights and non-discrimination); *The Walt Disney Co.* (Jan. 19, 2022) (declining to permit exclusion under Rule 14a-8(i)(7) of a proposal requesting that 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); *Amazon.com* (Apr. 7, 2021) (declining to permit exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board 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); *CorVel Corporation* (June 5, 2019) (declining to permit exclusion under Rule 14a-8(i)(7) of a proposal requesting the company issue a public report detailing the potential risks associated with omitting "sexual orientation" and "gender identity" from its written equal employment opportunity policy).

BlackRock's 2022 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

The Proponent's Letter also misinterprets the Staff's view on the substantial implementation basis for exclusion. In this regard, the Proponent's Letter argues that the Staff should not permit exclusion of the Proposal under Rule 14a-8(i)(10) because BlackRock's policies and procedures protect against "political affiliation" discrimination and not "political ideology" or "viewpoint and ideology" discrimination. This view has no basis under Rule 14a-8(i)(10) and would be tantamount to a requirement that a proposal be "fully effected," which was the very standard the Commission rejected in adopting the "substantial implementation" standard in Exchange Act Release No. 34-20091 (Aug. 16, 1983). In addition, as demonstrated in countless no-action determinations, the Staff consistently has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objectives of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. As explained in the No-Action Request, BlackRock has substantially implemented the Proposal because its EEO policy includes a non-exclusive list of protected classifications covered by applicable law which already includes "political affiliation", and moreover, would also protect "political ideology" where it is protected under applicable ordinance or law. Therefore, the Proposal is excludable under Rule 14a-8(i)(10).

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of BlackRock's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

cc: R. Andrew Dickson, III
Managing Director & Corporate Secretary
BlackRock, Inc.

Scott Shepard
National Center for Public Policy Research



March 18, 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

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the supplemental letter of Marc Gerber on behalf of BlackRock, Inc. (the “Company”) dated March 9, 2022, 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.

SUPPLEMENTAL RESPONSE TO BLACKROCK, INC.’S CLAIMS

The Company suggests in its March 9 supplemental letter that discrimination on the basis of race, gender, and sexual orientation implicates substantial policy concerns while “viewpoint” and “ideology” discrimination does not. But as we already explained in our February 22, 2022 reply, SLB 14L especially privileges proposals that raise concerns of “human capital management issues with a broad societal impact,”¹ and Rule 14a-8(i)(7) challenges have been particularly disfavored when brought against proposals that raise “significant discrimination matters” for more than 20 years.² This is exactly what our Proposal raises: a significant discrimination matter.

¹ See *Staff Legal Bulletin* No. 14L (Nov. 3, 2021), available at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals> (last accessed Jan. 3, 2022).

² *Amendments to Rules*, *supra* note 3.

Viewpoint and ideological discrimination is an issue of significant public concern. Polls in recent years demonstrate that individuals holding viewpoints other than liberal often feel discriminated against. For instance, a March 2021 *The Economist/YouGov* poll reveals that 45% of conservatives polled feel that conservatives are discriminated against “a great deal” and 34% of conservatives feel that conservatives are discriminated against “a fair amount;” only 21% feel that conservatives are not discriminated against “much” or “at all.”³ Similarly, in a 2019 Hill-HarrisX survey, “78 percent of GOP respondents said that they believe that conservatives have to deal with discriminatory behavior from other Americans,” with the “plurality of Republicans, 31 percent, sa[y]ing that conservatives face ‘a lot’ of discrimination.”⁴ The same survey found that “just 16 percent of Democrats said that liberals face a lot of discrimination from society.”⁵

Surveys show that these feelings of discrimination are particularly pervasive in certain industries. For example, a 2018 survey of tech workers show that “employees who identify as conservative or very conservative are increasingly uncomfortable at work.”⁶ According to the survey’s results, “[t]wo-thirds or more of respondents who describe themselves as libertarian, conservative or very conservative say they feel less comfortable sharing their ideological views with colleagues.... But only 30 percent of liberals and 14 percent of people who say they are very liberal feel that way.”⁷ Other reporting reveals a bias in academia, wherein faculty search committees are instructed to spare no expense in finding a female or minority candidate for hire while qualified conservative and libertarian candidates have their resumes dismissed.⁸ And a survey conducted by the *Crimson* at Harvard University found that only seven of Harvard’s faculty members identify as “somewhat” or “very” conservative.⁹ “While the University has made a concerted effort across the past decade to promote gender and racial diversity among its faculty, Harvard has not made any explicit attempts to bolster representation from across the ideological spectrum,” reported the campus newspaper.¹⁰

It is therefore undeniable that there is discrimination throughout society against conservatives, libertarians, and anyone else holding viewpoints or ideologies that don’t identify as liberal. The

³ *The Economist/YouGov* Poll, Mar. 20-23, 2021, available at:

<https://docs.cdn.yougov.com/5v6z1pywv7/econTabReport.pdf> (last accessed Mar. 10, 2022).

⁴ The Hill, *Poll: Republicans more likely to see ‘a lot’ of discrimination against conservatives than Democrats see against liberals*, Mar. 8, 2019, available at: <https://thehill.com/hilltv/what-americas-thinking/433259-poll-republicans-more-likely-to-see-a-lot-of-discrimination> (last accessed Mar. 10, 2022).

⁵ *Id.*

⁶ Wired, *Survey Finds Conservatives Feel Out of Place in Silicon Valley*, Feb. 2, 2018, available at:

<https://www.wired.com/story/survey-finds-conservatives-feel-out-of-place-in-silicon-valley/> (last accessed Mar. 11, 2022).

⁷ *Id.*

⁸ National Review, *Yes, Universities Discriminate Against Conservatives*, April 1, 2016, available at:

<https://www.nationalreview.com/corner/yes-universities-discriminate-against-conservative-scholars/> (last accessed Mar. 11, 2022).

⁹ The Harvard Crimson, *‘An Endangered Species’: The Scarcity of Harvard’s Conservative Faculty*, April 9, 2021, available at: <https://www.thecrimson.com/article/2021/4/9/disappearance-conservative-faculty/> (last accessed Mar. 11, 2022).

¹⁰ *Id.*

only distinction then between our Proposal and the proposals in *Levi Strauss*, *Disney Co.*, *Amazon.com*, and *CorVel* – precedent in our February 22 reply letter that the Company continues to allege is misplaced – is that our Proposal focuses on discrimination on the basis of viewpoint and ideology while those earlier proposals focused on discrimination on other, also pernicious, grounds. But as previously noted, the Staff cannot allow or refuse to allow omission of materially indistinguishable proposals on the grounds that the Staff itself dislikes discrimination on some grounds, but doesn't mind that same discrimination on other grounds. BlackRock has provided no basis for a conclusion that viewpoint discrimination is objectively less morally reprehensible, or less risky to the company, than other forms of discrimination the analysis of which the Staff has found non-omissible. This is because it cannot. And as there is no other way to distinguish these proposals, our Proposal is not omissible.

Moreover, if any precedent is misplaced, it is the Company's reliance on *Costco Wholesale Corporation* (avail. Nov. 14, 2014). The Company argues in its supplemental letter that because Staff rejected, in 2014 the proposal in that proceeding "as relating to Costco's ordinary business operations," it must also reject our current Proposal. But in its decision Staff specifically noted that the proposal related to ordinary business operations because "the proposal relates to Costco's policies concerning its employees," which our Proposal does not do.

Our Proposal requests the Company "issue a public report detailing the potential risks associated with omitting 'viewpoint' and 'ideology' from its written equal employment opportunity (EEO) policy." Nothing requires the Company to implement a policy concerning employees. On the other hand, the *Costco* proposal urged the Costco Board to "*adopt, implement and enforce a revised company-wide Code of Conduct* that includes an anti-discrimination policy...." (emphasis added). Unlike the *Costco* proposal, which required the actual adoption, implementation, and enforcement of a company-wide policy, our Proposal simply requires the Company to assess the risk of *not* prohibiting discrimination, which has nothing to do with adopting policies let alone the management of its workforce. Therefore, the Company's claim that because the rejected proposal in *Costco* included an anti-discrimination policy, our Proposal must similarly be rejected is inaccurate and a mischaracterization of the proposals. As such, *Costco* is irrelevant to the Staff's decision.

In its supplemental letter, the Company also claims our February 22, 2022 response misinterprets Rule 14a-8(i)(10) while itself misrepresenting the rule, subsequent precedent, and the import of its own actions. The Company declares that it has substantially implemented our Proposal's call for a study of the effects of viewpoint and ideology discrimination because the Company protects against "political affiliation" discrimination. It suggests that requiring the Company to do more is tantamount to requiring our Proposal be *fully* implemented by the Company.

But we have already demonstrated in this proceeding why that claim is entirely wrong. In making this claim the Company ignores the large performative gap that we have already recounted in detail between protecting against one kind of discrimination (political affiliation) and reporting on the risks of expressly omitting protections against other types of discrimination (viewpoint and ideology) as requested in our Proposal. Not only are these actions not the same

conduct, but the Company's preexisting protections against "political affiliation" discrimination does not come close to satisfactorily addressing our Proposal's *guidelines and its essential objective*, which in this case it to issue a report. *See, e.g., Exelon Corp.* (avail. Feb. 26, 2010) (emphasis added).

Furthermore, the Company's supplemental letter continues to take the same narrow approach that it did in its initial no-action letter by mischaracterizing our Proposal as if it requires the Company to institute a policy that prohibits "viewpoint" and "ideology" discrimination rather than simply requesting a report detailing the potential risks associated with *omitting* these types of discrimination. And even if our Proposal does what the Company pretends it does (require a policy change instead of a report), the Company fails to demonstrate in its supplemental letter how "political affiliation" protection policies extend beyond mere political party registration (as pointed out in our February 22 reply) to include "viewpoint" and "ideological" discrimination.

As previously noted, the inclusion of protection against "political affiliation" discrimination does not fulfill the guidelines and essential purpose of our Proposal because it fails to include the risk-report portion of our Proposal's request. Again, we think that it's vital that the Company take a hard look at itself and at the risks of reputational, regulatory, litigational, legislative and myriad other types of harm it runs by failing to protect against viewpoint and ideology discrimination. Companies need strong and fulsome viewpoint diversity to be successful and to avoid the type of potentially serious errors that can come from a lack of viewpoint and ideological diversity.

The Company's minimal and largely performative prohibition against *affiliation* discrimination is responsive to our concerns in only a faint and largely empty way, for reasons we laid out in our February 22 letter. In its supplemental letter, the Company is arguing, in essence, that getting five percent of the way there should be good enough, and that asking anything more of it would constitute a demand for "full implementation." But a shadowy pretense of implementation simply is not "substantial implementation" for the reasons we have already made entirely clear and which the Company didn't in any way attempt to refute. Were the Staff to agree with the Company here, it would establish the proposition that companies can omit proposals on substantial-implementation grounds simply by enacting a largely empty reform that is vaguely related to the subject matter of the proposal but that accomplishes only a fraction of what the proposal seeks. And it would establish that proposition for all companies, and for all proponents.

Accordingly, given the precedent in *Levi Strauss*, *Disney Co.*, *Amazon.com* and *CorVel Corp.*, as well as the new guidance offered by SLB 14L, the Company's claims that our Proposal fails to include a non-omissible form of discrimination fall short as the Staff has unquestionably declared discrimination against employees to be of significant social policy interest. Moreover, the Company has failed in its burden to demonstrate that it has substantially implemented our Proposal, as nothing in the Company's policy against prohibiting "political affiliation" discrimination fulfills our Proposal's guidelines and essential objective of a report on the omission of protections against viewpoint and ideology discrimination.

Office of the Chief Counsel
Division of Corporation Finance
March 18, 2022
Page 5

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 sshepard@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard
Director
Free Enterprise Project
National Center for Public Policy Research

cc: Marc Gerber (marc.gerber@skadden.com)