



DIVISION OF
CORPORATION FINANCE

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

April 2, 2022

Michael Kaplan
Davis Polk & Wardwell LLP

Re: Meta Platforms, Inc. (the "Company")
Incoming letter dated January 19, 2022

Dear Mr. Kaplan:

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 board commission an audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business.

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

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

January 19, 2022

Re: Shareholder Proposal of the National Center for Public Policy Research Pursuant to Rule 14a-8 of the Securities Exchange Act of 1934

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F. Street, N.E.
Washington, D.C. 20549
Via email: shareholderproposals@sec.gov

Dear Sir or Madam:

On behalf of Meta Platforms, Inc., a Delaware corporation (the “**Company**” or “**Meta**”), and in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, we are filing this letter with respect to the shareholder proposal submitted by the National Center for Public Policy Research (the “**Proponent**”), on December 3, 2021 (the “**Proposal**”) for inclusion in the proxy materials that the Company intends to distribute in connection with its 2022 Annual Meeting of Shareholders (the “**2022 Proxy Materials**”). We hereby request confirmation that the staff of the Office of Chief Counsel (the “**Staff**”) will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from its 2022 Proxy Materials.

Pursuant to Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission (the “**Commission**”) before the Company files its definitive 2022 Proxy Materials. Pursuant to Staff Legal Bulletin No. 14D (CF), *Shareholder Proposals* (Nov. 7, 2008), question C, we have submitted this letter to the Commission via email to shareholderproposals@sec.gov.

Pursuant to Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company’s intention to omit the Proposal from its 2022 Proxy Materials. This letter constitutes the Company’s statement of the reasons that it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

A copy of the Proposal is attached to this letter as Exhibit A.

The Proposal sets forth the following resolution:

RESOLVED:

Shareholders of Facebook/Meta Platforms Inc. (“the Company”) request that the Board of Directors commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public interest litigation groups, employees and other stakeholders – of a wide spectrum of viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

While the Company is committed to civil rights, as noted below, the Company believes the Proposal should be excluded from its 2022 Proxy Materials for the reasons discussed below.

Statement of Reasons to Exclude

The Proposal May Be Excluded Pursuant To 14a-8(i)(10) Because It Has Been Substantially Implemented And Its Practices, Policies And Procedures Compare Favorably To The Proposal.

Rule 14a-(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission has stated that “substantial” implementation under the rule does not require implementation in full or exactly as presented by the proponent. *See Exchange Act Release No. 34-40018* (May 21, 1998, n.30). The Staff has provided no-action relief under Rule 14-8(i)(10) when a company has substantially implemented and therefore satisfied the “essential objective” of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. *See Exxon Mobil Corporation* (March 20, 2020) (proposal requesting that the Company issue a report describing how it will reduce its contribution to climate change and align with the Paris Agreement where the requested information was available in a public report from the Company); *PPG Industries* (January 16, 2020) (proposal requesting that the board of directors prepare a report on the company’s processes for “implementing human rights commitments within company-owned operations and through business relationships” where the requested information was already disclosed in the company’s global code of ethics, global supplier code of conduct, supplier sustainability policy, and sustainability report and other disclosures that addressed the requested information); *Mondelēz International, Inc.* (March 7, 2014) (proposal requesting a report on the company’s process for identifying and analyzing potential and actual human rights risks of the company’s operations and supply chain where the company had achieved the essential objective of the proposal by publicly disclosing its risk-management processes). “[A] determination that the company has substantially implemented the proposal depends upon whether [the Company’s] particular policies, practices, and procedures compare favorably with the guidelines of the proposal.” *See Texaco, Inc.* (March 28, 1991) (permitting exclusion on substantial implementation grounds of proposal requesting that the company adopt the Valdez Principles where the company had already adopted policies, practices and procedures regarding the environment).

The Proposal asks the Company to produce and publish a report on the outcomes of a civil rights and non-discrimination audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The supporting statement specifically references “workplace and employment practices”, and states that “[a]ll agree that employee success should be fostered and that no employees should face discrimination.” The Proposal’s “essential objective” is for the Company to issue a report on the impact of civil rights and discrimination on its workplace and employment practices and efforts taken by the Company to prevent any such discrimination. The Company has already taken actions and made extensive disclosures that address the essential objective

of the Proposal, including the Company’s civil rights audit (the “**Civil Rights Audit**”), which began in 2018 and was completed in 2020. As described in more detail below, the Company published the results of the Civil Rights Audit and continues to monitor and report on its progress in these areas, demonstrating that the Company has substantially implemented the Proposal by satisfying its essential objective, and thus the Proposal is excludable under Rule 14a-8(i)(10).

The table below succinctly demonstrates how the Company’s 2020 Civil Rights Audit – Final Report (“**2020 Final Report**”) and other public disclosures by the Company are responsive to the Proposal’s request. A detailed discussion of the disclosures contained in the 2020 Final Report that address the essential objective of the Proposal is set forth following the summary table.

Proposal Request	Relevant Reporting
An audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business.	Facebook’s Civil Rights Audit – 2019 Progress Report ¹ Facebook’s Civil Rights Audit – 2020 Final Report ²
The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public interest litigation groups, employees and other stakeholders – of a wide spectrum of viewpoints and perspectives	Laura Murphy, a highly respected civil rights and civil liberties leader, guided the audit and spoke with more than 100 civil rights organizations. The audit was supported by Megan Cacace, a civil rights attorney and partner at Relman Colfax PLLC at the time of the audit.
A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website	Facebook’s Civil Rights Audit – 2019 Progress Report ³ Facebook’s Civil Rights Audit – 2020 Final Report ⁴ An Update on Our Civil Rights Audit ⁵ Facebook Diversity Update: Increasing Representation in Our Workforce and Supporting Minority-Owned Businesses ⁶ Following Through on Meta’s Civil Rights Audit Progress ⁷ Race Data Measurement and Meta’s Commitment to Fair and Inclusive Products ⁸

¹ https://about.fb.com/wp-content/uploads/2019/06/civilrightaudit_final.pdf
² <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>
³ https://about.fb.com/wp-content/uploads/2019/06/civilrightaudit_final.pdf
⁴ <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>
⁵ <https://about.fb.com/news/2018/12/civil-rights-audit/>
⁶ <https://about.fb.com/news/2021/07/facebook-diversity-report-2021/>
⁷ <https://about.fb.com/news/2021/11/civil-rights-audit-progress-report/>
⁸ <https://about.fb.com/news/2021/11/inclusive-products-through-race-data-measurement/>

	Meta's Progress on Civil Rights Audit Commitments ⁹
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In May 2018, the Company undertook a civil rights audit and appointed Laura Murphy, a highly respected civil rights and civil liberties leader, to guide the audit. The 2020 Final Report and the subsequent progress report on the recommendations from the Civil Rights Audit—Meta's Progress on Civil Rights Audit Commitments ("**Progress Report**"), show that the Company acknowledges the importance of civil rights and non-discrimination, including the impact on workplace and employment practices. The 2020 Final Report also recognizes the impact on the Company's business, stating that there is a lack of representation from Latin and African American staff and concerns about the underrepresented minorities employee experiences have also been heightened following "public memos and posts from current or former employees alleging experiences with bias, exclusion, and/or microaggressions." It also mentions a public memo by The House Committee on Financial Services, issued in advance of its 2019 hearing on the Company, in which it highlighted the Company's slow progress with diversity metrics. The Company has made the results of this audit public on its website, thus substantially fulfilling the objective of the Proposal.

The Civil Rights Audit addresses the particular topics requested in the Proposal as the audit covered seven substantive issue areas, and included a review of the Company's "diversity and inclusion strategy, programs and practices." The 2020 Final Report explains the three main components of the Company's "Diversity and Inclusion Programs & Systems," and also outlines the Company's new changes in improving diversity and inclusion, which includes elevating the role of the Chief Diversity Officer to report directly to the Chief Operating Officer, and goals to increase the percentage of personnel from underrepresented communities. In the 2020 Final Report, the third-party auditors provide detailed observations and recommendations for enhancing the Company's efforts regarding civil rights and non-discrimination. Based on the 2020 Final Report alone, the Company believes it has already substantially implemented the Proposal.

The Company's Civil Rights Team—established in 2020 as a result of the Civil Rights Audit—prepared the Progress Report to disclose the status of the recommendations and actions taken as a result of the Civil Rights Audit. The report represents the next phase of the Company's work to enhance protections for marginalized communities and demonstrates its commitment to continuing its important work in moving towards equity across all of the Company's technologies. The Civil Rights Audit provided the Company with an initial roadmap, and the Civil Rights Team is continuing its efforts to help ensure responsiveness to the Civil Rights Audit and considerations of the civil rights issues in the ongoing management of the Company's operations.

* * *

For the reasons set forth above, we believe that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10). The Company respectfully requests the Staff's concurrence with its decision to exclude the Proposal from its 2022 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the Commission if it so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4111 if we may be of any further assistance in this matter.

⁹ <https://about.fb.com/wp-content/uploads/2021/11/Metas-Progress-on-Civil-Rights-Audit-Commitments.pdf>

Respectfully yours,

A handwritten signature in black ink, appearing to read 'MK' or similar initials, written in a cursive style.

Michael Kaplan

Attachment: Exhibit A

cc: Scott Shepard, National Center for Public Policy Research
Katherine R. Kelly, Vice President, Deputy General Counsel and Secretary,
Meta Platforms, Inc.

Proposal

Civil Rights and Non-Discrimination Audit Proposal

Resolved: Shareholders of Facebook/Meta Platforms Inc. (“the **Company**”) request that the Board of Directors commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees and other stakeholders - of a wide spectrum of viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

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

Concern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial/social equity,” which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit.¹⁰ Where adopted, however, such programs raise significant objection, including concern that, e.g., “anti-racist” programs are themselves deeply racist and otherwise discriminatory.¹¹

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer and CVS.¹² Facebook, meanwhile is awash in claims that it discriminates on grounds akin to the policies and positions noted above.¹³

This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed “non-diverse,” In developing the audit and report, the Company should consult civil-rights and public-interest law groups - but it must not compound error with bias by relying only on left-leaning organizations. Rather, it should consult groups across the spectrum of viewpoints. This includes right-leaning civil-rights groups representing people of color, such as the Woodson Center¹⁴ and Project 21,¹⁵ and groups that defend the rights and liberties of *all* Americans, not merely the ones that many companies label “diverse.” All Americans have civil rights; to behave otherwise is to invite disaster.

¹⁰ <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/idx3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>; https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom_108785_58

¹¹ <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>

¹² <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ>

¹³ See, e.g., <https://reason.com/volokh/2021/07/06/facebook-will-now-ban-criticism-of-concepts-institutions-ideas-practices-or-beliefs-when-they-risk-harm-intimidation-or-discrimination-against-religious-national-or-other-groups/>; https://www.theepochtimes.com/mkt_morningbrief/pretty-weird-facebook-starts-sending-extremist-content-warnings-to-users_3883194.html?utr_source=morningbriefnoe&utm_medium=email2&utm_campaign=mb-2021-07-02&mktids=ab50c2b873197c4b77b7efe5bebafeed&est=mgunXhP1%2BnBaVebX6toJeMr1%2BkqUSWtcuO8aKjZ3TbDj5a7iS0S36O3CXW19GsVMLpYsAAng%3D%3D

¹⁴ <https://woodsoncenter.org>

¹⁵ <https://nationalcenter.org/project-21/>

Similarly, when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too many employers have established company stances that themselves chill contributions from employees who disagree with the company's asserted positions, and then have pretended that the employees who have been empowered by the companies' partisan positioning represent the true and only voice of all employees. This by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal.



February 15, 2022

Via email: shareholderproposals@sec.gov

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

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 Michael Kaplan on behalf of Meta Platforms, Inc. (the “Company”) dated January 19, 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 META PLATFORMS, INC.’S CLAIMS

Our Proposal asks the Board of Directors to “commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business.” In the Board’s discretion, the audit may be conducted by an “independent and unbiased third party” and should also include a “wide spectrum of viewpoints and perspectives.” A report of such audit should be published on the Company’s website.

The Company asserts that it has already substantially implemented our Proposal by conducting its 2020 Civil Rights Audit (“Audit”) and publishing the 2020 Final Report on the Audit (“Final Report”) and related documents on its website. The Company therefore asserts that our Proposal can be excluded under Rule 14a-8(i)(10). But the Final Report is a document that establishes that the Company engages in all of the risky activities at which our Proposal explicitly asks the Company to look, but fails in any way to do any of the analysis we seek. The Final Report and

other documents listed by the Company in fact demonstrates why our Proposal is so vital for the company to undertake.

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.

The Company cited only the resolution of our Proposal in order to allow it even the slightest pretense that it has already substantially implemented our Proposal. However, should the Company have included the whole of our Proposal in its analysis, it would have been forced to admit that the type of discrimination our Proposal seeks to prevent is the very type of behavior elucidated by the reporting it claims substantially implements it. This fails, because all Meta employees deserve protection against discrimination, a fact that the Company has studiously ignored and to which it has never paid the slightest attention.

The entirety of our Proposal states:

Civil Rights and Non-Discrimination Audit Proposal

Resolved: Shareholders of Facebook/Meta Platforms Inc. (“the Company”) request that the Board of Directors commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees and other stakeholders – of a wide spectrum of viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

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

Concern stretches across the ideological spectrum. Some have pressured companies to adopt “anti-racism” programs that seek to establish “racial/social equity,” which appears to mean the distribution of pay and authority on the basis of race, sex,

orientation and ethnic categories rather than by merit.¹ Where adopted, however, such programs raise significant objection, including concern that, e.g., “anti-racist” programs are themselves deeply racist and otherwise discriminatory.²

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer and CVS.³ Facebook, meanwhile is awash in claims that it discriminates on grounds akin to the policies and positions noted above.⁴

This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed “non-diverse,” then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

In developing the audit and report, the Company should consult civil-rights and public-interest law groups – but it must not compound error with bias by relying only on left-leaning organizations. Rather, it should consult groups across the spectrum of viewpoints. This includes right-leaning civil-rights groups representing people of color, such as the Woodson Center⁵ and Project 21,⁶ and groups that defend the rights and liberties of all Americans, not merely the ones that many

¹ <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/ndx3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyourownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>; https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58.

² <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>

³ <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ>

⁴ See, e.g., <https://reason.com/volokh/2021/07/06/facebook-will-now-ban-criticism-of-concepts-institutions-ideas-practices-or-beliefs-when-they-risk-harm-intimidation-or-discrimination-against-religious-national-or-other-groups/>; https://www.theepochtimes.com/mkt_morningbrief/pretty-weird-facebook-starts-sending-extremist-content-warnings-to-users_3883194.html?utm_source=morningbriefnoe&utm_medium=email2&utm_campaign=mb-2021-07-02&mktids=ab50c2b873197c4b77b7efe5bebafeed&est=mgunXhPI%2BnBaVeubX6toJeMr1%2BkqUSWtcuO8aKjZ3TbDj5a07iS0S36O3CXW19GsVMLpYsAAng%3D%3D

⁵ <https://woodsoncenter.org/>

⁶ <https://nationalcenter.org/project-21/>

companies label “diverse.” All Americans have civil rights; to behave otherwise is to invite disaster.

Similarly, when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too many employers have established company stances that themselves chill contributions from employees who disagree with the company’s asserted positions, and then have pretended that the employees who have been empowered by the companies’ partisan positioning represent the true and only voice of all employees. This by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal.

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 most of the guidelines of a proposal and the proposal’s essential purpose, the Staff has concurred that the proposal has been “substantially implemented.” In the current instance, the Company has substantially fulfilled neither the guidelines nor the essential purpose of the Proposal.

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

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

The Company alleges it has already substantially implemented our Proposal by publication of the results of its Audit in its Final Report. According to the Company, the “Report [] and other public disclosures by the Company are responsive to the Proposal’s request.” But the referenced

Report and other publicly available information do not address the “guidelines and essential objective” of our Proposal, let alone substantially implement it.

As noted above, our Proposal concerns itself with vital issues of civil rights and non-discrimination, with guidelines that ask the Company in particular to ensure that its review of the Company’s impacts on these important issues attend to whether it is discriminating against groups that it has not honored with the label of “diverse,” given that discrimination against *any* employees or other stakeholders on the basis of protected classifications is both morally repugnant and an issue raising profound risks for the Company.

The Company includes a chart citing to its Final Report and related materials, arguing each is responsive to our Proposal, but these items could not further miss the mark and indeed underscores the need for our Proposal in the first place. In doing so, the Company fails to point to anything in its Final Report or elsewhere that does the very thing we seek because it has not done that thing. We replicate the chart below and demonstrate how in turn how none of the Company’s proffered publications actually provide any evidence of substantial implementation.

Proposal Request	Relevant Reporting (according to the Company)	Evidence the Relevant Reporting Actually Substantially Implements our Proposal.
An audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business.	Facebook’s Civil Rights Audit – 2019 Progress Report ⁷ Facebook’s Civil Rights Audit – 2020 Final Report ⁸	None. Our guidelines clearly specify that our Proposal intends to propel the Company to consider the effects of its DEI policies and programs on employee populations that the Company does not honor with the appellation “diverse.” The Company points to no way in which it has done that.
The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public interest litigation groups, employees and other stakeholders – of a wide	Laura Murphy, a highly respected civil rights and civil liberties leader, guided the audit and spoke with more than 100 civil rights organizations. The audit was supported by Megan Cacace, a civil rights attorney and	None. Our Proposal seeks to propel the Company to meet with and include input from leaders and scholars from <i>across the intellectual spectrum</i> , including those who can speak clearly for the vast segment of the population who think that

⁷ https://about.fb.com/wp-content/uploads/2019/06/civilrightaudit_final.pdf

⁸ <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>

<p>spectrum of viewpoints and perspectives</p>	<p>partner at Relman Colfax PLLC at the time of the audit.</p>	<p>“anti-racism” is very racist indeed. Not only has the Company failed to do that at all, but the specific consultants they mention are both from the same spot on that spectrum – and explicit and entrenched “equity” supporters.</p>
<p>A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website</p>	<p>Facebook’s Civil Rights Audit – 2019 Progress Report⁹</p> <p>Facebook’s Civil Rights Audit – 2020 Final Report¹⁰</p> <p>An Update on Our Civil Rights Audit¹¹</p> <p>Facebook Diversity Update: Increasing Representation in Our Workforce and Supporting Minority-Owned Businesses¹²</p> <p>Following Through on Meta’s Civil Rights Audit Progress¹³</p> <p>Race Data Measurement and Meta’s Commitment to Fair and Inclusive Products¹⁴</p> <p>Meta’s Progress on Civil Rights Audit Commitments¹⁵</p>	<p>None. None of these reports address the essence or guidelines of our Proposal in any way.</p>

⁹ https://about.fb.com/wp-content/uploads/2019/06/civilrightaudit_final.pdf

¹⁰ <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>

¹¹ <https://about.fb.com/news/2018/12/civil-rights-audit/>

¹² <https://about.fb.com/news/2021/07/facebook-diversity-report-2021/>

¹³ <https://about.fb.com/news/2021/11/civil-rights-audit-progress-report/>

¹⁴ <https://about.fb.com/news/2021/11/inclusive-products-through-race-data-measurement/>

¹⁵ <https://about.fb.com/wp-content/uploads/2021/11/Metas-Progress-on-Civil-Rights-Audit-Commitments.pdf>

i. The “Relevant Reporting” does not demonstrate the guidelines and essential objective of an audit and report as requested in our Proposal has been met.

In an attempt to demonstrate that it has substantially implemented our Proposal, the Company lists the Final Report and a 2019 Progress Report on its Audit, along with some updates. However, simply listing these two reports without providing any further explanation as to how they actually meet the “guidelines and essential objective” of our Proposal is wholly unconvincing, as the reports fail to actually do what the Company claims.

As the Company recognizes in its letter, one of the “essential objectives” of our Proposal is for the Company to conduct an audit and publish an accompanying report on the Company’s impact on civil rights and discrimination in the workplace; however, the reports cited by the Company fail to do this very thing. Instead, the reports are nothing more than an act to appease a narrow group of so-called civil rights organizations, as the “Relevant Reports” focus more on how these external groups feel about the Company’s actions than on anything requested in our Proposal.

Indeed, the whole of our Proposal focuses on the Company’s impacts on civil rights and non-discrimination on *everyone* in the workplace—including those the Company deem “non-diverse.” As our Supporting Statement reads:

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer and CVS.¹⁶ Facebook, meanwhile is awash in claims that it discriminates on grounds akin to the policies and positions noted above.¹⁷ This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed ‘non-diverse,’ then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

It is clear from the opening pages that the Final Report – and thereby the Audit itself – was not only initiated at the behest of left-leaning (only) civil rights organizations and advocates, but that they had an outsized role in determining the Report’s outcome. The Final Report reads:

¹⁶ <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ>

¹⁷ See, e.g., <https://reason.com/volokh/2021/07/06/facebook-will-now-ban-criticism-of-concepts-institutions-ideas-practices-or-beliefs-when-they-risk-harm-intimidation-or-discrimination-against-religious-national-or-other-groups/>; https://www.theepochtimes.com/mkt_morningbrief/pretty-weird-facebook-starts-sending-extremist-content-warnings-to-users_3883194.html?utm_source=morningbriefnoe&utm_medium=email2&utm_campaign=mb-2021-07-02&mktids=ab50c2b873197c4b77b7efe5bebafced&est=mgunXhPl%2BnBaVeubX6toJeMr1%2BkqUSWtcuO8aKjZ3TbDj5a07iS0S36O3CXW19GsVMLpYsAAng%3D%3D

The Audit began at the behest of civil rights organizations and members of Congress, who recognized the need to make sure important civil rights laws and principles are respected, embraced, and robustly incorporated into the work at Facebook. Civil rights groups have been central to the process, engaging tirelessly and consistently in the Audit effort. We interviewed and solicited input from over 100 civil rights and social justice organizations, hundreds of advocates and several members of Congress.¹⁸

As the Final Report itself admits, the focus was on interviewing and gauging the opinion of (left-wing, “equity” supporting) “civil rights and social justice organizations” on the Company’s policies and actions. How these policies and actions impact “non-diverse” employees or the Company’s business – the essential objective of our Proposal – was never a focus of the Company’s Audit or Report. Nor did the Company make any effort to get and report the input of those not already deeply supportive of “equity,” and of the merit-ignoring and spoils-system-based nature of “equity,” which its proponents frequently define in direct contrast to *equality* of treatment. (More about this point in the next subsection.)

Indeed, the Report has nothing to do with employee discrimination, but rather reads as a laundry list of grievances that liberal organizations and advocates have with Facebook’s policies:

Many in the civil rights community have become disheartened, frustrated and angry after years of engagement where they implored the company to do more to advance equality and fight discrimination, while also safeguarding free expression. As the final report is being issued, the frustration directed at Facebook from some quarters is at the highest level seen since the company was founded, and certainly since the Civil Rights Audit started in 2018. The Auditors vigorously advocated for more and would have liked to see the company go further to address civil rights concerns in a host of areas that are described in detail in the report. These include but are not limited to the following:

- **A stronger interpretation of its voter suppression policies** — an interpretation that makes those policies effective against voter suppression and prohibits content like the Trump voting posts — and **more robust and more consistent enforcement of those policies** leading up to the US 2020 election.
- **More visible and consistent prioritization of civil rights** in company decision-making overall.
- **More resources invested to study and address organized hate** against Muslims, Jews and other targeted groups on the platform.
- **A commitment to go beyond banning explicit references to white separatism and white nationalism** to also prohibit express praise, support and

¹⁸ See The Final Report at pg. 5 <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>.

- representation of white separatism and white nationalism even where the terms themselves are not used.
- **More concrete action** and specific commitments to take steps **to address concerns about algorithmic bias or discrimination.**

This report outlines a number of positive and consequential steps that the company has taken, but at this point in history, the Auditors are concerned that those gains could be obscured by the vexing and heartbreaking decisions Facebook has made that represent significant setbacks for civil rights.¹⁹

Accordingly, the Company's Audit and Final Report was nothing more than a venue for certain (left-wing) "civil rights and social justice organizations" to complain and feel heard when it comes to Facebook's policies on leaving up certain posts by individuals these particular organizations deem non-diverse or even hateful. In doing so, it does the exact opposite of meeting the guidelines and essential objective of our Proposal.

Even the sections of the Final Report focusing on employees focus exclusively on increasing representation of groups of individuals the Company deems "diverse" based on surface characteristics such as race without regard to diversity of thought or opinion or without regard to whether any discrimination may have taken place to meet its goals of hiring or promoting individuals who meet the Company's definition of "diverse." For instance, the Final Report states, "Facebook also recently committed to a goal of diversifying its employee base such that by 2024 at least 50% of Facebook employees will be women, people who are Black, Hispanic, Native American, Pacific Islanders, people with two or more ethnicities, people with disabilities, and veterans In establishing this goal, Facebook aims to double the number of women it employs globally and the number [sic] Black and Hispanic employees working in the US."²⁰ Indeed, rather than meeting the guidelines and essential objective of our Proposal, the Final Report touts the very behavior our Proposal is concerned with.

As the precedent in *Nike, Inc.* (Aug. 2, 2021) makes clear, it is not sufficient for exclusion under the substantial implementation standard if companies have generated *some* civil-rights-related reporting but the reporting is not responsive to the guidelines and the essential object of the proposal. Staff should therefore find that the Audit and Report by the Company fail to substantially implement our Proposal just as it did in *Nike, Inc.*

Furthermore, the "Relevant Reporting" cited completely ignores the essential purpose of our Proposal focusing on how the Company's actions with regard to civil rights and non-discrimination impact the Company's business; therefore, the Company's Audit and Report cannot possibly meet the guidelines and essential objective of our Proposal. Given that Meta's stock has recently plummeted more than 26 percent,²¹ is forecasting weaker than anticipated

¹⁹ *Id.* at pg. 8.

²⁰ *Id.* at pg. 63.

²¹ <https://www.cnbc.com/2022/02/03/facebook-shares-plummet-22percent-after-reporting-weak-guidance.html>

revenue growth,²² and large numbers of users are leaving the Facebook platform,²³ it seems an examination of the Company's civil rights and non-discrimination impacts on its business is more important than ever. As many center/right-leaning individuals, Members of Congress, and organizations seek alternative platforms because of the very issues outlined in our Proposal (and other evidences of profound bias at the Company), it seems that the Company's civil rights and non-discrimination positions are more relevant than ever to the Company's business and bottom-line – and its deterioration.

ii. The “Relevant Reporting” does not demonstrate that the audit was conducted by an independent and unbiased third party that includes a wide spectrum of viewpoints and perspectives.

As noted above, our Supporting Statement reads:

In developing the audit and report, the Company should consult civil-rights and public-interest law groups – but it must not compound error with bias by relying only on left-leaning organizations. Rather, it should consult groups across the spectrum of viewpoints. This includes right-leaning civil-rights groups representing people of color, such as the Woodson Center²⁴ and Project 21,²⁵ and groups that defend the rights and liberties of all Americans, not merely the ones that many companies label “diverse.”

Compounding error with bias by relying only on left-leaning organizations, however, is exactly what the Company did in developing its Audit and Report.

Touting the appointment of Laura Murphy to lead Facebook's Audit, a 20+ year veteran²⁶ of the leftwing American Civil Liberties Union (ACLU) who once led the group's legislative office, hardly suggests any effort to reach out of the left of the spectrum to get different insights and feedback – an essential purpose and explicit guideline of our Proposal. This is especially true given the number of left-leaning legislative and policy issues admittedly pursued by Ms. Murphy.²⁷ Neither does the “support” of Megan Cacace, who left Relman Colfax PLLC to become Airbnb's Director of Anti-Discrimination Policy & Equity Programs.²⁸ Airbnb's announcement for Ms. Cacace says her “hire signifies the company's continuing investment into anti-discrimination work and policies, and adds to a number of key leaders on teams across the company who are working collectively to advance this important work....”²⁹ The names of the

²² *Id.*

²³ See, e.g., <https://www.businessinsider.in/tech/enterprise/news/facebook-reported-decline-in-daily-active-users-for-first-time/articleshow/89314035.cms>; <https://www.newsweek.com/parler-mewe-newsmax-top-apple-store-1546403>.

²⁴ <https://woodsoncenter.org/>

²⁵ <https://nationalcenter.org/project-21/>

²⁶ See Update on Facebook's Civil Rights Audit, <https://about.fb.com/wp-content/uploads/2018/12/Civil-Rights-Audit-Update-1.pdf> at pg. 1.

²⁷ <https://lwmurphy.com/about.html>.

²⁸ <https://news.airbnb.com/megan-cacace-joins-airbnb-as-director-of-anti-discrimination-policy-amp-equity/>.

²⁹ *Id.*

other “key leaders” includes several former Obama Administration officials and individuals with background and ties to leftwing organizations.³⁰

The appointment of these two individuals to lead the Audit, therefore, hardly meets the criteria for a wide spectrum of viewpoints and, as demonstrated below, also failed to lead to the consultation of a wide spectrum of viewpoints as no information provided by the Company in its reporting or its letter indicates a contrary conclusion. As the Final Report states, “[w]e interviewed and solicited input from over 100 civil rights and social justice organizations, hundreds of advocates and several members of Congress.” But the Report fails to list or provide any other identifying information as to which organizations, advocates, or members of Congress participated in the Audit.

This lack of transparency is telling, as one needs to look no further than the Final Report itself to see that a majority of (if not all of those consulted) exclusively constituted an echo chamber of like-minded liberal and leftwing oriented groups and advocates that failed to provide any diversity of opinion or thought. For instance, the Report asserts that:

[c]ivil rights advocates continue to take issue with Facebook’s definition of a ‘dangerous organization,’ contending that the definition is too narrow and excludes hate figures and hate organizations designated by civil rights groups that track such content on social media. Furthermore, civil rights groups have challenged the accuracy and effectiveness of Facebook’s enforcement of these policies; for example, a 2020 report published by the Tech Transparency Project (TTP) concluded that more than 100 groups identified by the Southern Poverty Law Center and/or Anti-Defamation League as white supremacist organizations had a presence on Facebook.³¹

As the Southern Poverty Law Center and Anti-Defamation League are well-known left-leaning organizations, without the Company offering any evidence to the contrary, it seems quite clear that the “civil rights and social justice organizations” consulted have similar viewpoints and fail to constitute a wide spectrum of perspectives.

Underscoring the one-sided left-leaning perspective of the auditors and consultants, the Final Report blasts Facebook for continuing to leave in place at the time the July 2020 Report was issued, certain posts by then President Donald Trump:

Facebook’s decisions in May of 2020 to let stand on three posts by President Trump, have caused considerable alarm for the Auditors and the civil rights community ... The Auditors were not alone. The company’s decisions elicited uproar from civil rights leaders, elected officials and former and current staff of the company, forcing urgent dialogues within Facebook ... Worse, some civil rights

³⁰ *Id.*

³¹ *See* The 2020 Final Report at pg. 51.

groups have, at this writing, threatened to walk away from future meetings with Facebook.

Given that 74 million Americans nonetheless went on to vote for Donald Trump months later in the November 2020 election, it is difficult to conceive that any significant number of individuals working at right-leaning civil rights or public interest law firms, or Members of Congress, were meaningfully or on equal-footing consulted or included in the analysis that so vociferously condemned Facebook for leaving up these posts. Again, this is indicative of an echo chamber designed to arrive at a results-oriented conclusion that advocates policies in favor of those the Company deems “diverse” and in need of protection while discriminating against those that does not meet its own narrow view of the term.

iii. The “Relevant Reporting” demonstrating public disclosure of the audit’s results is irrelevant because the guidelines and essential objective of our Proposal was never met in the first place.

We do not dispute that the Company conducts what it refers to as a Civil Rights Audit and published a publicly available Final Report on it; however, for the publication of these items to satisfy substantial implementation, the items must actually meet the guidelines and essential objective of our Proposal. As outlined above, they do not. Indeed, it would make no difference whether the Company pointed to the items listed in its letter under Relevant Reporting or to its most recent press release discussing its latest technological advances, as neither would be responsive to our Proposal. Therefore, similar to the recent *Nike, Inc.* decision, even if the Company generated *some* civil-rights-related reporting in its Final Report or related documents, these reports are not responsive to the guidelines and the essential object of the Proposal and is thereby not substantially implemented under Rule 14a-8(i)(10).

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

Conclusion

The Company’s argument that it has already substantially implemented the Proposal is simply false, as it has not conducted an audit on, let alone published the results of, the Company’s impacts on civil rights and non-discrimination when it comes to its employees, its business, or anything else outlined in our Proposal. To the contrary, the reports proffered by the Company claiming substantial implementation focus on the Company’s broader policies for posting to its platform and none of the issues that our Proposal seeks to combat and therefore fails to substantially implement our Proposal.

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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 srehberg@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Rehberg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah Rehberg
National Center for Public Policy Research

cc: Scott Shepard (sshepard@nationalcenter.org)
Michael Kaplan (michael.kaplan@davispolk.com)