



DIVISION OF  
CORPORATION FINANCE

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

March 4, 2022

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

Re: Johnson & Johnson (the "Company")  
Incoming letter dated December 2, 2021

Dear Mr. Gerber:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by HLB Investments ULC and The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board commission and publish a third-party review of whether the Company's lobbying activities align with the Company's Position on Universal Health Coverage, and, in particular, its provision supporting "broad and timely access to our medicines at sustainable prices that aim to be locally affordable," and to report on how it addresses the risks presented by any misaligned lobbying and the Company's plans, if any, to mitigate these risks.

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

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: Anthony Schein  
SHARE

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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

December 2, 2021

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

RE: Johnson & Johnson – 2022 Annual Meeting  
Omission of Shareholder Proposal of  
HLB Investments ULC and The Domestic and  
Foreign Missionary Society of the Protestant  
Episcopal Church in the United States of America

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Johnson & Johnson, a New Jersey corporation, to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Johnson & Johnson’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by The Shareholder Association for Research & Education (“SHARE”) on behalf of HLB Investments ULC (“HLB”), and co-filed by The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America (“DFMS”), from the proxy materials to be distributed by Johnson & Johnson in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”). SHARE, HLB and DFMS are sometimes collectively referred to as the “Proponents.”

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

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

## **I. The Proposal**

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

**Resolved:** Shareholders request that the Board of Directors commission and publish a third party review within the next year (at reasonable cost, omitting proprietary information) of whether Johnson & Johnson lobbying activities (direct and through trade associations) align with the company’s Position on Universal Health Coverage, and in particular its provision supporting “broad and timely access to our medicines at sustainable prices that aim to be locally affordable.” The Board of Directors should report on how it addresses the risks presented by any misaligned lobbying and the company’s plans, if any, to mitigate these risks.

## **II. Basis for Exclusion**

We hereby respectfully request that the Staff concur in Johnson & Johnson’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 Johnson & Johnson’s ordinary business operations.

## **III. Background**

### *A. Procedural Background*

On November 9, 2021, Johnson & Johnson received the Proposal, accompanied by a cover letter from SHARE dated November 8, 2021 and an authorization letter from HLB dated November 8, 2021. In addition, on November 9, 2021, Johnson & Johnson received a letter from CIBC Wood Gundy, dated November 3, 2021, regarding HLB’s

stock ownership in Johnson & Johnson. Also on November 9, 2021, Johnson & Johnson received a copy of the Proposal, accompanied by a cover letter from DFMS indicating it was co-filing the Proposal with HLB and a letter from The Bank of New York Mellon verifying DFMS's continuous ownership of at least the requisite amount of stock for at least the requisite period preceding and including the date of submission. On November 10, 2021, Johnson & Johnson sent a letter to SHARE requesting a written statement from the record owner of HLB's shares verifying that HLB had beneficially owned the requisite number of shares of Johnson & Johnson common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal (the "Deficiency Letter"). On November 12, 2021, Johnson & Johnson received a letter from CIBC Wood Gundy verifying HLB's continuous ownership of at least the requisite amount of stock for at least the requisite period preceding and including the date of submission. Copies of the Proposal, cover letters, broker letters, Deficiency Letter and related correspondence are attached hereto as Exhibit A.

*B. The Johnson & Johnson Position on Universal Health Coverage*

The Proposal specifically relates to the alignment of Johnson & Johnson's lobbying activities with the Johnson & Johnson Position on Universal Health Coverage (the "J&J Position on UHC").<sup>1</sup> The J&J Position on UHC explains the relevance of the topic in light of Johnson & Johnson being "the world's largest and most broadly based healthcare company" and "reaching patients and consumers each day with its medicines, consumer products and medical devices." Moreover, the J&J Position on UHC explains the relevance of the topic in light of Johnson & Johnson's Credo, which states: "We believe our first priority is to the patients, doctors and nurses, to mothers and fathers and all others who use our products and services."

The J&J Position on UHC describes that Johnson & Johnson supports universal health coverage through initiatives in four key areas: workforce and infrastructure; access and affordability; sustainable financing; and shared accountability. In the area of workforce and infrastructure, the J&J Position on UHC provides that a "robust health system" requires "well-trained and well-equipped health workers." In the area of access and affordability, the J&J Position on UHC states that Johnson & Johnson "engage[s] stakeholders throughout the world to achieve broad and timely access to [its] medicines at sustainable prices that aim to be locally affordable." In addition, in the area of sustainable financing, the J&J Position on UHC affirms that "there is no single universal approach to how UHC is financed and delivered through government, non-profit or private-sector channels," "[f]inancing considerations should account for the

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<sup>1</sup> See Johnson & Johnson's *Position on Universal Health Coverage*, a copy of which is attached hereto as Exhibit B and available at <https://www.jnj.com/about-jnj/policies-and-positions/our-position-on-universal-health-coverage>.

full complexity of the healthcare system, rather than addressing specific issues in isolation” and that Johnson & Johnson “support[s] investments in value-based care to advance the implementation of effective solutions for health systems.” Finally, in the area of shared accountability, the J&J Position on UHC explains that “[w]hile governments typically play a leading role in building health systems, financing and/or delivering care, the inherent complexity of healthcare requires” that the “public, private, and nonprofit sectors” maintain “a shared responsibility and accountability” toward the goal of delivering healthcare for all. The J&J Position on UHC also notes that Johnson & Johnson “partner[s] with all stakeholders with a mix of global and country-specific policy and advocacy efforts.”

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

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

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

Consistent with this guidance, the Staff has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that are directed at a company’s political or lobbying activities relating to specific issues that implicate the company’s ordinary

business operations. For example, in *Bristol-Myers Squibb Company* (Feb. 17, 2009), the proposal requested a report on the company's lobbying activities and expenses relating to Medicare Prescription Drug Plans (Part D). The company argued in its no-action request that its pharmaceuticals segment manufactured and sold numerous company products covered by Medicare Prescription Drug Plans (Part D). In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal "relat[ed] to [the company's] ordinary business operations (i.e., lobbying activities concerning its products)." See also *Abbott Laboratories* (Feb. 11, 2009) (same). Likewise, in *General Motors Corporation* (Apr. 7, 2006), the proposal requested that the company "petition the [U.S. government] for radically improved [corporate average fuel economy] standards for light duty trucks and cars," lead an effort to develop non-oil based transportation system and spread this technology to other nations. The company argued in its no-action request that the proposal focused on the company's ordinary business activities, including "communicating with lawmakers and regulators regarding appropriate product regulations" and "seeking support from the government . . . for research and development of product technology." In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal "appears directed at involving [the company] in the political or legislative process relating to an aspect of [the company's] operations." See also, e.g., *Int'l Business Machines Corp.* (Dec. 17, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "[j]oin with other corporations in support of the establishment of a properly financed national health insurance system as an alternative for funding employee health benefits," noting that the proposal "appears directed at involving [the company] in the political or legislative process relating to an aspect of [the company's] operations"); *General Electric Co.* (Jan. 29, 1997) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board prohibit payment of company funds to oppose specific citizen ballot initiatives, including initiatives related to the company's nuclear reactor products, noting that the proposal "is directed at matters relating to the conduct of the [c]ompany's ordinary business operations (i.e., lobbying activities which relate to the [c]ompany's products)"); *Chrysler Corp.* (Feb. 10, 1992) (permitting exclusion under Rule 14a-8(i)(7) of a proposal providing that the company actively support and lobby for universal health coverage, noting that the proposal is "directed at involving the [c]ompany in the political or legislative process relating to an aspect of the [c]ompany's operations").

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals where the proposal appears facially neutral but the supporting statement, when read together with the proposal, makes clear that the proposal focuses on a company's specific lobbying activities relating to the company's business. See, e.g., *Johnson & Johnson* (Feb. 10, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board create and implement a policy using consistent incorporation of corporate values and report to shareholders contributions that may appear incongruent with the company's corporate values, noting that "the proposal and

supporting statement, when read together, focus primarily on [the company's] specific political contributions that relate to the operation of [the company's] business and not on [the company's] general political activities"); *Bristol-Myers Squibb Co.* (Jan. 29, 2013, *recon. denied* Mar. 12, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board prepare a report describing the policies, procedures, costs and outcomes of the company's legislative and regulatory public policy advocacy activities, noting that "the proposal and supporting statement, when read together, focus primarily on [the company's] specific lobbying activities that relate to the operation of [the company's] business and not on [the company's] general political activities"); *PepsiCo, Inc.* (Mar. 3, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board annually report on the company's process for identifying and prioritizing legislative and regulatory public policy advocacy activities, noting that "the proposal and supporting statement, when read together, focus primarily on [the company's] specific lobbying activities that relate to the operation of [the company's] business and not on [the company's] general political activities").

In this instance, the Proposal and supporting statement, when read together, focus on Johnson & Johnson's specific lobbying activities as they relate to the J&J Position on UHC and therefore directly implicate Johnson & Johnson's operations as a healthcare company. The Proposal does so by requesting a review of Johnson & Johnson's lobbying activities and alignment with the J&J Position on UHC and including selected excerpts of the J&J Position on UHC in both the Proposal's resolution and supporting statement. In addition, the Proposal's supporting statement expresses concern that a member of Johnson & Johnson's leadership team sits on the board of directors of a pharmaceutical trade organization and that the trade organization, in turn, sits on the board of another group that has been involved in advocating for the privatization of Medicare and Medicaid. When read together, the Proposal and supporting statement are clearly focused on Johnson & Johnson's specific lobbying activities relating to the J&J Position on UHC.

As described above, the J&J Position on UHC and any lobbying related thereto directly implicate Johnson & Johnson's business as the world's largest and most broadly based healthcare company and manufacturer of medicines, consumer products and medical devices. Any lobbying initiatives supporting the key areas identified in the J&J Position on UHC have the potential to impact Johnson & Johnson's business operations, products, sales and profitability. As a result, decisions regarding which lobbying initiatives to support in furtherance of the J&J Position on UHC requires a detailed understanding of Johnson & Johnson's business, including its products, business models, strategies and operations, as well as the highly competitive industries and markets in which Johnson & Johnson operates. These decisions are the responsibility of management and are not proper subjects for shareholder involvement. Accordingly, the report sought by the Proposal does not relate to Johnson & Johnson's general political activities but to activities relating to the operation of its business.

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, the Proposal does not appear to touch on any significant policy issue. However, even if the Proposal did touch on a significant policy issue, the Proposal's overwhelming concern with Johnson & Johnson's specific lobbying activities as they relate to the J&J Position on UHC demonstrates that the Proposal's focus is on an ordinary business matter. 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 Johnson & Johnson's 2022 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Johnson & Johnson's ordinary business operations.

## **V. Conclusion**

Based upon the foregoing analysis, Johnson & Johnson respectfully requests that the Staff concur that it will take no action if Johnson & Johnson excludes the Proposal from its 2022 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Johnson & Johnson's position, we would appreciate the opportunity to confer with the Staff



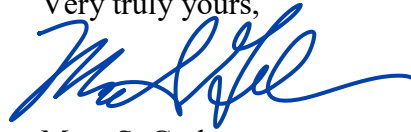
Office of Chief Counsel

December 2, 2021

Page 8

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: Matt Orlando  
Worldwide Vice President, Corporate Governance and Corporate Secretary  
Johnson & Johnson

Anthony Schein  
Director of Shareholder Advocacy  
The Shareholder Association for Research & Education

James Dunne  
HLB Investments ULC

Lydia Kuykendal  
Director of Shareholder Advocacy  
Mercy Investment Services, Inc.

N. Kurt Barnes  
Treasurer and CFO  
The Domestic and Foreign Missionary Society of the Protestant Episcopal  
Church in the United States of America

EXHIBIT A

(see attached)

Matt Orlando, Vice President, Worldwide Corporate Governance & Corporate Secretary  
Johnson & Johnson  
One Johnson And Johnson Plaza  
New Brunswick, New Jersey, USA  
08933

November 8, 2021

*Via email only to: morland3@its.jnj.com*

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Mr. Orlando:

The Shareholder Association for Research & Education (SHARE) is filing a shareholder proposal on behalf of HLB Investments ULC (the "Proponent"), a shareholder of Johnson & Johnson, for action at the next annual meeting of the company. The Proponent submits the enclosed shareholder proposal for inclusion in the Johnson & Johnson 2022 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

HLB Investments ULC has continuously beneficially owned, for at least three (3) years as of the date hereof, at least \$2000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. HLB Investments ULC intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

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

James Dunne (on behalf of the Proponent) and/or Kevin Thomas (on behalf of SHARE) are available to meet with the Company on November 26 between 10:00am and 12:00pm Eastern Time, or an alternative time as mutually agreed between 10 and 30 days after the filing.

We are available to discuss this issue and appreciate the opportunity to engage and seek to resolve the Proponent's concerns. I can be contacted at 416 306 6462 or by email at [aschein@share.ca](mailto:aschein@share.ca) to schedule a meeting and to address any questions. Please address any future correspondence regarding the proposal to me at this address.

Sincerely,

Anthony Schein  
Director of Shareholder Advocacy

Encl: Shareholder proposal (Annex I), Authorization Letter (Annex II)

**Resolved:** Shareholders request that the Board of Directors commission and publish a third party review within the next year (at reasonable cost, omitting proprietary information) of whether Johnson & Johnson lobbying activities (direct and through trade associations) align with the company's Position on Universal Health Coverage, and in particular its provision supporting "broad and timely access to our medicines at sustainable prices that aim to be locally affordable." The Board of Directors should report on how it addresses the risks presented by any misaligned lobbying and the company's plans, if any, to mitigate these risks.

### **Supporting Statement:**

The company's Position on Universal Health Coverage states that "Patients and communities must have access to care, including drugs, vaccines, surgical care, and other medical technologies needed to prevent and treat diseases and address public health needs."

Yet prices for needed medication continue to be a barrier to access for many patients in the US.

Efforts to reform the pricing system to improve access have been systematically opposed by the industry's leading lobbying organization, Pharmaceutical Research and Manufacturers of America (PhRMA).

PhRMA raised nearly \$527 million in 2020 and spent roughly \$506 million, including making multi-million-dollar donations to numerous other organizations like the American Action Network for use in opposing congressional efforts to address drug pricing.<sup>1</sup> PhRMA also launched a vigorous lobbying effort against a proposal to waive intellectual property rights for Covid-19 vaccines designed to boost production of vaccines in developing countries (the TRIPS waiver). PhRMA also sits on the board of the American Legislative Exchange Council (ALEC) which has been involved in highly controversial lobbying activity including advocating for the privatization of Medicare and Medicaid and opposition to drug pricing reforms and prescription drug importation.<sup>2</sup>

Johnson & Johnson's Executive Vice President and Worldwide Chairman, Pharmaceuticals, Jennifer Taubert, sits on the PhRMA board of directors.

The positions the company adopts should not be undermined by lobbying efforts undertaken by organizations the company supports financially. While a company may not support every position taken by the trade associations to which it belongs, proper risk management requires that the board at least be aware of inconsistencies and evaluate whether they are salient to the company and therefore require mitigation.

With regard to the company's own lobbying – on which it spent \$3,280,000 dollars of its own money on lobbying in the first two quarters of 2021, focused on drug pricing legislation, amongst other things<sup>3</sup> – a similar review of alignment is in order. Shareholders have an interest in the use of company funds to support lobbying efforts that may have negative effects on the company's

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<sup>1</sup> <https://www.opensecrets.org/news/2020/12/pharma-lobby-poured-millions-into-darkmoney-groups/>

<sup>2</sup> [https://www.alecexposed.org/w/images/3/38/5V0-Access\\_to\\_Medicaid\\_Act\\_Exposed.pdf](https://www.alecexposed.org/w/images/3/38/5V0-Access_to_Medicaid_Act_Exposed.pdf) and <https://www.alecaction.org/advocacy/ipi/>

<sup>3</sup> [https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2021&id=D000000386&spec=HCR&specific\\_issue=Health+Issues#specific\\_issue](https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2021&id=D000000386&spec=HCR&specific_issue=Health+Issues#specific_issue)

reputation, its stated positions on public policy and regulatory concerns, and on matters of public interest such as COVID-19 recovery efforts which affect our global economy.

For these reasons, we urge shareholders to support the proposal.

November 8, 2021

Anthony Schein  
Director of Shareholder Advocacy  
SHARE  
257-401 Richmond St  
Toronto, Ontario M5V 3A8

RE: Authorization to act on behalf of HLB Investments ULC in matters related to Johnson & Johnson annual shareholder meeting

Dear Mr. Schein:

I hereby authorize Anthony Schein, Director of Shareholder Advocacy, SHARE to file a shareholder resolution on my behalf for the 2022 Annual Shareholder Meeting of Johnson & Johnson. Specifically, the proposal requests the company report to shareholders on whether Johnson & Johnson lobbying activities (direct and through trade associations) align with the company's Position on Universal Health Coverage, and in particular, its provision supporting "broad and timely access to our medicines at sustainable prices that aim to be locally affordable." The Board of Directors should report on how it addresses the risks presented by any misaligned lobbying and the company's plans, if any, to mitigate these risks.

I support this proposal and specifically give Kevin Thomas, CEO, SHARE, and/or Anthony Schein, Director of Shareholder Advocacy, SHARE full authority to engage with the company on my behalf regarding the proposal and the underlying issues, and to negotiate a withdrawal of the proposal to the extent the representative views of the company's actions as responsive.

I understand that I, and/or HLB Investments ULC may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,



James Dunne  
HLB Investments ULC  
194 Delaware Ave  
Toronto, ON  
M6H 2T3






# FOR SIGNATURE - Authorization letter

Final Audit Report

2021-11-08

Created:	2021-11-08
By:	Anthony Schein (aschein@share.ca)
Status:	Signed
Transaction ID:	CBJCHBCAABAArax52Jz6pBLmRL_EiXGNpR47PVN-oOX

## "FOR SIGNATURE - Authorization letter" History

-  Document created by Anthony Schein (aschein@share.ca)  
2021-11-08 - 2:12:32 PM GMT- IP address: 104.247.241.89
-  Document emailed to James Dunne (james@markdalemanagement.com) for signature  
2021-11-08 - 2:13:19 PM GMT
-  Email viewed by James Dunne (james@markdalemanagement.com)  
2021-11-08 - 3:14:57 PM GMT- IP address: 74.125.212.73
-  Document e-signed by James Dunne (james@markdalemanagement.com)  
Signature Date: 2021-11-08 - 3:15:35 PM GMT - Time Source: server- IP address: 99.233.114.19
-  Agreement completed.  
2021-11-08 - 3:15:35 PM GMT



CIBC World Markets Inc.  
600 de Maisonneuve Blvd. West  
Suite 3050  
Montreal, QC H3A 3J2

Tel: (514) 847-6300  
Fax: (514) 847-6397  
Toll Free: 1-888-847-6300

November 3, 2021

Matt Orlando, Vice President, Worldwide Corporate Governance & Corporate Secretary  
Johnson & Johnson  
One Johnson And Johnson Plaza  
New Brunswick, New Jersey, USA  
08933

Re: Shareholder proposal submitted by HLB Investments ULC

Dear Mr. Orlando:

I write concerning a shareholder proposal (the "Proposal") submitted to Johnson & Johnson by HLB Investments ULC.

As of November 4, 2021, HLB Investment ULC beneficially owned, and had beneficially owned continuously for at least three years shares of the Company's common stock worth at least \$2000 (the "Shares")."

CIBC Wood Gundy has acted as record-holder of the Shares and is a DTC participant.

Sincerely

A handwritten signature in blue ink, appearing to read 'Maryse Lepine', with a long horizontal flourish extending to the right.

Maryse Lepine  
Manager, Regulatory Supervision



THE  
*Episcopal*  
CHURCH

VIA EMAIL: [morland3@its.jnj.com](mailto:morland3@its.jnj.com)



November 10, 2021

Matt Orlando  
Vice President, Worldwide Corporate Governance & Corporate Secretary  
Johnson & Johnson  
One Johnson And Johnson Plaza  
New Brunswick, NJ 08933

Dear Mr. Orlando,

The Episcopal Church, along with many other churches and socially concerned investors, has long been concerned not only with the financial return on its investments, but also with the social, ethical, and environmental implications of its investments. We believe that a demonstrated corporate responsibility in matters of environmental, social and governance concerns fosters long-term business success. The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America (DFMS or Episcopal Church) is the beneficial owner of more than 5,600 shares of Johnson & Johnson.

DFMS is requesting that the Board of Directors commission and publish a third party review within the next year (at reasonable cost, omitting proprietary information) of whether Johnson & Johnson lobbying activities (direct and through trade associations) align with the company's Position on Universal Health Coverage, and in particular its provision supporting "broad and timely access to our medicines at sustainable prices that aim to be locally affordable." The Board of Directors should report on how it addresses the risks presented by any misaligned lobbying and the company's plans to mitigate these risks.

DFMS is co-filing the enclosed shareholder proposal with lead filer, HLB Investments ULC, for inclusion in the 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. As of January 4, 2020, DFMS has beneficially owned continuously 5,678 shares of the Company's common stock worth at least \$2,000. and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. A representative of the filers will attend the Annual Meeting to move the resolution as required by SEC rules. The verification of ownership is being sent to you separately by our custodian, a DTC participant. We authorize Mercy Investment Services, Inc. to withdraw on our behalf if an agreement is reached. We respectfully request direct communications from Johnson & Johnson and to have our supporting statement and organization name included in the proxy statement.

We will plan to participate in any meetings on this proposal to the extent we are available at the time selected by the lead filer and our company. Please direct all future correspondence regarding this proposal to Lydia Kuykendal of Mercy Investment Services, Inc., who is authorized to speak and negotiate on the behalf of DFMS. Ms. Kuykendal's contact information is: [lkuykendal@mercyinvestments.org](mailto:lkuykendal@mercyinvestments.org), 317-910-8581, 2039 N. Geyer Rd., St. Louis, MO 63131.

Best regards,



N. Kurt Barnes  
Treasurer and CFO

[The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America](http://www.episcopalchurch.org)

**Resolved:** Shareholders request that the Board of Directors commission and publish a third party review within the next year (at reasonable cost, omitting proprietary information) of whether Johnson & Johnson lobbying activities (direct and through trade associations) align with the company’s Position on Universal Health Coverage, and in particular its provision supporting “broad and timely access to our medicines at sustainable prices that aim to be locally affordable.” The Board of Directors should report on how it addresses the risks presented by any misaligned lobbying and the company’s plans, if any, to mitigate these risks.

### **Supporting Statement:**

The company’s Position on Universal Health Coverage states that “Patients and communities must have access to care, including drugs, vaccines, surgical care, and other medical technologies needed to prevent and treat diseases and address public health needs.”

Yet prices for needed medication continue to be a barrier to access for many patients in the US.

Efforts to reform the pricing system to improve access have been systematically opposed by the industry’s leading lobbying organization, Pharmaceutical Research and Manufacturers of America (PhRMA).

PhRMA raised nearly \$527 million in 2020 and spent roughly \$506 million, including making multi-million-dollar donations to numerous other organizations like the American Action Network for use in opposing congressional efforts to address drug pricing.<sup>1</sup> PhRMA also launched a vigorous lobbying effort against a proposal to waive intellectual property rights for Covid-19 vaccines designed to boost production of vaccines in developing countries (the TRIPS waiver). PhRMA also sits on the board of the American Legislative Exchange Council (ALEC) which has been involved in highly controversial lobbying activity including advocating for the privatization of Medicare and Medicaid and opposition to drug pricing reforms and prescription drug importation.<sup>2</sup>

Johnson & Johnson’s Executive Vice President and Worldwide Chairman, Pharmaceuticals, Jennifer Taubert, sits on the PhRMA board of directors.

The positions the company adopts should not be undermined by lobbying efforts undertaken by organizations the company supports financially. While a company may not support every position taken by the trade associations to which it belongs, proper risk management requires that the board at least be aware of inconsistencies and evaluate whether they are salient to the company and therefore require mitigation.

With regard to the company’s own lobbying – on which it spent \$3,280,000 dollars of its own money on lobbying in the first two quarters of 2021, focused on drug pricing legislation, amongst other things<sup>3</sup> – a similar review of alignment is in order. Shareholders have an interest in the use of company funds to support lobbying efforts that may have negative effects on the company’s

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<sup>1</sup> <https://www.opensecrets.org/news/2020/12/pharma-lobby-poured-millions-into-darkmoney-groups/>

<sup>2</sup> [https://www.alecexposed.org/w/images/3/38/5V0-Access\\_to\\_Medicaid\\_Act\\_Exposed.pdf](https://www.alecexposed.org/w/images/3/38/5V0-Access_to_Medicaid_Act_Exposed.pdf) and <https://www.alecaction.org/advocacy/ipi/>

<sup>3</sup> [https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2021&id=D000000386&spec=HCR&specific\\_issue=Health+Issues#specific\\_issue](https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2021&id=D000000386&spec=HCR&specific_issue=Health+Issues#specific_issue)

reputation, its stated positions on public policy and regulatory concerns, and on matters of public interest such as COVID-19 recovery efforts which affect our global economy.

For these reasons, we urge shareholders to support the proposal.



500 Grant Street  
BNY Mellon Center, Suite 4040  
Pittsburgh, PA 15258-0001

November 10, 2021

VIA E-MAIL [morland3@its.jnj.com](mailto:morland3@its.jnj.com)

Matthew Orlando  
Vice President  
Worldwide Corporate Governance & Corporate Secretary  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

Dear Mr. Orlando,

I write concerning a shareholder proposal submitted to Johnson & Johnson (the "Company") by The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America ("DFMS"). As of November 10, 2021, DFMS beneficially owned, and had beneficially owned continuously since and including January 2, 2020, 5,678 shares of the Company's common stock worth at least \$2,000. The Bank of New York Mellon is the holder of record of the shares and is a DTC participant. Further, it is the intent of DFMS to hold at least \$2,000 in market value through the next annual meeting

If you have any questions regarding this information, please contact Michele Miller at (412) 234-3076 or [michele.miller@bnymellon.com](mailto:michele.miller@bnymellon.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "Michele Miller".

Michele Miller, Vice President  
The Bank of New York Mellon

Cc: N. Kurt Barnes  
Ms. Pat Zerega



November 10, 2021

**VIA EMAIL**

Anthony Schein  
Director of Shareholder Advocacy  
Shareholder Association for Research & Education  
aschein@share.ca

Dear Mr. Schein:

This letter acknowledges receipt by Johnson & Johnson, on November 9, 2021, of the shareholder proposal submitted by the Shareholder Association for Research & Education on behalf of HLB Investments ULC (the “Proponent”) pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Rule”), for consideration at the Company’s 2022 Annual Meeting of Shareholders (the “Proposal”).

Paragraph (b) of the Rule provides that shareholder proponents must submit sufficient proof of their continuous ownership of:

- at least \$2,000 in market value of a company’s common stock for at least three years, preceding and including the date that the proposal was submitted;
- at least \$15,000 in market value of a company’s common stock for at least two years, preceding and including the date that the proposal was submitted; or
- at least \$25,000 in market value of a company’s common stock for at least one year, preceding and including the date that the proposal was submitted.

Alternatively, a proponent must have continuously held at least \$2,000 in market value of a company’s common stock for at least one year as of January 4, 2021 and continuously maintained a minimum investment of at least \$2,000 in market value of a company’s common stock from January 4, 2021 through and including the date that the proposal was submitted.

The Company’s stock records do not indicate that the Proponent is a record owner of Company shares, and to date, we have not received sufficient proof that the Proponent has satisfied the Rule’s ownership requirements. We have received a letter from CIBC Wood Gundy (the “CIBC Letter”) indicating that the Proponent has owned at least \$2,000 in market value of the Company’s common stock for at least the period from November 4, 2018 through November 4, 2021. There is a gap in the period of ownership covered by the CIBC Letter in that it does not establish a continuous three-year ownership period preceding and including November 9, 2021, the date the Proposal was submitted. In addition, the CIBC Letter is dated November 3, 2021, but references ownership as of November 4, 2021.

The CIBC Letter, therefore, does not provide sufficient proof that the Proponent has satisfied the Rule's ownership requirements, as described above.

Accordingly, please furnish to us, within 14 days of your receipt of this letter, a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) and a participant in the Depository Trust Company ("DTC") verifying that the Proponent beneficially owned the requisite number of Company shares continuously for at least the requisite period preceding and including November 9, 2021, the date the Proposal was submitted. The Proponent can confirm whether a particular broker or bank is a DTC participant by asking the broker or bank or by checking DTC's participant list, which is currently available on the Internet at: <http://www.dtcc.com/client-center/dtc-directories>.

If the Proponent's broker or bank is not on the DTC participant list, the Proponent will need to obtain a written statement from the DTC participant through which the Proponent's shares are held verifying that the Proponent beneficially owned the requisite number of Company shares continuously for at least the requisite period preceding and including November 9, 2021, the date the Proposal was submitted. The Proponent should be able to find who this DTC participant is by asking the Proponent's broker or bank. If the broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant knows the Proponent's broker or bank's holdings, but does not know the Proponent's holdings, the Proponent can satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, for at least the requisite period preceding and including November 9, 2021, the required amount of securities was continuously held – one from the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant confirming the Proponent's broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Johnson & Johnson, One Johnson & Johnson Plaza, New Brunswick, NJ 08933, Attention: Corporate Secretary. For your convenience, a copy of the Rule is enclosed.

Once we receive any response, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Company's 2022 Annual Meeting of Shareholders. We reserve the right to seek relief from the Securities and Exchange Commission as appropriate.

In the interim, you should feel free to contact either my colleague, Pinto Adhola, Assistant Corporate Secretary, at (732) 524-3581 or me at (732) 524-2472 if you wish to discuss the Proposal or have any questions or concerns that we can help to address.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Orlando". The signature is fluid and cursive, with the first letter "M" being particularly large and stylized.

Matthew Orlando  
Worldwide Vice President Corporate Governance  
& Corporate Secretary

Cc: Pinto Adhola

MO/tmk



CIBC World Markets Inc.  
600 de Maisonneuve Blvd. West  
Suite 3050  
Montreal, QC H3A 3J2

Tel: (514) 847-6300  
Fax: (514) 847-6397  
Toll Free: 1-888-847-6300

November 12, 2021

Matt Orlando, Vice President, Worldwide Corporate Governance & Corporate Secretary  
Johnson & Johnson  
One Johnson And Johnson Plaza  
New Brunswick, New Jersey USA  
08933

Re: Shareholder proposal submitted by HLB Investments ULC

Dear Mr. Orlando

I write concerning a shareholder proposal (the "Proposal") submitted to Johnson & Johnson by HLB Investments ULC.

As of November 9<sup>th</sup>, 2021, HLB Investment ULC beneficially owned, and had beneficially owned continuously for at least three years shares of the Company's stock worth at least \$2000 (the "Shares").

CIBC Wood Gundy has acted as record-holder of the Shares and is a DTC participant.

Sincerely,

A handwritten signature in black ink, appearing to read "Maryse Lepine".

Maryse Lepine  
Manager, Regulatory Supervision



EXHIBIT B

(see attached)

# Position on Universal Health Coverage

## Background

For many people around the world, good health is not within reach because of the accessibility and affordability of healthcare services.

Universal health coverage (UHC) is a global priority, championed by the World Health Organization and promoted by governments worldwide. As part of the Sustainable Development Goals, all United Nations Member States, including the United States, have committed to achieve UHC by 2030. Doing so will build healthier communities and stronger economies.

## Relevance

At Johnson & Johnson, the world's largest and most broadly based healthcare company, reaching patients and consumers each day with its medicines, consumer products and medical devices, we believe that good health is at the heart of human progress. Good health enables children to thrive, families and communities to prosper, and countries to achieve economic security. That is why we have a promise to relentlessly drive better health for all.

## Guiding Principles

Johnson & Johnson's [Credo](#) states: "We believe our first responsibility is to the patients, doctors and nurses, to mothers and fathers and all others who use our products and services."

## Our Position

We believe that everyone should have access to quality, affordable healthcare services that they need, regardless of where they live. We support UHC through initiatives in the following key areas:

- **Workforce and infrastructure:** A robust health system with well-trained and well-equipped health workers is foundational to achieving UHC. In particular, we believe a holistic approach ensures that:
  - (1) young people can gain the knowledge and support to enter health-related careers;
  - (2) health workers are provided with opportunities to improve their education and strengthen their skills;
  - (3) health workers and health systems are resilient and can adapt to adversity; and
  - (4) health systems are equipped with the supplies and tools they need to deliver quality care.
- **Access and affordability:** Patients and communities must have access to care, including drugs, vaccines, surgical care, and other medical technologies needed to prevent and treat diseases and address public health needs. We engage stakeholders throughout the world to achieve broad and timely access to our medicines at sustainable prices that aim to be locally affordable. Safe, authentic

medicines must be procured and in stock at the local- and primary-care levels. This holds true for many medicines that currently are available as generics, as well as newer, more innovative medicines. Ensuring access to innovative products can help individual patients and free up health system resources.

- **Sustainable financing:** While UHC is an important, unifying goal, there is no single universal approach to how UHC is financed and delivered through government, non-profit or private-sector channels. Rather, each country must tailor strategies that align to local needs, resources, market conditions, and societal values. UHC can be established through a variety of models and systems, but all require sustainable financing for both providers and patients. Financing considerations should account for the full complexity of the healthcare system, rather than addressing specific issues in isolation. We support investments in value-based care to advance the implementation of effective solutions for health systems.
- **Shared accountability:** While governments typically play a leading role in building health systems, financing and/or delivering care, the inherent complexity of healthcare requires a diverse group of stakeholders to participate in the effective design, implementation, and delivery of care for all. The public, private, and nonprofit sectors have a shared responsibility and accountability toward this goal. Appropriate, transparent ways to measure and track country-level progress toward key bellwether outcomes for health system capacity are crucial to ensuring this accountability.

**Activities to Support UHC:** At Johnson & Johnson, we are firmly committed to doing our part to ensure the promise of UHC becomes a reality for patients, families, and communities around the world. We partner with all stakeholders with a mix of global and country-specific policy and advocacy efforts. Around the world, we support hundreds of health-related programs and we strive to align with government priorities and advocate for quality healthcare, especially for women and children. We believe that tailored strategies that align local needs, resources and market conditions must be part of the solution.

## Application

This position is relevant for the Johnson & Johnson Family of Companies, as detailed in our [governance materials](#). We provide updates relating to UHC in our annual [Health for Humanity Report](#) where relevant.

*Last Updated: June 2020*

December 21, 2021

Via electronic mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E. Washington, D.C. 20549

**Re:** Johnson & Johnson – 2022 Annual Meeting Shareholder Proposal of HLB Investments ULC and The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America

Dear Madam or Sir;

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, SHARE on behalf of HLB Investments ULC (the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Johnson & Johnson (the “Company”).

In a letter to the Division dated December 2, 2021 (the “no-action request”), the Company represented by the firm SKADDEN, ARPS, SLATE, MEAGHER & FLOM stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders. The Company argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with the Company’s ordinary business operations.

As discussed below, the Company has not met its burden of proving its entitlement to exclude the Proposal on the ground of Rule 14a-8(i)(7) and the Proponents respectfully request that the Company’s request for relief be denied.

A copy of this letter is being emailed concurrently to [marc.gerber@skadden.com](mailto:marc.gerber@skadden.com). We ask that the Staff provide its response to Anthony Schein at [aschein@share.ca](mailto:aschein@share.ca) and Kevin Thomas at [kthomas@share.ca](mailto:kthomas@share.ca).

## PROPOSAL

The resolved clause of the Proposal states:

**Resolved:** Shareholders request that the Board of Directors commission and publish a third-party review within the next year (at reasonable cost, omitting proprietary information) of whether Johnson & Johnson lobbying activities (direct and through trade associations) align with the company's Position on Universal Health Coverage, and in particular its provision supporting "broad and timely access to our medicines at sustainable prices that aim to be locally affordable." The Board of Directors should report on how it addresses the risks presented by any misaligned lobbying and the company's plans, if any, to mitigate these risks.

## SUMMARY

The Proposal requests that the Board commission a report to shareholders on whether the company's lobbying and that of its trade associations is consistent with the Board's own disclosed policies regarding universal health coverage ("J&J Position on UHC"), and how it mitigates risks identified as a result of this review.

The Company's no-action request argues that the Proposal is excludable under Rule 14a-8(i)(7) because it addresses an ordinary business matter — "Johnson & Johnson's specific lobbying activities as they relate to the J&J Position on UHC" — allegedly without addressing a significant policy issue.

The Proposal is not excludable under Rule 14a-8(i)(7). The following discussion will demonstrate that, to the contrary, the Proposal addresses significant policy issues that transcend the day-to-day business matters and that are appropriate for a shareholder vote.

## ANALYSIS

**The proposal's subject is the Board's oversight of regulatory and reputational risks in the company's industry and disclosure to inform shareholders on the effectiveness of this oversight.**

Rule 14a-8(i)(7) permits a company to omit a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations". The purpose of the exception, as articulated by Staff, is "to confine the resolution of ordinary business

problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”

The company argues that “the Proposal and supporting statement, when read together, focus on Johnson & Johnson’s specific lobbying activities as they relate to the J&J Position on UHC and therefore directly implicate Johnson & Johnson’s operations as a healthcare company” and are therefore excludable by virtue of Rule 14a-8(i)(7).

The quotation of segments of the J&J Position on UHC in the supporting statement next to examples of potential misalignment in trade association positions is used to identify a potential risk to shareholders, namely “the use of company funds to support lobbying efforts that may have negative effects on the company’s reputation, its stated positions on public policy and regulatory concerns, and on matters of public interest such as COVID-19 recovery efforts which affect our global economy.” These are not matters related to the company’s operations but moreover to its use of shareholder funds to support external organizations that may negatively affect the company and its shareholders and contradict disclosures upon which shareholders may rely.

The company suggests that the proposal’s intent is to interfere in “decisions regarding which lobbying initiatives to support in furtherance of the J&J Position” and that “these decisions are the responsibility of management and are not proper subjects for shareholder involvement.”

This is a misrepresentation of the shareholder proposal, which at no point requests that shareholders interfere in decisions about what lobbying activity to undertake, who should undertake it, when, or even what the J&J Position on UHC should be. Rather, the proposal clearly asks the board to clarify its own process for risk assessment and mitigation in keeping with the policy position it has, itself, identified and disclosed publicly.

The company tries to argue that the proposal affects ordinary business because “any lobbying initiatives supporting the key areas identified in the J&J Position on UHC have the potential to impact Johnson & Johnson’s business operations, products, sales and profitability.”

Simply because any public policy matter might ultimately affect the company’s operations does not mean that requesting a risk assessment related to public policy matters is an effort by shareholders to micromanage the company’s ordinary business

operations. Respectfully, almost any matter of corporate governance upon which shareholders are clearly entitled to vote may, in the long term, affect the company's business operations, products, sales and profitability, but this does not mean, for example, that by taking part in an advisory vote on executive compensation ("say on pay") the shareholders are interfering in ordinary business. In fact it would be patently absurd to restrict shareholder votes to only those matters that would have no foreseeable effect on a company's profitability, since the company's profitability is a core reason why shareholders invest in the company in the first place and why they are concerned about good corporate governance.

Staff's November 3, 2021 Legal Bulletin 14L(CF) clarified the interpretation of ordinary business and micromanagement for purposes of considering exclusions of shareholder proposals. It rightly distinguishes between proposals that, for example, ask a board to set targets, and proposals that seek to impose specific methods for doing so. Staff noted that it

will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

We submit that the current proposal, which asks the board to commission its own review and report on how it addresses and mitigates any risks falls clearly within the scope of that definition, allowing board discretion but seeking information related to the board's assessment.

The November 3, 2021 Staff Legal Bulletin 14L(CF) also clarified the question of "complexity", saying that:

Additionally, in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.

We submit that on the issue of lobbying-related disclosures and assessments, this is a matter of substantial investor discussion and concern, having been the subject of hundreds of shareholder proposals over the last five years and a substantial amount of

disclosure by companies. It is not a matter of which shareholders are ill-equipped to consider.

### **The proposal focuses on significant policy issues that transcend the company's ordinary business operations**

In a 1998 release, the Commission explains that “proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote”<sup>1</sup>.

The current Proposal, because it is focused on a set of high visibility controversies and concerns raised by current events, is non-excludable under Rule 14a-8(i)(7). Staff precedents indicate that when the magnitude of a controversy relating to a company rises to the level of the ones in the current Proposal, it led the Staff to find that the significant policy issue transcends ordinary business, even in proposals that were clearly and closely related to ordinary business matters, unlike the current Proposal.

Unbelievably, however, the Company in its response to the current Proposal argues that “the Proposal does not appear to touch on any significant policy issue.”

It might be difficult to find subjects that are more *obviously* significant policy issues right now than the issues of drug pricing reform, broad and timely access to medicines at sustainable prices, intellectual property rights as they relate to COVID-19 vaccine access globally, and advocating for the privatization of Medicare and Medicaid, all raised in the supporting statement of this Proposal.

The subject of drug pricing reform has been the subject of at least nine congressional reports since 2019, including a 269-page Congressional Majority Staff report issued just days after the Company filed this no-action request,<sup>2</sup> which concluded a nearly three-year, sweeping public investigation of the issue that included five public hearings.

The question of global policy on intellectual property in the context of the COVID pandemic – raised in this shareholder proposal – is not only a significant policy issue upon which the US President himself has taken a position, but is also of serious interest

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<sup>1</sup> Exchange Act Release No. 40018 (May 26, 1998)

<sup>2</sup> The report, notably, discusses Johnson & Johnson repeatedly. Available at: <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf>



to shareholders because of the severe economic impacts of new variants of COVID which arise when vaccines are in short supply in developing countries – which can clearly be seen in capital markets right now as the Omicron variant spreads globally.

The Proposal clearly asks the company’s board to review whether its lobbying activity, and that of its trade associations, is consistent with its own disclosed position on exactly these significant policy issues.

Having tried unconvincingly to claim that there is no significant policy issue at stake, the Company goes on to argue that even if the Proposal does relate to a significant policy issue, other precedents suggest it may still be excluded.

The Company cites the Staff decision in *PetSmart, Inc.* (Mar. 24, 2011), in which the proposal was excluded because it asked the company to “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”. There is no comparison between the two proposals, in which one asks the company to take specific actions related to a wide range of administrative issues including record keeping, and the current Proposal which asks the board to assess the risk that its lobbying, and that of its trade associations, may be inconsistent with its own disclosed policy objectives. In *CIGNA Corp.* (Feb. 23, 2011), also cited by the Company, the proposal was excluded because it also asked the company to report on expense management. In *Capital One Financial Corp.* (Feb. 3, 2005), again cited by the Company, the proposal was excluded because it asked for information about how the company manages the workforce.

We submit that none of these cases cited by the Company has any parallel in the current Proposal, and that the Proposal clearly relates to significant policy issues and not ordinary business.

## **CONCLUSION**

The Proposal relates to the Board’s oversight of lobbying activity on significant policy issues, and asks that it assess whether there is a risk of misalignment between its own publicly-disclosed policy position and those positions advocated by its hired lobbyists, its trade associations, and the organizations into which its trade association is funneling the company’s money. It leaves the Board with full discretion to commission

the study, assess the risks, determine its own mitigation strategy, none of which inserts shareholders into the ordinary business of the corporation.

The issues of concern to shareholders relate to incidences cited in the report where it appears that the advocacy by a trade association to which the company belongs is contrary to the Company's own stated and disclosed objectives. For shareholders, the positive statements about universal health access and pricing which the Company has disclosed publicly are an important element in addressing a mounting material risk of regulatory and legislative action on these very policy issues, but they are of little value if the Company's lobbying activity and that of its trade associations undermine and contradict those same statements.

Based on the foregoing, we believe the Company has failed to provide basis for the conclusion that the Proposal is excludable from the 2022 proxy statement pursuant to Rule 14a-8(i)(7). Therefore, we respectfully request that Staff inform the Company that the SEC proxy rules require denial of the Company's no-action request.

In the event that the Staff should decide to concur with the Company, we respectfully request an opportunity to confer with the Staff.

Should you have any questions regarding this matter, please, contact Kevin Thomas at [kthomas@share.ca](mailto:kthomas@share.ca).

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Thomas', with a stylized flourish at the end.

Kevin Thomas  
CEO, SHARE

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2111

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FAX: (202) 393-5760

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TOKYO  
TORONTO

DIRECT DIAL  
202-371-7233  
DIRECT FAX  
202-661-8280  
EMAIL ADDRESS  
MARC.GERBER@SKADDEN.COM

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

January 4, 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: Johnson & Johnson – 2022 Annual Meeting  
Supplement to Letter dated December 2, 2021  
Relating to Shareholder Proposal of HLB Investments  
ULC and The Domestic and Foreign Missionary  
Society of the Protestant Episcopal Church in the  
United States of America

Ladies and Gentlemen:

We refer to our letter dated December 2, 2021 (the “No-Action Request”), submitted on behalf of our client, Johnson & Johnson, a New Jersey corporation, 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 Johnson & Johnson’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by The Shareholder Association for Research & Education (“SHARE”) on behalf of HLB Investments ULC (“HLB”), and co-filed by The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America (“DFMS”), may be excluded from the proxy materials to be distributed by Johnson & Johnson in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”). SHARE, HLB and DFMS are sometimes collectively referred to as the “Proponents.”

This letter is in response to the letter to the Staff, dated December 21, 2021, submitted by SHARE (the “Proponents’ 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 Proponents.

The Proponents’ Letter mischaracterizes both the argument made in the No-Action Request and the Staff’s guidance on the ordinary business exclusion. In this regard, the Proponents’ Letter argues that the Proposal does not focus on ordinary business matters because it “clearly asks the board to clarify its own process for risk assessment and mitigation” and asserts that “[s]imply because any public policy matter might ultimately affect the company’s operations does not mean that requesting a risk assessment related to public policy matters is an effort by shareholders to micromanage the company’s ordinary business operations.”

The No-Action Request did not argue that the Proposal seeks to micromanage Johnson & Johnson in any manner. Moreover, as described in Staff Legal Bulletin No. 14E (Oct. 27, 2009), when a proposal relates to an evaluation of risk, as the Proponents’ Letter claims the Proposal does, the Staff will focus on the subject matter to which the risk pertains or that gives rise to the risk. Thus, as explained in the No-Action Letter, Johnson & Johnson believes the Proposal focuses on ordinary business matters because it focuses on Johnson & Johnson’s specific lobbying activities as they relate to the Johnson & Johnson Position on Universal Health Coverage (the “J&J Position on UHC”) and therefore directly implicate Johnson & Johnson’s operations as a healthcare company.

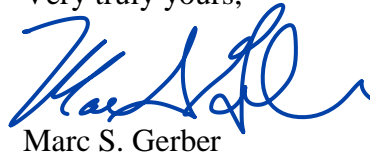
In addition, the Proponents’ Letter argues that the Staff should not permit exclusion of the Proposal because the Proposal relates to a significant policy issue. Specifically, the Proponents’ Letter asserts that because the Proposal “is focused on a set of high visibility controversies and concerns raised by current events, [it] is non-excludable under Rule 14a-8(i)(7).” The Proponents’ Letter then takes an extremely expansive approach to articulating the significant policy issue raised by the Proposal, referencing “drug pricing reform, broad and timely access to medicines at sustainable prices, intellectual property rights as they relate to COVID-19 vaccine access globally, and advocating for the privatization of Medicare and Medicaid.” Notwithstanding the fact that this admission demonstrates the Proposal is overbroad and thus does not focus on any particular significant policy issue, if any, the Proponents’ argument ignores the fact that the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that are directed at a company’s political or lobbying activities relating to specific issues pertaining to the company’s business even where the specific activities potentially relate to a significant policy issue. *See, e.g., Bristol-Myers Squibb Co.* (Jan. 29, 2013, *recon.*

*denied* Mar. 12, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal relating to access to healthcare, noting that “the proposal and supporting statement, when read together, focus primarily on [the company’s] specific lobbying activities that relate to the operation of [the company’s] business and not on [the company’s] general political activities”); *Duke Energy Corp.* (Feb. 24, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal relating to global warming, noting that “the proposal and supporting statement, when read together, focus primarily on [the company’s] specific lobbying activities that relate to the operation of [the company’s] business and not on [the company’s] general political activities”). Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, it would be excludable.

Accordingly, the Proposal may be excluded from Johnson & Johnson’s 2021 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Johnson & Johnson’s ordinary business operations.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Johnson & Johnson’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: Matt Orlando  
Worldwide Vice President, Corporate Governance and Corporate Secretary  
Johnson & Johnson

Kevin Thomas  
CEO  
Anthony Schein  
Director of Shareholder Advocacy  
The Shareholder Association for Research & Education

Office of Chief Counsel  
January 4, 2022  
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James Dunne  
HLB Investments ULC

Lydia Kuykendal  
Director of Shareholder Advocacy  
Mercy Investment Services, Inc.

N. Kurt Barnes  
Treasurer and CFO  
The Domestic and Foreign Missionary Society of the Protestant Episcopal  
Church in the United States of America

January 7, 2022

Via electronic mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E. Washington, D.C. 20549

**Re:** Johnson & Johnson – 2022 Annual Meeting Shareholder Proposal of HLB Investments ULC and The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America

Dear Madam or Sir;

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, SHARE on behalf of HLB Investments ULC (the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Johnson & Johnson (the “Company”).

In a letter to the Division dated December 2, 2021 (the “no-action request”), the Company represented by the firm SKADDEN, ARPS, SLATE, MEAGHER & FLOM stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders.

SHARE responded to that submission in a letter to the Commission dated December 21, 2021, and shared with the Company. On January 4<sup>th</sup>, 2022, the Company submitted a rebuttal to the Commission.

In its January 4<sup>th</sup>, 2022 letter, the Company argues that the Proposal intrudes upon “ordinary business” because the underlying subject matter of the board’s risk assessment is the Company’s lobbying activity which may “directly implicate Johnson & Johnson’s operations as a healthcare company.”

To borrow a turn-of-phrase from the Company’s January 4<sup>th</sup> letter, this argument is “overbroad”. Any lobbying activity on any issue may affect a company’s operations in some way. Presumably this is why companies engage in lobbying activity; otherwise,

investors would argue that the Company is wasting shareholder dollars on personal political objectives unrelated to creating value for investors and stakeholders. However, the mere possibility that the results of lobbying activity might somehow affect operations does not mean that asking the board to report on its oversight of risks related to its own policies and activities is an effort to intrude in ordinary business, nor to suggest shareholders should decide how to solve such problems at an annual shareholders meeting.

We suggest further that the Company’s argument, if followed, would draw the Staff into the question of whether and how the significant policy issue of broad and timely access to medicines in a time of a mass pandemic might affect ordinary business at this Company. That effort would not advance the policy objectives behind the ordinary business exception, namely to “preserve shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters.”<sup>1</sup>

We submit that the current Proposal brings a significant policy issue in front of shareholders while still recognizing the board’s authority over most day-to-day business matters. The Proposal does not ask shareholders to vote on any membership or position taken on an issue, but rather asks the board to report on its oversight of activity related to positions already defined by the Company itself, positions which are not being called into question in this Proposal.

Accordingly, we further submit that consistent with Staff Legal Bulletin No. 14L (CF), published on Nov 3, 2021, the only relevant test is to “consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.”<sup>2</sup>

With regard to that question – whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company – the Company is now arguing that our Proposal is too specific to its operations to transcend ordinary business but is simultaneously “*overbroad* and thus does not focus on any particular significant policy issue, if any” [emphasis added]. As evidence, the Company cites our letter’s mention of “drug pricing reform, broad and timely access to medicines at

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<sup>1</sup> Staff Legal Bulletin No. 14L (CF) published November 3, 2021, found at <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>

<sup>2</sup> Ibid.



sustainable prices, intellectual property rights as they relate to COVID-19 vaccine access globally, and advocating for the privatization of Medicare and Medicaid.”

Rather than being “overbroad”, every one of these matters are raised as individual examples of the core issue of broad and timely access to medicines at sustainable prices – a single significant policy issue with broad societal impact, and one with particular implications for investors that have relied upon the company’s own publicly-disclosed policy on this very issue, its Position on Universal Health Coverage.

In its January 4, 2022 letter, the Company cites *Bristol-Myers Squibb Co.* (Jan. 29, 2013, recon. denied Mar. 12, 2013) to support its position. That decision, however, pertains to a Proposal that focused on the company’s position on a specific piece of legislation. In fact the company, in that instance, argued successfully that

“... the Proponent is solely focused on the Company's stated position on PPACA [the Patient Protection and Affordable Care Act]. The Proponent is asking shareholders to vote on a Proposal that, when read together with the Supporting Statement, transforms the Proposal into a referendum on the Company's specific lobbying activities relating to the operation of the Company's ordinary business (e.g., PPACA and membership in PhRMA).”<sup>3</sup>

The current Proposal does no such thing. It does not ask shareholders to vote on any membership or position taken on an issue, but rather asks the board to report on its oversight of activity related to positions already defined by the Company itself, positions which are not being called into question in this Proposal.

The Company also cites *Duke Energy Corp.* (Feb. 24, 2012), a decision on a proposal asking the company to report on its “global warming-related lobbying activities”. That proposal also explicitly linked its request to a specific legislative effort by Duke Energy’s CEO to enact cap-and-trade legislation, and concluded that “disclosure of the Company's global warming-related activities will provide the transparency shareholders need *to evaluate these public policy activities*”<sup>4</sup> [emphasis added] – again, effectively asking that shareholders vote on a specific legislative effort. The current Proposal does no such thing. It does not ask shareholders to vote on any membership or position taken on an issue, but rather asks the board to report on its oversight of

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<sup>3</sup> <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2013/nationalcenter012913-14a8.pdf>

<sup>4</sup> <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/sheltonehrlich022412-14a8.pdf>

activity related to positions already defined by the Company itself, positions which are not being called into question in this Proposal.

Further, while the *Duke Energy* proposal was indeed excluded almost a decade ago, we note that more recent proposals asking for a “report (at reasonable cost, omitting proprietary information) describing if, and how, [company]’s lobbying activities (direct and through trade associations) align with the Paris Agreement’s goal to limit temperature rise to 1.5 degrees and how [company] plans to mitigate risks presented by any misalignment” have not been excluded, even at energy companies whose ordinary business could be affected by legislative action or inaction on the issue.<sup>5</sup>

In 2021, five of those proposals received majority votes from shareholders, indicating substantial shareholder interest in lobbying alignment.

This inclusion is reasonable given changing shareholder expectations which have recognized, alongside regulators, the clear systemic risk associated with issues like climate change and, for that matter, global pandemic responses – including broad and timely access to medicines (including COVID vaccines) at sustainable prices.

In conclusion, we submit that the Company has still not met its burden of proving its entitlement to exclude the Proposal on the ground of Rule 14a-8(i)(7) in either their initial December 2, 2021 letter or their January 4, 2022 rebuttal, and the Proponents respectfully request that the Company’s request for relief be denied.

A copy of this letter is being emailed concurrently to [marc.gerber@skadden.com](mailto:marc.gerber@skadden.com). We ask that the Staff provide its response to Anthony Schein at [aschein@share.ca](mailto:aschein@share.ca) and Kevin Thomas at [kthomas@share.ca](mailto:kthomas@share.ca). Should Staff wish to discuss any of the matters raised here, or raise any questions, we would welcome the opportunity to do so.

Respectfully,



Kevin Thomas  
CEO, SHARE

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<sup>5</sup> See for example, the 2020 proposal at Sempra Energy (<https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2020/asyousowtaggartsempra030620-14a8.pdf>), or the 2021 proposal at Exxon-Mobil (<https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/bnp Exxon022621-14a8.pdf>) which use nearly identical wording.