



DIVISION OF
CORPORATION FINANCE

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

May 3, 2022

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

Re: Rite Aid Corporation (the "Company")
Incoming letter dated February 3, 2022

Dear Mr. Gerber:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Kenneth Steiner for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board take each step necessary so that each voting requirement in the Company's charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In this regard, we note that if shareholders approve the Charter Amendments at the Company's 2022 annual meeting, the affirmative vote of the holders of a majority of the shares of Company stock entitled to vote in the election of directors would be required to take the relevant actions, rather than a majority of votes cast, as the Proposal requests.

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: John Chevedden

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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BY EMAIL (shareholderproposals@sec.gov)

February 3, 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: Rite Aid Corporation – 2022 Annual Meeting
Omission of Shareholder Proposal of Kenneth Steiner

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, Rite Aid Corporation, a Delaware corporation (“Rite Aid”), 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 Rite Aid’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden (“Mr. Chevedden”) on behalf of Kenneth Steiner (“Mr. Steiner”) from the proxy materials to be distributed by Rite Aid in connection with its 2022 annual meeting of stockholders (the “2022 proxy materials”). Messrs. Chevedden and Steiner are sometimes collectively referred to as the “Proponents.”

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are

simultaneously sending a copy of this letter and its attachments to the Proponents as notice of Rite Aid's intent to omit the Proposal from the 2022 proxy materials.

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

I. The Proposal

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

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in Rite Aid's view that it may exclude the Proposal from the 2022 proxy materials pursuant to Rule 14a-8(i)(10) as Rite Aid's Board of Directors (the "Board") has approved the resolutions, described below, approving and submitting for stockholder approval at the 2022 annual meeting of stockholders the Charter Amendments (as defined below) that will substantially implement the Proposal.

III. Background

A. The Proposal

Rite Aid received the Proposal on December 3, 2021, accompanied by a cover letter from Mr. Steiner, dated November 14, 2021. On December 8, 2021, Rite Aid sent a letter to Messrs. Chevedden and Steiner requesting a written statement from the record holder of Mr. Steiner's shares verifying that Mr. Steiner beneficially owned the requisite number of shares of Rite Aid common stock continuously for at least the requisite period preceding and including December 3, 2021, the date of submission of the Proposal, requesting a written statement regarding Mr. Steiner's availability to meet with Rite Aid in person or via teleconference no less than 10 calendar days nor more than 30 calendar days after submission of the Proposal and requesting written documentation from Mr. Steiner that includes a statement identifying the specific topic

of the Proposal to be submitted and a statement supporting the Proposal. On December 19, 2021, Rite Aid received a copy of a letter from TD Ameritrade confirming that Mr. Steiner beneficially held the requisite number of shares of Rite Aid common stock continuously for at least the requisite period as of the date of submission of the Proposal. In addition, on December 20, 2021, Rite Aid received an email from Mr. Chevedden regarding the Proponent's availability to meet with Rite Aid via teleconference and on December 22, 2021, Rite Aid received written documentation from Mr. Steiner identifying the specific topic of the Proposal and supporting the Proposal. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.

B. The Charter Amendments

Rite Aid's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") contains four provisions calling for a supermajority vote of stockholders. Rite Aid's Amended and Restated By-Laws do not include any supermajority vote provisions.

The first supermajority vote provision is contained in the introductory paragraph of paragraph B of Article ELEVENTH of the Certificate of Incorporation, which currently requires the affirmative vote of the holders of at least 75% of the shares of stock of Rite Aid entitled to vote in elections of directors to adopt or authorize a Business Combination (as defined in the Certificate of Incorporation) with any Related Person (as defined in the Certificate of Incorporation) unless certain conditions are satisfied.

The second is contained in paragraph D of Article ELEVENTH of the Certificate of Incorporation, which currently requires the affirmative vote of the holders of at least 75% of the shares of stock of Rite Aid entitled to vote in elections of directors to take any corporate action by the written consent of the stockholders of Rite Aid.

The third is contained in paragraph E of Article ELEVENTH of the Certificate of Incorporation, which currently requires the affirmative vote of the holders of at least 75% of the shares of stock of Rite Aid entitled to vote in elections of directors to take any corporate action at a special meeting of the stockholders of Rite Aid called by the Board, a majority of which Board are not Continuing Directors (as defined in the Certificate of Incorporation).

The fourth is contained in paragraph G of Article ELEVENTH of the Certificate of Incorporation, which currently requires the affirmative vote of the holders of at least 75% of the shares of stock of Rite Aid entitled to vote in elections of directors to amend Article ELEVENTH unless such amendment is recommended to the stockholders of Rite Aid by a majority of the Continuing Directors.

On February 2, 2022, the Board adopted resolutions (i) approving amendments to each of the above provisions of the Certificate of Incorporation to require a majority of the shares of stock of Rite Aid entitled to vote in elections of directors to take the relevant actions (collectively, the “Charter Amendments”), (ii) declaring the Charter Amendments advisable and in the best interest of Rite Aid and its stockholders, (iii) directing that the Charter Amendments be submitted to stockholders for adoption at the 2022 annual meeting, and (iv) recommending that stockholders vote to adopt the Charter Amendments. In the event that Rite Aid stockholders approve the Charter Amendments at the 2022 annual meeting, the affirmative vote of the holders of a majority of the shares of stock of Rite Aid entitled to vote in elections of directors would be required to take the relevant actions outlined above. The text of the Charter Amendments, marked to show proposed revisions, are attached hereto as Exhibit B.

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

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the “substantially implemented” standard in 1983 after determining that the “previous formalistic application” of the rule defeated its purpose, which is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”); Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be “fully effected” provided that they have been “substantially implemented” by the company. *See* 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal under Rule 14a-8(i)(10) when it has determined that the company’s policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., JPMorgan Chase & Co.* (Mar. 9, 2021)*; *AbbVie Inc.* (Mar. 2, 2021)*; *Devon Energy Corp.* (Apr. 1, 2020)*; *Johnson & Johnson* (Jan. 31, 2020)*; *Pfizer Inc.* (Jan. 31, 2020)*; *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. In *Wal-Mart Stores, Inc.* (Mar. 30, 2010), for example, the proposal

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

requested that the company adopt six principles for national and international action to stop global warming. The company argued that its Global Sustainability Report, available on the company's website, substantially implemented the proposal. Although the report referred to by the company set forth only four principles that covered most, but not all, of the issues raised by the proposal, the Staff concluded that the company had substantially implemented the proposal. *See, e.g., Masco Corp.* (Mar. 29, 1999) (permitting exclusion under Rule 14a-8(i)(10) where the company adopted a version of the proposal with slight modifications and clarification as to one of its terms); *see also, e.g., The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *Oshkosh Corp.* (Nov. 4, 2016) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting six changes to the company's proxy access bylaw, where the company amended its proxy access bylaw to implement three of six requested changes); *MGM Resorts International* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report disclosing policies and procedures for political contributions and monetary and non-monetary political contributions where the company had adopted corporate political contributions guidelines).

The text of the Proposal makes clear that the Proposal's essential objective is to remove the supermajority vote requirements contained in the Certificate of Incorporation. Applying the principles described above, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of proposals, substantially similar to the Proposal, seeking to eliminate supermajority vote provisions where the board lacked unilateral authority to adopt the amendments (which is the case here), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. *See, e.g., Flowsolve Corp.* (Mar. 30, 2021)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company's board of directors approved amendments to the company's certificate of incorporation eliminating the supermajority voting provisions and planned to submit the amendments to shareholders for approval at the company's next annual meeting); *AbbVie Inc.* (Mar. 2, 2021)* (same); *Fortive Corp.* (Feb. 12, 2020)* (same); *Fortive Corp.* (Mar. 13, 2019) (same); *AbbVie Inc.* (Feb. 27, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the [c]ompany's governing

documents”); *PepsiCo, Inc.* (Feb. 14, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the [c]ompany’s certificate of incorporation”); *AbbVie Inc.* (Feb. 16, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation that, if approved, will remove all supermajority voting requirements in the [c]ompany’s certificate of incorporation and bylaws”); *Dover Corp.* (Dec. 15, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, which, if approved, will eliminate the only two supermajority voting provisions in the [c]ompany’s governing documents”); *QUALCOMM Inc.* (Dec. 8, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation that, if approved, will remove all supermajority voting requirements in the [c]ompany’s certificate of incorporation and bylaws”); *Korn/Ferry Int’l* (July 6, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, approval of which will result in the replacement of each of the supermajority voting requirements in the certificate of incorporation and bylaws that are applicable to [the company’s] common stock with a majority vote standard”).

The Staff also has consistently permitted exclusion under Rule 14a-8(i)(10) of a proposal seeking to eliminate supermajority vote provisions where the amendments to the company’s governing documents resulted in replacing each supermajority vote requirement with a majority of the outstanding shares vote requirement. *See, e.g., AbbVie Inc.* (Mar. 2, 2021)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company’s certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the Delaware General Corporation Law (the “DGCL”)); *Fortive Corp.* (Feb. 12, 2020)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to Fortive’s certificate of incorporation would result in a majority of the outstanding shares vote requirement); *Fortive Corp.* (Mar. 13, 2019) (same); *AbbVie Inc.* (Feb. 27, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company’s certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the DGCL); *AbbVie Inc.* (Feb. 16, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company’s certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the

DGCL); *Dover Corp.* (Dec. 15, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company's certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the DGCL); *QUALCOMM Inc.* (Dec. 8, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company's certificate of incorporation and bylaws would result in a majority of the outstanding shares vote requirement pursuant to the DGCL); *Korn/Ferry Int'l* (July 6, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendment to the company's certificate of incorporation would require a majority vote of the voting power of the outstanding shares).

As in the foregoing letters, the Charter Amendments substantially implement the Proposal. Specifically, Rite Aid's stockholders will be asked at Rite Aid's 2022 annual meeting to vote to adopt the Charter Amendments that would, if approved, eliminate the supermajority vote requirements in the Certificate of Incorporation. As noted above, Rite Aid's Amended and Restated By-Laws do not include any supermajority vote provisions. Thus, Rite Aid has addressed the essential objective of the Proposal.

Accordingly, Rite Aid believes that the Proposal has been substantially implemented and may be excluded under Rule 14a-8(i)(10).

V. Conclusion

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

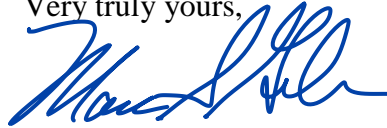
Office of Chief Counsel

February 3, 2022

Page 8

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

Very truly yours,



Marc S. Gerber

Enclosures

cc: Paul Gilbert
Executive Vice President, Secretary and General Counsel
Rite Aid Corporation

John Chevedden

Kenneth Steiner

EXHIBIT A

(see attached)

Kenneth Steiner

Mr. Paul Gilbert
Corporate Secretary
Rite Aid Corporation (RAD)
30 Hunter Lane
Camp Hill, PA 17011

RECEIVED
RITE AID
DEC 03 2021
LEGAL DEPARTMENT

Dear Mr. Gilbert,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I intent to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

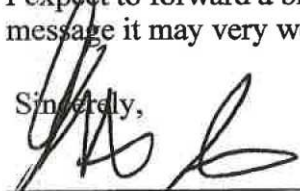
My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden at:

[REDACTED]
to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to [REDACTED]

I expect to forward a broker letter soon so if you acknowledge this proposal promptly in an email message it may very well save you from requesting a broker letter from me.

Sincerely,


Kenneth Steiner

11-14-21
Date

[RAD: Rule 14a-8 Proposal, December 1, 2021]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws.

If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes any existing supermajority vote requirement that result from default to state law and can be subject to replacement.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block proposals supported by most shareholders but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. The proponents of these proposals included Ray T. Chevedden and William Steiner. The votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice.

Church & Dwight shareholders gave 99% support to a 2020 proposal on this same topic. This proposal topic also won 99%-support at the 2021 ConocoPhillips annual meeting.

Most major companies started to remove their supermajority voting barriers 20 years ago. Rite Aid is thus 20 year behind in corporate governance.

It is a particular disadvantage to the shareholders of Rite Aid to have the current super majority voting requirements because a large percentage of shareholders do not have the time to vote. This means that proposals to improve Rite Aid corporate governance are knocked out by the one-two punch of requiring supermajority votes like 75% from all shares outstanding and then a large percentage of Rite Aid shareholders do not have the time to vote.

Please vote yes:

Simple Majority Vote – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

Notes:

“Proposal 4” stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The color version of the below graphic is to be published immediately after the bold title line of the proposal.

Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.

No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.

No ballot electioneering text repeating the negative management recommendation.

Management will give me the opportunity to correct any typographical errors.

Management will give me advance notice if it does a special solicitation that mentions this proposal.



EXHIBIT B

(see attached)

The Charter Amendments

Introductory paragraph of paragraph B of Article ELEVENTH

- B. Unless the conditions set forth in subparagraphs (1) or (2) of this paragraph B are satisfied, the affirmative vote of not less than ~~seventy-five percent (75%)~~ a majority of the outstanding shares of stock of the corporation entitled to vote in elections of directors, considered for the purposes of this Article ELEVENTH as one class, shall be required for the adoption or authorization of a Business Combination with any Related Person. Such affirmative vote shall be required notwithstanding the fact that no vote, or a lesser percentage, may be required by law or in any agreement with any national securities exchange or otherwise, but such vote shall not be applicable if:

Paragraph D of Article ELEVENTH

- D. Any corporation action which may be taken by the written consent of stockholders entitled to vote upon such action pursuant to Article SEVENTH Section 4 of this Certificate of Incorporation or pursuant to the General Corporation Law shall be only by the written consent of holders of not less than ~~seventy-five percent (75%)~~ a majority of the shares of stock of the corporation entitled to vote thereon, notwithstanding the fact that a lesser percentage may be required by law or otherwise.

Paragraph E of Article ELEVENTH

- E. Any corporate action which may be taken at a special meeting of stockholders called by the Board of Directors, a majority of which Board are not Continuing Directors, shall be only by the affirmative vote of the holders of not less than ~~seventy-five percent (75%)~~ a majority of the outstanding shares of stock of the corporation entitled to vote in elections of directors, considered for purposes of this Article ELEVENTH as one class, notwithstanding the fact that a lesser percentage may be required by law or otherwise.

Paragraph G of Article ELEVENTH

- G. No amendments to this Certificate of Incorporation of the corporation shall amend, alter, change or repeal any of the provisions of this Article ELEVENTH, unless the amendment effecting such amendment, alteration, change or repeal shall receive the affirmative vote of not less than ~~seventy-five percent (75%)~~ a majority of the shares of stock of the corporation entitled to vote in elections of directors, considered for the purposes of this Article ELEVENTH as one class; ~~provided that this paragraph G shall not apply to, and such seventy-five percent (75%) vote shall not be required for, any amendment, alteration, change or repeal recommended to the stockholders by a majority of the Continuing Directors.~~

JOHN CHEVEDDEN

February 3, 2022

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

1 Rule 14a-8 Proposal
Rite Aid Corporation (RAD)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the February 3, 2022 no-action request.

Management failed to mention that its 2022 proposal on this topic is guaranteed to fail. The management proposal requires a 75% vote. In 2021 only 48% of shares voted. This may be the largest gap in the history of rule 14a-8 between the vote required for a management proposal attempting to eclipse a rule 14a-8 proposal and the typical shareholder voting percentage.

Sincerely,



John Chevedden

cc: Kenneth Steiner

Paul D. Gilbert

[RAD: Rule 14a-8 Proposal, December 1, 2021]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Simple Majority Vote

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Please vote yes:

Simple Majority Vote – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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WASHINGTON, D.C. 20005-2111

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BY EMAIL (shareholderproposals@sec.gov)

February 9, 2022

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

RE: Rite Aid Corporation – 2022 Annual Meeting
Supplement to Letter dated February 3, 2022
Relating to Shareholder Proposal of Kenneth Steiner

Ladies and Gentlemen:

We refer to our letter dated February 3, 2022 (the “No-Action Request”), submitted on behalf of our client, Rite Aid Corporation, a Delaware corporation (“Rite Aid”), 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 Rite Aid’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden on behalf of Kenneth Steiner may be excluded from the proxy materials to be distributed by Rite Aid in connection with its 2022 annual meeting of stockholders (the “2022 proxy materials”). Messrs. Chevedden and Steiner are sometimes collectively referred to as the “Proponents.”

This letter is in response to the letter to the Staff, dated February 3, 2021, submitted by John Chevedden (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.

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

As described in the No-Action Request, because Rite Aid's Board of Directors adopted resolutions (i) approving amendments to each of the provisions of the Certificate of Incorporation described in the No-Action Request to require a majority of the shares of stock of Rite Aid entitled to vote in elections of directors to take the relevant actions (collectively, the "Charter Amendments"), (ii) declaring the Charter Amendments advisable and in the best interest of Rite Aid and its stockholders, (iii) directing that the Charter Amendments be submitted to stockholders for adoption at the 2022 annual meeting, and (iv) recommending that stockholders vote to adopt the Charter Amendments, Rite Aid has substantially implemented the Proposal pursuant to Rule 14a-8(i)(10).

The Proponents' Letter asserts that approval of the Charter Amendments requires a 75% stockholder vote and implies that this assertion is somehow relevant to the Staff's consideration of the No-Action Request. The Proponents' Letter is incorrect on both counts.

The Proponents' Letter misconstrues what Rule 14a-8(i)(10) requires for the Proposal to be deemed "substantially implemented." The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release"); Exchange Act Release No. 34-12598 (July 7, 1976). Management – more precisely in this context, the Rite Aid Board of Directors – has favorably acted upon the matter raised by the Proposal by approving the Charter Amendments to eliminate the supermajority voting requirements, declaring the Charter Amendments advisable, directing that the Charter Amendments be submitted for stockholder approval and recommending that stockholders vote to adopt the Charter Amendments. The Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of proposals, substantially similar to the Proposal, seeking to eliminate supermajority vote provisions where the board lacked unilateral authority to adopt the amendments (which is the case here), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. This has been the case regardless of the

shareholder vote required to approve such amendments and is consistent with the Commission's position adopted in the 1983 Release.

In any event, the assertion that a 75% stockholder vote is required to approve the Charter Amendments is incorrect, although we think we know where the Proponents' analysis goes awry. All of the Charter Amendments relate to Article ELEVENTH of the Certificate of Incorporation. Paragraph G of Article ELEVENTH provides that a 75% stockholder vote is required for any amendment to Article ELEVENTH unless such amendment is recommended to the stockholders of Rite Aid by a majority of the Continuing Directors. In this case, the Charter Amendments are being recommended to the stockholders of Rite Aid by a majority of the Continuing Directors and, therefore, the 75% stockholder approval requirement will not apply. Pursuant to Section 242 of the Delaware General Corporation Law, approval of the Charter Amendments will require the approval of a majority of the outstanding shares of Rite Aid common stock entitled to vote thereon.

For the reasons described above and in the No-Action Request, Rite Aid has substantially implemented the Proposal and, therefore, the Proposal is excludable under Rule 14a-8(i)(10).

II. Conclusion

For the reasons stated above and in the No-Action Request, Rite Aid respectfully requests that the Staff concur that it will take no action if Rite Aid excludes the Proposal from the 2022 proxy materials.

Office of Chief Counsel
February 9, 2022
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Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Rite Aid'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: Paul Gilbert
Executive Vice President, Secretary and General Counsel
Rite Aid Corporation

John Chevedden

Kenneth Steiner