



DIVISION OF  
CORPORATION FINANCE

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

March 30, 2022

Yafit Cohn  
The Travelers Companies, Inc.

Re: The Travelers Companies, Inc. (the "Company")  
Incoming letter dated January 18, 2022

Dear Ms. Cohn:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Trillium ESG Global Equity Fund and Friends Fiduciary Corporation for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal urges the board to oversee a third-party audit which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(2) or Rule 14a-8(i)(6). We are unable to conclude that the Proposal, if implemented, would cause the Company to violate state law.

We are unable to concur in your view that the Company may exclude the Proposal or portions of the supporting statement under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the portions of the supporting statement you reference are materially false or misleading. We also are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

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: Jonas D. Kron  
Trillium Asset Management



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VIA E-MAIL

January 18, 2022

Re: The Travelers Companies, Inc. – Omission of Shareholder Proposal from Proxy Materials Pursuant to Rule 14a-8

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

Ladies and Gentlemen:

The Travelers Companies, Inc. (“Travelers” or the “Company”) is filing this letter with respect to the shareholder proposal and supporting statement (collectively, the “Proposal”) co-filed by Trillium ESG Global Equity Fund and Friends Fiduciary Corporation (the “Proponents”) for inclusion in the proxy statement and form of proxy to be distributed by the Company in connection with its 2022 Annual Meeting of Shareholders (collectively, the “Proxy Materials”).

A copy of the Proposal and accompanying correspondence from the Proponents is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against the Company if it omits the Proposal in its entirety from the Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we are submitting this request for no-action relief to the Staff via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov), and the undersigned has included her name and telephone number both in this letter and in the cover e-mail accompanying this letter. Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), we are:

1. filing this letter with the Commission no later than 80 calendar days before the date on which the Company plans to file its definitive Proxy Materials with the Commission; and
2. simultaneously providing the Proponents with a copy of this submission.

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Rule 14a-8(k) of the Exchange Act and SLB 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponents that if they elect to submit additional correspondence to the Commission or the Staff relating to the Proposal, they must concurrently furnish a copy of that correspondence to the Company. Similarly, the Company will promptly forward to the Proponents any response received from the Staff to this request that the Staff transmits by email or fax only to the Company.

**I. The Proposal**

The Proposal sets forth the following resolution for adoption by the Company's shareholders:

Resolved, shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining the specific matters to be assessed. A report on the audit, prepared at reasonable cost and omitting confidential/proprietary information, should be published on the company's website.

**II. Bases for Exclusion**

The Company respectfully requests the Staff's concurrence that the Company may exclude the Proposal from its Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations;
- Rule 14a-8(i)(2) because the Proposal would, if implemented, cause the Company to violate state law;
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal; and
- Rule 14a-8(i)(3) and Rule 14a-9 because the Proposal is vague and indefinite and contains numerous false and misleading statements, rendering the Proposal in violation of the proxy rules.

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### **III. Background: The Operations of the Company and the Insurance Industry**

The Company is a holding company principally engaged, through its subsidiaries, in providing a wide range of commercial and personal property and casualty insurance products and services to businesses, government units, associations and individuals.<sup>1</sup>

The business of insurance involves a contractual arrangement in which the insurer agrees to bear a policyholder's financial risk of loss, subject to agreed limits, terms and conditions, in exchange for a premium. This requires insurers to design and price their insurance products based on the financial risk of loss. Under longstanding law and practice, insurers identify risk factors and establish rates based on sound actuarial principles that do not – and may not – take factors such as race or other prohibited characteristics into account. Established principles of risk-based insurance underwriting and pricing allow insurance markets to function properly, fairly and competitively. Ultimately, this approach benefits consumers by increasing the availability of insurance at fair prices that appropriately reflect the related risks. It also furthers the significant interests of states in ensuring the financial solvency of insurers to pay covered claims to policyholders and claimants as they come due.

Regulated through state departments of insurance, the Company's operating subsidiaries, like other insurance companies, are subject to extensive state laws and regulations touching on all aspects of its business, including insurance licensing, pricing, underwriting, claim handling, company capital requirements and solvency.<sup>2</sup> Rates are generally filed with, and reviewed and approved by, state insurance regulators, which uniformly require insurers to establish that their filed rates are "adequate," not "excessive," and not "unfairly discriminatory" as those terms are defined under each state's laws. Notably, unfair discrimination in this context is unrelated to outcomes based on race or other protected characteristics. Rather, as discussed further below, unfair discrimination in the insurance rating context occurs when insureds posing similar risks are treated differently. Under state insurance regulations, rates are not considered unfairly discriminatory simply because people or organizations are charged different premiums, so long as they reflect differences in expected losses and expenses, as typically determined through rigorous actuarial methods and principles.

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<sup>1</sup> References throughout this letter to the Company shall be deemed to also refer to the Company's insurance company subsidiaries.

<sup>2</sup> The business of insurance has been primarily regulated at the state level since the 19<sup>th</sup> century. The enactment of the McCarran-Ferguson Act in 1945 affirmed Congress's intent that the states should primarily regulate the business of insurance. *See* 15 U.S.C. §§ 1101–1012. Pursuant to the McCarran-Ferguson Act, federal statutes (other than those specifically relating to the business of insurance) may not be construed to invalidate, impair or supersede state laws and regulations relating to the business of insurance.

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Established risk-based pricing and underwriting principles, as regulated by the 50 states, go to the very core of the Company's ordinary business operations. In fact, insurers are strictly prohibited from considering race and other protected characteristics in the underwriting, design, issuance, renewal, termination or pricing of their products. Accordingly, consistent with its legal obligations and business policies, Travelers does not take race into account and, except as required by law in a limited circumstance in one state (California), does not collect data on the race or other prohibited characteristics of its insureds.<sup>3</sup>

Through its operating subsidiaries, the Company has over 10 million policies in force for millions of personal and commercial customers under hundreds of lines of coverage. These coverages range from homeowners and auto to workers compensation, general liability, directors & officers liability, professional liability and many other lines of coverage issued at the primary, umbrella and excess level, each of which is subject to detailed legal and regulatory filings and state laws. Ultimately, while the Proposal may appear to present broad social policy goals – and though the Company recognizes the significance of racial justice issues and strives to continually enhance diversity and inclusion in its workforce and support diverse communities around the country – the Proposal encroaches on the core business operations of the Company and the highly regulated environment in which it operates.

The Proposal is excludable on a number of independent grounds. First, it is excludable under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations by (i) interfering with risk-based pricing at the core of management's day-to-day business operations and seeking to address issues that are within the exclusive purview of state insurance regulators and legislators (*see* Section IV.A.1), (ii) implicating the Company's legal and litigation strategies in litigation and regulatory matters (*see* Section IV.A.2.a), and (iii) interfering with the Company's litigation strategies in lawsuits it is defending on behalf of its insureds, thus potentially impeding contractual duties to its insureds (*see* Section IV.A.2.b). Second, as addressed in Section IV.B, the Proposal is excludable under Rule 14a-8(i)(2) because, if implemented, it would cause the Company to violate state laws – specifically, those prohibiting the use of race in insurers' underwriting and rate-making decisions. Third, the Proposal is excludable under Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal. *See* Section IV.C. Finally, the Proposal is excludable under Rule 14a-8(i)(3) because it is vague and indefinite

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<sup>3</sup> In California, the Company is required to provide a "Race, National Origin & Gender Form" to its insureds as part of certain insurance applications, which they can complete on a strictly voluntary basis. *See* Cal. Code Regs. § 2646.6(b)(6). The Company does not tie any of the data collected to any specific policy and by law is prohibited from using such information for underwriting or rating purposes. *Id.*

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and contains numerous false and misleading statements. *See* Section IV.D. Each of these issues is addressed in turn below.

#### IV. Analysis

##### **A. The Proposal is Excludable under Rule 14a-8(i)(7) Because it Deals with Matters Relating to the Company's Ordinary Business Operations**

Under Rule 14a-8(i)(7), a registrant may omit from its proxy materials a shareholder proposal that relates to the registrant's "ordinary business" operations. In the 1998 amendments to Rule 14a-8, the Commission noted that the term "ordinary" in "ordinary business" "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998). In that release, the Commission noted that the principal policy for this exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and the second "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." *Id.*

A shareholder proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. Exchange Act Release No. 20091 (August 13, 1983) ("[T]he staff will consider whether the subject matter of the special report . . . 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, under Rule 14a-8(i)(7), exclusion of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risk 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").

We acknowledge the Staff's guidance in Legal Bulletin No. 14L (Nov. 3, 2021) and understand that, during the last proxy season, the Staff has not generally been persuaded by arguments that shareholder proposals seeking racial justice audits may be excludable on the basis that such proposals relate to the company's ordinary business operations. *See Amazon.com, Inc.* (CtW Investment Group) (Apr. 9, 2021) (sought exclusion under Rule

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14a-8(i)(7)); *JPMorgan Chase & Co.* (CtW Investment Group) (Mar. 26, 2021) (sought exclusion under Rules 14a-8(i)(7) and (i)(10)); *Citigroup Inc.* (CtW Investment Group) (Feb. 26, 2021) (sought exclusion under Rule 14a-8(i)(10)); *Johnson & Johnson* (Feb. 12, 2021) (sought exclusion under Rules 14a-8(i)(3), (i)(7) and (i)(10)). We believe, however, that the Company is differently situated, in a number of material ways, from other registrants that have asked the Staff to concur with the exclusion of similar proposals, including the fact that: (i) the Company is a heavily regulated insurance company; (ii) risk-based underwriting and pricing decisions, which the Proposal challenges, are at the very heart of the Company's insurance business and are generally prescribed in state statutes; (iii) the Company has active litigation and regulatory proceedings that could be impacted by the Proposal, and the Company is likely to continue to be subject to such litigation and regulatory proceedings in the ordinary course of its business; and (iv) the Company's legal duty to defend its insureds in litigation could be impacted by the Proposal. In addition, given the nature of the Company's business and the regulatory environment in which it operates, the third-party audit requested by the Proposal could put the Company at a competitive disadvantage relative to other property casualty insurers that do not publish a similar report.

*1. The Subject Matter of the Proposal is Fundamental to Management's Ability to Run the Company's Day-to-Day Business Because it Challenges Risk-Based Underwriting and Pricing, Which is at the Core of the Company's Business Model*

The Staff has consistently acknowledged that shareholder proposals that could undermine a company's core business model and/or relate to the products and services offered by the company are appropriately excludable under Rule 14a-8(i)(7). In *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) ("*Wells Fargo*"), for example, the Staff granted no-action relief under Rule 14a-8(i)(7) where the proposal requested that the company prepare a report discussing the adequacy of the registrant's policies in addressing the social and financial impacts of the registrant's direct deposit advance lending service, noting in particular that "the proposal relates to the products and services offered for sale by the [registrant]" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." Similarly, in *JPMorgan Chase & Co.* (Mar. 16, 2010), the Staff concurred in the exclusion of a proposal under Rule 14a-8(i)(7) where such proposal sought to have the company's board of directors implement a policy mandating that the company cease issuing refund anticipation loans, which the proponent claimed were predatory loans. There, the company acknowledged that the proposal addressed an issue that the Staff itself recognized as a "significant policy issue." The company noted, however, that its "decisions as to whether to offer a particular product to its clients and the manner in which the [c]ompany offers those products and services, *including pricing*, are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7)." (emphasis



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added). *See also Pfizer Inc.* (Mar. 1, 2016) (excluding, under Rule 14a-8(i)(7), a shareholder proposal requesting a report describing steps taken by Pfizer to prevent the sale of its medicines for use in executions, commenting that the proposal “relates to the sale or distribution” of the company’s products); *The Walt Disney Co.* (Nov. 23, 2015) (excluding, under Rule 14a-8(i)(7), a proposal requesting that the company’s board approve the release of a certain film on Blu-ray, noting that the proposal “relates to the products and services offered for sale by the company”); *The TJX Companies, Inc.* (Apr. 16, 2018) (excluding, under Rule 14a-8(i)(7), a proposal requesting that the company’s board develop and disclose a new universal and comprehensive animal welfare policy applying to the company’s sale of products, with the majority of the proposal focusing on the company’s sale of products containing fur). Further, the Staff has routinely acknowledged that exclusion of a shareholder proposal is permissible under Rule 14a-8(i)(7) when the actions sought by the proposal implicate tasks that are so fundamental to management’s ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight.

Here, the broad scope of the audit requested by the Proposal encompasses the Company’s underwriting and pricing practices and decisions regarding the products and services offered by the Company. Because such matters go to the very heart of the business of insurance, the Proposal is excludable under Rule 14a-8(i)(7).

The classification of, and differentiation among, risks is the foundation of any reliable system of insurance. *See, e.g.,* American Academy of Actuaries, Committee on Risk Classification, *Risk Classification: Statement of Principles* 1 (“The grouping of risks with similar risk characteristics . . . is a fundamental precept of any workable private, voluntary insurance system.”). Insurers must gather accurate data about risks they insure and set appropriate rates to ensure predictable outcomes and to maintain sufficient funds to remain solvent and cover claims. Insurance markets cannot function without risk-based pricing and underwriting based on actuarially sound, objective principles that allow an insurer to charge a reasonable premium that reflects the likelihood and severity of expected losses. To do so, insurers generally base rates on an insured’s loss history, risk of future loss and the extent of coverage sought. *See* Lars Powell, *Risk-Based Pricing of Property and Liability Insurance*, 39 JOURNAL OF INS. REG. 1 (Nat’l Assoc. of Ins. Comm. 2020) (“*Risk-Based Pricing*”). Apart from its impact on consumers through the availability and pricing of insurance, accurate pricing is also critical to the continued solvency of insurers. An insurer’s ability to make promised payments to insureds, beneficiaries and claimants is the bedrock of the insurance industry. To further these interests, insurers are legally required to take risk into account and are prohibited from charging “inadequate rates.” *See, e.g.,* N.Y. Ins. Law § 2303 (1984) (amended 1990) (“Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers.”); Tex. Ins. Code Ann. § 2251.052 (2005) (defining an “inadequate” rate as one that “is insufficient to sustain projected losses and expenses to which the rate applies” and “continued use of the rate endangers the solvency of an insurer using the rate[ ]”).

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To calculate the risk of expected future loss, actuaries apply mathematics, statistics and economic methods in order to estimate the probability and financial implications of various risk factors. Though actuaries necessarily evaluate various factors that correlate with losses, they do not consider, and, as discussed elsewhere herein, are in fact prohibited from using, information based on race and other legally prohibited characteristics. The procedures through which actuaries set rates are complex, but the theory behind this process is straightforward – insurance actuaries and underwriters seek (and are required by law) to determine risk factors that correlate with losses. *See generally*, Michael J. Miller, *Disparate Impact and Unfairly Discriminatory Insurance Rates*, Casualty Actuarial Society E-Forum, Winter 2009 at 284.<sup>4</sup> This assessment of risk is designed to accurately identify “the expected value of all future costs associated with an individual risk transfer.” Casualty Actuarial Society, *Statement of Principles Regarding Property and Casualty Insurance Ratemaking* at 57-58. Indeed, “[t]he grouping of risks with similar risk characteristics . . . is a fundamental precept of any workable private, voluntary insurance system.” American Academy of Actuaries, Committee on Risk Classification, *Risk Classification: Statement of Principles* 1. The purpose of correlating rates with sound risk factors is to set prices that accurately reflect the insurer’s cost of covering particular classes of risk for similarly situated customers. Kenneth S. Abraham, *Efficiency and Fairness*, 71 Va. L. Rev. 403, 421 (1985).

Fundamentally, insurers are not only permitted – but required – to “discriminate” on the basis of factors that are predictive of risk, so long as they do not include prohibited characteristics such as race. *See, e.g.*, Del. Code Ann. Tit. 18, § 2503(a)(3); N.Y. Ins. Law § 2304(a); MD. Code Ann., Ins. § 11-205(c). In particular, insurers are required to use past losses, anticipated future losses and other factors that are predictive of risk in their rate-setting calculations. *See, e.g.*, Wis. Stat. Ann. § 625.12(1) (1975) (amended 2020) (Wisconsin requires insurers to give “[d]ue consideration” to “[p]ast and prospective loss expense experience within and outside of this state,” “[c]atastrophe hazards and contingencies,” “[t]rends within and outside of this state, and “all other relevant factors.”); Ind. Code Ann. § 27-1-22-3(a) (1967) (amended 2011) (Indiana requires that “[d]ue consideration shall be given to the past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, if any, . . . [and] to all other relevant factors, including trend factors, within and outside this state. . . .”). *See also* Mass. Gen. Laws Ann. Ch 174A, § 5(3); Del. Code Ann. Tit. 18, § 2503(a)(3); N.Y. Ins. Law § 2304(a); MD. Code Ann., Ins. § 11-205(c) (state regulations requiring risk-based pricing). In fact, failure to account for differences in expected losses constitutes “unfair discrimination.” *See, e.g.*, Utah Code Ann. § 31A-19a-201(4)(a) (1985) (amended 1999) (Under Utah law, a “rate is unfairly discriminatory if price differentials fail to equitably reflect differences in expected losses and expenses after allowing for practical limitations.”).

<sup>4</sup> Available at [https://www.casact.org/sites/default/files/database/forum\\_09wforum\\_miller.pdf](https://www.casact.org/sites/default/files/database/forum_09wforum_miller.pdf).

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As noted above, an “unfairly discriminatory” rate is one that is not statistically correlated with expected losses and expenses. *See, e.g., Insurance, Government, and Social Policy*, The S.S. Huebner Foundation for Insurance Education, C. Arthur Williams, Jr., Chapter 11, Price Discrimination in Property and Liability Insurance, 209–242 (“An insurance rate structure will be considered unfairly discriminatory . . . , if allowing for practical limitations, there are premium differences that do not correspond to expected losses and average expenses or if there are expected average cost differences that are not reflected in the premium differences.”). Importantly, as courts have observed, risk discrimination is not race discrimination. *NAACP v. American Family Mut. Ins. Co.*, 978 F.2d 287, 290 (7th Cir. 1992) (“Insurance works best when the risks in the pool have similar characteristics. . . . To curtail adverse selection, insurers seek to differentiate risk classes with many variables. Risk discrimination is not race discrimination.”); *see also Saunders v. Farmers Insurance Exchange*, 537 F.3d 961, 967 n.6 (8th Cir. 2008).

In the insurance context, disparate impact differs from unfair discrimination. While unfair discrimination under state insurance laws occurs when insureds posing similar risks are treated differently, disparate impact refers to situations in which risk factors result in different outcomes in terms of price or availability of coverage for certain populations. In light of the significant regulations to which insurers are subject and the nature of insurance, avoidance of disparate impact is unlikely in the insurance context. As the U.S. Department of Housing and Urban Development itself previously recognized, “to avoid creating a disparate impact, an insurer would have to charge everyone the same rate, regardless of risk.” 78 Fed. Reg. at 11,745. Charging insureds the same rate regardless of risk, however, would fundamentally change the nature of the insurance industry, and would adversely impact the availability of insurance, raise the cost of insurance and have other adverse consequences. *See Powell, Risk-Based Insurance, supra.*

For these reasons, due to the unique nature of insurance, state and federal laws generally neither permit nor require insurers to assess disparate impact in the way the Proposal seeks to measure through a racial justice audit. Nor do such laws or regulations impose liability based on an alleged disparate impact. Instead, state laws require “risk discrimination” so long as race and other protected characteristics are not taken into account. Indeed, the only context in which courts have permitted disparate impact claims in insurance is in the context of housing (the legality of which is currently in dispute in pending litigation, as discussed below). Importantly, however, even in that limited context, under the Supreme Court’s ruling in *Texas Dep’t of Housing and Comm. Affairs v. The Inclusive Communities Project*, 576 U.S. 519 (2015), liability is subject to important limitations. While the Supreme Court has not considered whether disparate impact liability is even an

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appropriate theory of liability in the insurance context,<sup>5</sup> it has made clear that disparate impact is aimed at removing only “artificial, arbitrary, and unnecessary” barriers. *Inclusive Communities*, 576 U.S. at 543 (“Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision.”). Thus, a statistical disparity alone is not sufficient to impose liability; rather, it must be a disparity that was *caused* by a defendant’s policy. This is meant to ensure that the defendant is not “held liable for racial disparities they did not create.” *Id.* at 542. This “robust causality” requirement seeks to prevent race from being used or considered in a pervasive way that could lead parties to use numerical quotas, which would raise serious constitutional questions, or which could be so expansive as to *inject* racial considerations into decision-making. As the Court explained, injecting race into decision-making would perpetuate race-based considerations rather than move beyond them. *Id.* at 542–43. Further, the Supreme Court recognized that a defendant does not face disparate impact liability where the challenged practice is based on a legitimate business justification, *i.e.*, where it is based on a legitimate business interest, and the practice or policy serves in a significant way that legitimate interest. Compliance with state or federal law can give rise to a business justification defense as a matter of law. *Id.* at 533, 541.

In this case, the Proposal seeks to address potential racial disparate impacts in a way that is divorced from and contrary to this settled legal framework and challenges the foundational tenets of insurance underwriting and pricing. For example, it ignores insurers’ legal obligations to select and price risks based on factors indicative of their risk profile and seeks to identify and presumably remediate statistical disparities without regard to whether the disparity was caused by any policy or practice used by the Company. Further, the Proposal would require the Company or a third-party auditor to utilize information about race, which is not only itself unlawful but would *inject* racial consideration into heavily regulated decision-making. At every level, this would run afoul of the Supreme Court’s guidance in *Inclusive Communities* and the regulatory framework in which insurers operate. *See also The Coca-Cola Company* (Jan. 21, 2009) (permitting, under Rule 14a-8(i)(7), the exclusion of a proposal asking the registrant’s board of directors to prepare a report that evaluates new or expanded policy options to enhance transparency of information on bottled beverages; the registrant noted the labyrinthine regulatory framework within which it operates with respect to the disclosure of such information).

Moreover, the Proposal contemplates that the Company would necessarily take race into account in its underwriting and pricing decisions after it undergoes the racial justice audit. However, precisely because race is not predictive of risk, requiring the Company to

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<sup>5</sup> In *Inclusive Communities*, the Supreme Court considered the viability of disparate impact liability under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (“FHA”). Specifically, the plaintiffs alleged that the manner in which a state housing authority disbursed certain low-income housing subsidies had a disparate impact on protected classes and thereby violated the FHA. 576 U.S. 519 (2015).

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do so could undermine the accuracy of risk-based underwriting and pricing – the very core of insurers’ business model – which would lead to less available insurance, increased costs and have other adverse consequences. *See Powell, Risk-Based Pricing*, 39 JOURNAL OF INS. REG. at 12–18. Adding to the practical problems associated with an audit focusing on race, altering underwriting or pricing policies and practices based on factors not predictive of risk, such as race, could lead to disparities when measured along other dimensions such as sex (including sexual orientation and gender identity), religion, national origin, age, disability, marital status, income or other characteristics that are subject to a range of insurance and other legal protections.

Additionally, requiring the Company to collect information about race, whether it does so itself or through a third party, would reflect a sharp departure from established insurance industry practice, including the policies and practices of the Company. As noted above, the Company does not utilize and, except in a limited circumstance where required by one state’s law, does not collect such data in part because of the legal constraints, but also as a matter of sound business practice. Ensuring that the Company does not collect or have access to information about the race of actual or prospective insureds or other third parties minimizes any chance that race could be taken into account and ensures that the Company and its actuarial and underwriting professionals focus on factors that are predictive of risk, unlike race.

Although the resolution contained in the Proposal is drafted in such a sweeping, general way so as to appear to implicate a matter of significant social policy, the supporting statement contained in the Proposal makes clear that the Proposal is intended to result in significant changes to the insurance industry’s – and the Company’s – business practices in a manner that would be incompatible with the established regulatory regime to which insurers are subject and longstanding principles of risk-based insurance pricing and underwriting. Indeed, the supporting statement included in the Proposal specifically focuses on underwriting and pricing, for example by alleging that “[a]n investigation found insurance companies charged higher premiums by up to 30 percent in minority communities versus whiter communities despite similar accident costs,” and that “Travelers settled a . . . lawsuit alleging that Travelers denied insurance to landlords renting to Section 8 voucher recipients, who are predominantly Black women.” By seeking to address the underwriting and pricing of the Company’s insurance products in a manner that explicitly takes race into account, the Proposal, while well intentioned, ultimately interferes with the fundamental underpinnings of risk-based insurance.

The Staff has recognized that, regardless of whether certain proposals may extend beyond the topic of the subject companies’ practices to implicate broader societal issues, if the essence of the proposal nevertheless impermissibly targets the ordinary business operations of a company, such proposals are excludable. *See Apple Inc.* (Christine Jantz) (Dec. 21, 2017) (concurring, under Rule 14a-8(i)(7), in the exclusion of a proposal asking

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the registrant's board of directors to prepare a report that evaluates the potential for the company to achieve certain climate change-related outcomes because the proposal "seeks to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment"); *Chipotle Mexican Grill, Inc.* (Feb. 23, 2016, *recon. denied* Mar. 8, 2016) (concurring, under Rule 14a-8(i)(7) in the exclusion of a proposal asking the registrant's board of directors to adopt principles for minimum wage reform because the proposal "relate[d] to general compensation matters"); *General Electric Co.* (Rita Bugzavich) (Jan. 9, 2008) (concurring, under Rule 14a-8(i)(7), in the exclusion of a shareholder proposal requesting that the company's board of directors establish an independent committee to prepare a report on the potential damage to the registrant's brand as a result of sourcing products and services from the People's Republic of China, with the Staff noting in its response that the proposal "relat[es] to [the company's] ordinary business operations (*i.e., evaluation of risk*)" (emphasis added)).

The Proposal is directly comparable to the proposal found to be excludable in *The Allstate Corporation* (Mar. 20, 2015) ("*Allstate*"), where the proposal requested that the registrant's board of directors prepare a report describing, among other things, how the board and management identify, oversee and analyze civil rights risks related to the registrant's use of data. There, the Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), noting "that the proposal relates to the manner in which the company uses customer information to make pricing determinations." Here, while the Proposal is positioned as a broad call to arms to combat systemic racism, the essence of the Proposal is to identify ways in which the Company can "improve the racial impacts" of the Company's policies, practices, products and services through a third-party audit that is at odds with core insurance principles and regulation. If race is taken into account in order to address an alleged racial disparate impact, the result would be to treat similar risks differently. Such differential underwriting, pricing and rating itself would constitute unfair discrimination, which is impermissible under existing state laws and would undermine the very nature of insurance. As discussed above, state rating and unfair practices laws ensure that insurance markets operate fairly and efficiently and ultimately benefit consumers by ensuring that insurance products remain available and affordable regardless of race and that insurers remain financially strong so that they are able to fulfill their commitments to customers for decades to come.

Insurance markets can only operate in an effective and fair manner when every insured pays a rate that accurately reflects the cost of providing insurance to that insured and similarly situated insureds. This is the very core of the Company's business. Allowing shareholders to interfere with the process by which insurance actuaries and underwriters assess risk would undermine the ability of insurers such as Travelers to function properly. As in the case of *Allstate*, insurance companies are uniquely positioned compared to other companies by virtue of being subject to comprehensive supervision and regulation by

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insurance regulatory authorities in the states in which they operate; not only do such authorities require that the rates and forms of policies be filed and reviewed, insurance companies are also subject to periodic market conduct examinations in part to ensure that customers are not charged premiums that are unfairly discriminatory under the law.

The Proposal implicates the foundation of risk-based pricing and underwriting, which is at the core of the Company's day-to-day business operations and strategies. A racial justice audit of the kind contemplated by the Proposal would interfere with the Company's business operations in innumerable ways and risks penalizing the Company for relying on neutral, sound risk factors in compliance with state laws and regulations if the use of such factors results in a potential disproportionate effect when assessed on the basis of race. These are issues uniquely within the purview of management's responsibility in implementing the Company's day-to-day business operations, including established actuarial and underwriting practices, which are subject to the regulation, oversight and enforcement of state regulatory bodies and laws.

To the extent the Proponents believe various underwriting or pricing factors or legal requirements should be modified in order to achieve different outcomes on the basis of race, those are issues that should be addressed by regulators and legislators rather than the Company's shareholders. As a general matter, insurers are required to seek and obtain approval of their rates by state insurance regulators based on detailed filings that require actuarial support to establish that the filed rates are adequate and not excessive or unfairly discriminatory. *See e.g.*, N.Y. Ins. Law § 2305(a)–(b); Del. Code Ann. Tit. 18 § 2504; Cal. Ins. Code § 1861.05(b)–(d). Under the filed-rate doctrine, courts have consistently prohibited parties from challenging rates that have been approved by state insurance regulatory agencies. Thus, for example, any remedy that operates like a rebate to give one class of policyholders a preference over others would violate the filed-rate doctrine. *See, e.g., Taffet v. Southern Co.*, 967 F.2d 1483, 1494 (11th Cir. 1992) (en banc) (“Where the legislature has conferred power upon an administrative agency to determine the reasonableness of a rate, the rate-payer can claim no rate as a legal right that is other than the filed rate.”). This doctrine is based on the recognition that regulators have the expertise to consider the reasonableness of rates given the risks involved and the requirement that they not be excessive, inadequate or unfairly discriminatory, balanced by the need to ensure that insurers that do business in the state are sufficiently financially stable to pay claims and make coverage available.

The Company is not suggesting that the third-party audit envisioned by the Proposal, in and of itself, would necessarily be barred by the filed-rate doctrine. Rather, this doctrine illustrates that the issues and likely resolutions contemplated by the Proposal fall squarely within the province of legislators and regulators, not shareholders or even individual insurance companies themselves. Legislators and regulators are uniquely positioned to address the potential impact of particular underwriting or rating criteria that are predictive of

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risk, but nonetheless, like credit scores, have been alleged to have a disparate impact by race.

A study of the use of occupation and education factors in automobile insurance by the New Jersey Department of Banking and Insurance (“NJ DOI”) is a perfect illustration of this point. After a comprehensive review, the NJ DOI recognized that a host of rating factors used by auto insurers – including those widely established to correlate with risk – could potentially lead to differential effects on the basis of race. For example, the NJ DOI observed that “higher-than-average accident rates are correlated with higher-than-average minority populations,” causing auto policies priced in part on accident history to charge more to minority customers, correlating with those customers’ higher likelihood of experiencing an accident.<sup>6</sup> The report noted that accidents are more common in urban centers (presumably due to traffic density) and that racial minorities constitute a higher-than-average share of the urban population. *Id.* Similarly, some urban centers have higher-than-average incident rates of auto or contents theft, which could be perceived as having a disparate impact by race despite being directly correlated with loss. Even the availability of premium discounts offered by insurers could be seen as having a disparate impact. Customers who benefit from insurers’ discounts for having a garage to shelter a vehicle, for example, are more likely to live outside of an urban center as garages are more common in the suburbs. *Id.* Ultimately, the NJ DOI recognized that such otherwise lawful and appropriate risk factors, which insurers may be *required* to take into account to ensure that rates are adequate, not excessive and not unfairly discriminatory, could result in differential effects when measured on the basis of race. Yet, given the policy issues and inevitable tradeoffs involved in balancing the desire to avoid unequal outcomes that may correlate with race with the policies behind risk-based insurance principles, New Jersey insurance statutes continue to permit consideration of these and other “long-accepted factors.” *Id.* at 51.<sup>7</sup>

For its part, the Company has robust governance and controls in place to ensure the integrity of its underwriting, actuarial and modeling practices, and to ensure that all rating and pricing factors are actuarially justified as predictive of risk and in compliance with applicable laws. These practices include organized reviews of models and third-party data

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<sup>6</sup> The Use of Occupation and Education Factors in Automobile Insurance, New Jersey Department of Banking and Insurance (April 2008) at 50, available at [https://www.state.nj.us/dobi/division\\_insurance/pdfs/ed\\_occ\\_april2008.pdf](https://www.state.nj.us/dobi/division_insurance/pdfs/ed_occ_april2008.pdf).

<sup>7</sup> See also, Impact of S111/A1657 on Auto Insurance Customers, Underwriting and Overall Auto Premiums, Insurance Council of New Jersey (May 2021) (discussing adverse consequences of proposed legislation that would ban the use of education, occupation, and credit-based insurance scores in auto insurance, including estimated immediate increase in premium on 54% of New Jersey drivers of \$400 per year and decrease in availability of auto coverage) (available at <https://icnj.org/wp-content/uploads/2021/05/ICNJ-Whitepaper-on-Impact-of-Underwriting-Restrictions.pdf>).



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through a multi-disciplinary governance process that includes legal, actuarial and data science assessments. Travelers examines and evaluates its models and the factors used within those models on a regular basis. This framework, which has been favorably reviewed with the Company's lead regulator, creates a full view of the Company's models throughout the entire model lifecycle. These governance and control processes ensure that the Company complies with existing laws and does not consider race, national origin or other protected characteristics in connection with underwriting or pricing, which, as noted above, are governed and are approved by regulators. The Proposal, however, seeks to address the risk-based insurance underwriting and pricing principles upon which the Company depends and to identify practices that the Proponents speculate might have a disparate impact on the basis of race. While risk-based pricing goes to the heart of the Company's business operations, the public policy implications the Proposal seeks to address are uniquely issues for insurance regulatory and legislative policymakers, rather than the Company's shareholders, to address.

2. *The Proposal Would Implicate the Company in Litigation and Regulatory Proceedings*

The Staff has noted that in certain circumstances, proposals relating to both ordinary business matters and significant social policy issues may be excluded under Rule 14a-8(i)(7). This is particularly the case where there is ongoing litigation, and litigation strategy is at issue – the Staff has recognized that shareholder proposals that implicate a company's litigation conduct or legal strategy are excludable under Rule 14a-8(i)(7) on the basis that management, and not a registrant's shareholders, are responsible for the litigation strategies of a company. For example, though smoking is widely considered to be a significant social policy issue, the Staff concurred in the exclusion of a proposal that touched upon this issue where the substance of the proposal (*e.g.*, the health effects of smoking in teens) was the same as or similar to that which was implicated by litigation in which the company was then involved. *See Philip Morris Companies Inc.* (Feb. 4, 1997) (noting that although the Staff “has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business,” and that the Staff has viewed “the issue of teen smoking as transcending ordinary business,” the company could exclude a proposal under Rule 14a-8(c)(7) that “primarily addresses the litigation strategy of the company, which is viewed as inherently the ordinary business of management to direct”). Most recently, the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a shareholder proposal seeking a racial justice audit of Chevron Corporation that is nearly identical to the Proposal at issue here, where the proposal potentially implicated Chevron's litigation strategy in climate change litigation involving allegations that its policies perpetuate racial injustice on communities of color. *See Chevron Corp.* (Mar. 30, 2021). Specifically, the proposal in *Chevron* sought an independent report analyzing how Chevron's “policies, practices, and the impacts of its business, perpetuate racial injustice and

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inflict harm on communities of color,” and, as explained in its supporting statement, proposed that the report “[a]ssess long-term cumulative contributions to climate change and disparate impacts on the health of communities of color.” Chevron successfully argued that the proposal was excludable under Rule 14a-8(i)(7) on the basis that it was defending litigation involving the same subject matter as the proposed racial justice audit, and the proposed report could interfere with management’s responsibility for defending such litigation where the requested report could be construed as an implied admission and potentially require Chevron to take public positions outside of the discovery process that could undermine its defense.

The Staff has also concurred in the exclusion of other proposals that similarly implicated ongoing litigation and legal strategy. *See, e.g., Walmart Inc.* (Apr. 13, 2018) (the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks associated with emerging public policies on the gender pay gap where the registrant was involved in numerous pending lawsuits regarding gender-based pay discrimination and related claims before a U.S. regulator, as “affect[ing] the conduct of ongoing litigation relating to the subject matter of the [p]roposal to which the [c]ompany is a party”); *General Electric Co.* (Sisters of St. Dominic of Caldwell, N.J.) (Feb. 3, 2016) (proposal sought a report assessing the registrant’s potential liability in connection with a chemical spill, with the registrant noting that such a report interferes with the registrant’s “defense of both pending *and potential* litigation”; the Staff noted that the proposal was excludable under Rule 14a-8(i)(7) because of its impact on pending litigation) (emphasis added); *AT&T Inc.* (Feb. 9, 2007) (concurring, under Rule 14a-8(i)(7), in the exclusion of a proposal requesting a report containing certain information regarding the alleged disclosure of customer records to governmental agencies where the registrant was a defendant in multiple pending lawsuits alleging related unlawful acts by the company).

*a. The Proposal implicates Travelers’ strategy in litigation and regulatory proceedings in which it is directly involved*

Here, the Company currently faces, has faced and could again in the future face legal proceedings that would be adversely affected by publication of a third-party audit report regarding the Company’s business practices and the impact those practices may be claimed to have on minority populations or communities, as contemplated by the Proposal. As one example, the Company is a member of the plaintiff trade organizations in the ongoing *American Insurance Association (“AIA”) v. U.S. Department of Housing and Urban Development (“HUD”)* litigation, which involves a challenge to proposed rules promulgated by HUD imposing disparate impact liability in the context of homeowners insurance. *See Am. Ins. Ass’n v. U.S. Dep’t of Hous. and Urb. Dev.*, 74 F. Supp.3d 30, 44–45 (D.D.C. 2014), *vacated*, No. 14-5321 (D.C. Cir. Nov. 17, 2015) (“*AIA v. HUD*”). Specifically, HUD issued several proposed rules addressing circumstances in which a violation of the Fair Housing Act may be found based on the alleged disparate impact on protected classes,

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including race, regardless of actual discriminatory intent. AIA and another trade organization challenged the proposed rulemaking to the extent it purported to apply to homeowners insurers, arguing, among other things, that disparate impact liability is fundamentally incompatible with established principles of risk-based insurance. *Id.*<sup>8</sup>

As a member of plaintiff AIA, the Company has participated in the *AIA v. HUD* litigation in several ways. The Company has submitted sworn testimony in support of the plaintiffs' arguments in response to the government's challenges to the plaintiffs' standing, and in support of the merits of the dispute concerning the effect that disparate impact liability could have on insurance ratemaking and underwriting. See *Nat'l Ass'n of Mut. Ins. Cos., et al. v. U.S. Dep't of Hous. & Urb. Dev.*, No. 1:13-cv-00966-RJL (D.D.C.) ECF No. #27. Moreover, the Company regularly participates in decisions concerning legal strategy given its role as a member of the plaintiff trade association and its significant interest in the litigation's outcome as one of the nation's largest insurance providers that would be directly impacted by the HUD rule at issue. The Company has played a similar role, and has the same interests, in the companion lawsuit involving the proposed HUD rule in *Prop. Cas. Ins. Ass'n of Am. v. Sec'y of Hous. & Urb. Dev.*, No. 1:13-civ-08564 (N.D. Ill.) ("*PCIAA*"). Publication of a third-party racial justice audit report based on a wide-scale review of the Company's products, practices and policies, such as that contemplated by the Proposal, raises a significant risk of undermining the Company's positions and that of plaintiffs in *AIA v. HUD* and in *PCIAA* on a range of issues, including the Company's and the plaintiffs' assertion in the litigation that disparate impact liability under HUD's rule, as applied to insurance ratemaking and underwriting practices, is incompatible with existing law and that insurers do not and may not utilize information about race. The Proposal would also likely result in inevitable discovery demands on the Company for materials relating to the proposed audit, including confidential, proprietary and potentially privileged information and documents in the possession of the Company, as well as material prepared or collected by any third party retained by the Company. Such requests could not only result in an extraordinary expense and use of management time to the detriment of shareholders, but could also impair the Company's position in ongoing and potential litigation. Further, given the uncertainty surrounding the structure and processes of the proposed audit, there may be

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<sup>8</sup> The district court agreed with the position of the insurers for numerous reasons and granted summary judgment in their favor. The appellate court later vacated the summary judgment order and remanded the action for consideration in light of the Supreme Court's ruling in *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), which had not been decided at the time of the court's ruling. Presently, after proposed modifications of HUD's proposed rules and further public comment, the parties are again addressing these issues in connection with pending motions for summary judgment. See also *Prop. Cas. Ins. Ass'n of Am. ("PCIAA") v. Donovan*, 66 F. Supp. 3d 1018 (N.D. Ill. 2014) (granting in part summary judgment, finding HUD acted arbitrarily and capriciously in promulgating prior version of HUD rule). As with the *AIA v. HUD* action, the district court is currently considering renewed motions for summary judgment in the *PCIAA* action.

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additional, unknown ways in which the report could impact the Company negatively with respect to its litigation strategy.

The risk we cite is not theoretical. Aside from the Company's involvement in pending lawsuits initiated by insurance trade organizations, the Company and/or certain of its affiliates have been named in litigation alleging disparate impact on the basis of race in connection with the underwriting and pricing of its products, both under federal law and state anti-discrimination statutes. *See Jones, et al. v. Travelers Ins. Co. of Am.*, No. 5:13-cv-02390-LHK (N.D. Cal.); *Nat'l Fair Housing Alliance v. Travelers Indemnity Co.*, No. 16:cv-928 (D.D.C.). In addition, HUD has initiated government investigations of the Company regarding these issues, which involved voluminous information requests, submissions, and time and resources of the Company and its in-house and outside counsel. While these matters have been resolved, the threat of similar litigation remains ongoing, particularly given the Company's role as one of the nation's largest insurers and the fact that the HUD rule has been revived, as reflected by numerous lawsuits brought against various insurers in recent years involving similar allegations of disparate impact on the basis of race.<sup>9</sup>

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<sup>9</sup> *See, e.g., Davis v. State Farm Mut. Auto. Ins. Co.*, No. 3096, Sept. term, 2018, 2021 WL 1594225 (Md. Ct. Spec. App. Apr. 23, 2021), *cert. denied sub nom. Davis v. State Farm Mut. Auto. Ins.*, 475 Md. 707, 257 A.3d 1165 (2021) (alleging State Farm's consideration of insureds' places of residence when calculating insurance premiums resulted in a pattern of discrimination against people of color throughout the state); *Viens v. Am. Empire Surplus Lines Ins. Co.*, 113 F. Supp. 3d 555 (D. Conn. 2015) (alleging that insurer's underwriting criteria that charged higher premiums or denied coverage to landlords who rent apartments to tenants receiving Section 8 housing assistance has a disparate impact on racial minorities); *Ojo v. Farmers Grp., Inc.*, 600 F.3d 1201 (9th Cir. 2010), as amended (Apr. 30, 2010), certified question accepted (Apr. 16, 2010), certified question answered, 356 S.W.3d 421 (Tex. 2011) (class action alleging that Farmers used "undisclosed factors" in credit-scoring system that disparately impacted minorities); *Fair Hous. Opportunities of Nw. Ohio v. Am. Fam. Mut. Ins. Co.*, 684 F. Supp. 2d 964 (N.D. Ohio 2010) (alleging that insurer's underwriting guidelines had a disparate impact on minorities); *Saunders v. Farmers Ins. Exch.*, 537 F.3d 961 (8th Cir. 2008) (alleging that Farmers used rating zones based on facially neutral risk factors that have a disparate racial impact); *Lumpkin v. Farmers Grp., Inc.*, No. 05-2868 MA/V, 2007 WL 6996777 (W.D. Tenn. July 6, 2007) (alleging insurer's credit scoring program used in its automated underwriting systems to price homeowners property and casualty insurance policies had a disparate impact on racial minorities); *McKenzie v. S. Farm Bureau Cas. Ins. Co.*, No. CIV A 306CV013-B-A, 2007 WL 2012214 (N.D. Miss. July 6, 2007) (alleging insurer used credit information and credit scoring to screen applicants and set premiums for its insurance policies resulting in a disparate impact on minorities); *Melder v. Allstate Corp.*, 404 F.3d 328 (5th Cir. 2005) (class action by Louisiana homeowner and automobile insureds alleging that insurers violated Louisiana law in setting insurance rates using credit-scoring formulas that had discriminatory impact based on race and/or economic condition of area); *Owens v. Nationwide Mut. Ins. Co.*, No. CIV. 303CV1184H, 2003 WL 22364319 (N.D. Tex. Oct. 1, 2003) (alleging that insurer NMIC denied minorities insurance coverage that would be offered to similarly-situated non-minorities); *Dehoyos v. Allstate Corp.*, 345 F.3d 290 (5th Cir. 2003) (class action challenging pricing of automobile and homeowners policies alleging disparate impact); *Nat'l Fair Hous. All., Inc. v. Prudential Ins. Co. of Am.*, 208 F. Supp. 2d 46 (D.D.C. 2002)

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Comparable to the Company's position in the ongoing *AIA v. HUD* litigation and recent suits against the Company directly, the actions contemplated by the Proposal – both the collection and use of race-based data and the publication of the audit report – could substantially prejudice the Company in such litigation, which, based on prior no-action letters, justifies exclusion of the Proposal.

Further, to the extent a third-party racial justice audit identifies alleged unintentional disparate impacts, that outcome alone would likely result in an increase in claims and litigation costs against the Company despite the fact that the Company is acting in compliance with applicable legal requirements and does not use race as a consideration in its underwriting, pricing or other decision-making and, to this end, except as required by law in one narrow circumstance referenced above, does not collect race data. This risk of litigation is particularly acute given recent proposed rulemaking by HUD – subject to challenge in the *AIA v. HUD* litigation – that seeks to recodify prior disparate impact regulation and rescind HUD's recent guidance despite Supreme Court case law that the Company believes supports its position that disparate impact liability would be incompatible with the business of insurance. *See* Reinstatement of HUD's Discriminatory Effects Standard, 86 Fed. Reg. 33,596 (June 25, 2021).<sup>10</sup> In fact, the Company has highlighted this risk in the Risk Factors section of its Annual Report on Form 10-K for a number of years – specifically, the Company noted that it is subject to the risk of “claims alleging that one or more of our underwriting criteria have a disparate impact on persons belonging to a protected class in violation of the law, including the Fair Housing Act.” The collection of racial demographic information would also impair a significant defense that the Company has in these actions – namely, that the Company does not have in its possession or otherwise utilize its insureds' race data.

In addition to ongoing and threatened disparate impact litigation in which the Company is involved, the Company is currently defending three active employment matters, involving allegations of race discrimination, and, during the normal course of business, receives and investigates similar employment-related complaints on occasion. Though there are only three such matters (in a company of approximately 30,000 employees) and the Company vigorously disputes the allegations in each of those cases, the publication of a

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(alleging Prudential's underwriting guidelines and policies have a disparate impact on the basis of race); *Toledo Fair Hous. Ctr. v. Nationwide Mut. Ins. Co.*, 94 Ohio Misc. 2d 17, 703 N.E.2d 340 (Ohio Com. Pl. 1996) (alleging minimum insurance amount and maximum dwelling-age requirements had a disparate impact on African-American neighborhoods); *McKenzie v. S. Farm Bureau Cas. Ins. Co.*, No. CIV A 306CV013-B-A, 2007 WL 2012214 (N.D. Miss. July 6, 2007) (alleging insurer premiums result in disparate impact on minority applicants).

<sup>10</sup> *See also* HUD Press Release, HUD Proposes Restoring Discriminatory Effects Rule (June 25, 2021) (available at [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_21\\_107](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_107)).

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report involving the alleged “racial impacts of [the Company’s] policies, practices, products, and services” could prejudice the Company’s ability to defend these ongoing matters.

Similarly, there has been no shortage of litigation against companies for their alleged roles in such large-scale issues as climate change, racial justice, opioid addiction and other societal harms. Just as Chevron and other companies have faced such lawsuits, plaintiffs have asserted a wide variety of creative legal theories in suits against insurers, including the Company, contending that insurers owe direct duties to third parties arising from the insurers’ involvement in insuring and defending their insureds or in connection with loss control activities for their insureds. See *Travelers Indemn. Co. v. Bailey*, 557 U.S. 137, 142–43 (2009) (discussing numerous lawsuits asserted against Travelers based on its insurance relationship and defense of Johns-Manville). Though the Company does not engage in discriminatory practices, a publicly filed report could prompt further litigation based on alleged disparate impact and other creative theories of liability based on the Company’s involvement as an insurer of countless individuals, businesses and public entities. Indeed, the Proponents themselves hint at the Company’s and other insurers’ supposedly “pivotal role” and “risk for contributing to systemic racism” through its ordinary insurance business operations and practices.

In addition to civil litigation, in the ordinary course of its business, the Company is regularly involved in a range of state department of insurance (“DOI”) market conduct examinations, data calls and other regulatory inquiries. As is customary for an insurer, the Company is subject to market conduct examinations – investigations by state insurance regulators to determine whether an insurer is in compliance with state laws and regulations – in all 50 states. Market conduct examinations are used, among other reasons, to ensure consumers are charged the filed and approved fair and reasonable rates for insurance and typically focus on a variety of issues. At present, the Company is in the process of responding to several regulatory inquiries and/or requests for information from state insurance regulators related to the alleged impact of its underwriting and pricing factors on race. For example, the Oklahoma DOI recently inquired about the Company’s offer of sprinkler system credits and premium reductions for residences, including whether this offer is available statewide or limited to certain zip codes. At the same time, the Washington DOI is seeking information about policies issued by the Company by zip code as part of a market analysis presumably addressing, among other things, racial impact issues. The Company also recently responded to inquiries from the Illinois and Delaware DOIs regarding its use of factors such as education level, occupation and credit history in the underwriting of, and pricing for, private passenger auto insurance policies for similar reasons. Similarly, the Company is subject to inquiries by the National Association of Insurance Commissioners concerning the use of artificial intelligence and third-party data and such data’s intended and unintended impacts, and there has been regulatory activity in Arizona, Colorado, Connecticut and New York concerning the use of artificial intelligence and third-party data.

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These regulatory matters are, and we expect will continue to be, common in the property casualty insurance industry.

Separately, in June 2021, the Insurance Commissioner in the State of Washington issued a temporary order banning the use of credit in personal lines insurance. Through its trade association, The American Property Casualty Insurance Association (the “APCIA”), the Company challenged the validity of the emergency rule, and the Washington court agreed that the emergency rule was invalid. Nevertheless, the Insurance Commissioner has proposed a permanent rule to take effect.<sup>11</sup> We anticipate that the Commissioner will adopt the proposed permanent rule and that the APCIA – on behalf of the Company and other insurers – will initiate litigation challenging the permanent rule. In Colorado, the legislature granted that state’s insurance commissioner broad latitude to investigate insurance practices that could have a disparate impact on protected classes.<sup>12</sup> Various legislative and regulatory challenges to the permissibility of using credit in personal insurance have been enacted or are being considered in Colorado, Illinois, Maryland, Montana, New Jersey, New York, Nevada, Oregon, Rhode Island and Washington. Further, the U.S. Treasury Department’s Federal Insurance Office Advisory Committee on Insurance has adopted auto insurance study recommendations and associated data surveys focusing on availability and affordability as well as the use of non-driving factors and big data.<sup>13</sup>

The collection of race-based data and publication of an audit report such as the one contemplated by the Proposal in this extremely active litigation, regulatory, and legislative environment would impair the Company’s legal positions and strategies in litigation and in responding to these and other regulators, and could give rise to additional regulatory scrutiny regardless of the absence of any unlawful discriminatory conduct. Such an audit would also risk exposing the Company to further litigation and expenses and undermine a key defense of non-discriminatory risk-based pricing practices – namely that the Company does not collect, possess or use any information on the race or other protected classification of its insureds. Importantly, the litigation, regulatory and legislative proceedings faced by the Company involve the very same subjects that the Proposal seeks to address through its

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<sup>11</sup> *Washington Insurance Commissioner Pursues January Date for Rule to Ban Use of Credit Scores*, Insurance Journal, October 19, 2021, available at <https://www.insurancejournal.com/news/west/2021/10/19/637977.htm>.

<sup>12</sup> *See SB21-169, 73rd Gen. Assemb., Reg. Sess. (Co. 2021); Pat Poblete, Gov. Jared Polis Signs 14 Health Care Bills Into Law, Colorado Politics*, Jul. 6, 2021, available at [https://www.coloradopolitics.com/legislature/gov-jared-polis-signs-14-health-care-bills-into-law/article\\_aa8f9054-de7e-11eb-85e7-bf3add81c9a4.html](https://www.coloradopolitics.com/legislature/gov-jared-polis-signs-14-health-care-bills-into-law/article_aa8f9054-de7e-11eb-85e7-bf3add81c9a4.html).

<sup>13</sup> *Federal Insurance Office, U.S. Department of the Treasury, Study on the Affordability of Personal Automobile Insurance*, January 2017, available at [https://www.treasury.gov/initiatives/fio/reports-and-notices/documents/final%20auto%20affordability%20study\\_web.pdf](https://www.treasury.gov/initiatives/fio/reports-and-notices/documents/final%20auto%20affordability%20study_web.pdf).

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proposed racial justice audit. In short, the litigation risks faced by Chevron in connection with a nearly identical proposal that the Staff considered in concurring in Chevron's requested exclusion last year pale in comparison to the legal implications such an audit would have on the Company, particularly given the unique nature of the insurance industry and the extensive regulatory scheme in which the Company operates.

*b. The Company's legal duty to defend its insureds in litigation would also be compromised by the Proposal*

Beyond the impact that the Proposal would have on the Company with respect to its ongoing and anticipated litigation and regulatory proceedings, the Proposal would compromise the Company's ability to defend its insureds, including in ways that are impossible to predict. The Company provides a wide range of insurance products to insureds that, for example, have been, are and may in the future be subject to suits asserting claims for discrimination and/or civil rights violations. Where such claims trigger a defense obligation under the relevant insurance contract and applicable law, the Company is legally obligated to defend that insured for those claims.<sup>14</sup> Recommendations of the nature anticipated to be included in the report requested by the Proposal, however, would affect the Company's ability to defend its insureds, including in ongoing litigation.

As but one example, as part of a multi-line offering to small cities, counties, municipalities and other public entities with law enforcement exposure, the Company writes Law Enforcement Liability ("LEL") coverage<sup>15</sup> under which the Company is required to defend – and is currently defending – insureds in claims alleging civil rights violations. The LEL coverage provides in relevant part:

## SECTION I - LAW ENFORCEMENT LIABILITY COVERAGE

### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies. **We will have the**

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<sup>14</sup> Note that the Company's obligations to defend and/or indemnify claims for discrimination and civil rights violations are subject to the terms, conditions and exclusions in the insurance contract which may otherwise eliminate coverage. For example, loss arising out of criminal or intentional acts are generally excluded from insurance coverage. Such contract terms are consistent with the laws of many jurisdictions that prohibit insurance coverage for intentional or criminal wrongdoing. *See, e.g.,* Cal. Ins. Code § 533 ("An insurer is not liable for a loss caused by the willful act of the insured.").

<sup>15</sup> *See* Form PR TI 04 02 09.



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**right and duty to defend the insured against any claim or “suit” seeking those damages.** (emphasis added).

The Company’s LEL coverage defines “personal injury” to include:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;  
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- f. False or improper service of process; or
- g. Violation of civil rights protected under any federal, state or local law.

Pursuant to its contractual and legal obligations, the Company has defended, is currently defending and expects to continue to defend insureds in lawsuits that rely on disputed allegations and legal theories that could be implicated by the Proposal, as evidenced by a sample of such underlying complaints<sup>16</sup>:

- *Patty Jackson, individually, and as Administratrix of the Estate of Daryl Mount v. City of Saratoga Springs, et al*, Index No. 20143461 (Supreme Court of the State of NY) (alleging, *inter alia*, civil rights violations in the death of a black male at the hands of officers, with allegations of racial profiling, including that “individual police officer defendants engaged in a pursuit, detention and/or arrest and battery of plaintiff’s decedent herein based upon a pre-textual allegation of misconduct and as a result of ‘racial profiling’ and/or discriminatory practices due to, and motivated by, decedent’s race . . .”).
- *Lakeisha Afiah Nix, as Personal Representative of the Estate of Lymond Maurice Moses v. New Castle County, et al.*, 1:21-cv-00590-LFR, (U.S.D.C., DE) (alleging, *inter alia*, civil rights violations resulting in the death of a black male resulting from implementation of deadly force at a higher rate against black men, including allegations that “New Castle County, with deliberate indifference to rights of arrestees, detainees, and the like, tolerated, permitted, failed to correct, promoted, fostered or ratified a number of customs, patterns, or practices that condoned and required officers to treat the members of the black Community of New Castle County differently, including but not limited to, implementing deadly force at a higher rate against black men who did not pose a threat to officers”).

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Unless otherwise noted, cases cited are open, and litigation is ongoing.

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- *Estate of Ricky J. Ball v. City of Columbus, Mississippi, et al*, 1:16-cv-176 (N.D., MS) (alleging, *inter alia*, racial profiling resulting in an unjustified stop and ultimate shooting of an unarmed black male by a white police officer, including allegations that “Plaintiff is the victim of racial profiling, since Defendant [officer] Boykin singled him out for arrest because he was black . . .;” “Defendant Boykin and other officers of the City of Columbus had engaged in racial profiling . . .;” and that the “City of Columbus had knowledge that Defendant Boykin had made racists [sic] postings . . . on social media . . .”).<sup>17</sup>

The Proposal, whose supporting statement alleges that through its law enforcement liability insurance the Company “may be at risk for contributing to systemic racism,” may compromise Travelers’ ability to effectively defend its insureds against claims such as those enumerated above. For example, the report requested by the Proposal may recommend that the Company take a public position on how to reduce racism in law enforcement, such as by supporting and lobbying for legislation seeking to abolish qualified immunity in the name of police reform. Qualified immunity is a legal doctrine that protects government officials from liability for civil damages insofar as the official’s conduct did not violate clearly established statutory or constitutional rights. The doctrine of qualified immunity is a significant legal defense to the Company’s public sector insureds who have been sued for civil rights violations and discrimination, including racial discrimination. In addition to thrusting the Company into a charged political debate, any action or support for the abolishment of qualified immunity would jeopardize the Company’s ability to defend public sector insureds who routinely rely on and invoke the protection of qualified immunity.

The Proposal also appears to relate to practices and policies that the Proponents believe the Company should attempt to require police departments to implement in order to reduce or eliminate police violence against people of color. As an insurance company, the Company has no ability to require its insureds to implement any particular policy or practice. By recommending such policies or practices in the manner contemplated by the Proposal, the Company and its underwriting and risk control personnel risk becoming subject to discovery and depositions in cases brought against the Company’s own insureds. The Company’s ability to adequately defend its insureds would be impaired if claimants sought to use testimony by Company personnel against its own insureds.

Additionally, a report outlining practices for reducing police brutality against people of color could make it significantly more difficult for the Company to defend the municipalities it insures in current litigation alleging race-based violence, if the police

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<sup>17</sup> Travelers defended this case, and the matter is resolved. The complaint in this matter is typical of the types of complaints tendered to Travelers in the ordinary course of its business.

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department at issue did not have such practices in place, even if it had other (and even robust and effective) practices in place designed to reduce the risk of police brutality. Similarly, if the report requested by the Proposal were to conclude that Travelers should perform risk control consultations or assessments beyond those the Company already performs and to make recommendations to implement additional training, tools and tactics aimed at reducing police violence, such recommendations could be used against the insured to establish liability under the *Monell* doctrine, significantly prejudicing the insured and the Company in litigation.<sup>18</sup>

The Company cannot risk compromising the defense of its insureds in lawsuits centered on allegations and legal theories that could be directly implicated by the Proposal. Contracts of insurance (like other contracts) include an implied promise of good faith and fair dealing. A number of jurisdictions have even concluded that insurers are subject to a heightened duty of good faith and fair dealing to their insureds that is akin to a fiduciary relationship. *See, e.g., Love v. Fire Ins. Exch.*, 271 Cal. Rptr. 246, 251–52 (Cal. App. 4th Dist. 1990) (“Moreover, because of the ‘special relationship’ inherent in the unique nature of an insurance contract, the insurer’s obligations attendant to its duty of good faith are heightened. Such obligations have been characterized as *akin* to fiduciary-type responsibilities.”); *O.K. Lumber Co., Inc. v. Providence Washington Ins. Co.*, 759 P.2d 523, 525 (Alaska 1988) (“The fiduciary relationship inherent in every insurance contract gives rise to an implied covenant of good faith and fair dealing.”).

Consequently, the Proposal could cause the Company to take positions that could impair its insureds’ defense and/or subject the Company to claims for extracontractual liability based on an alleged breach of duties the Company owes to its insureds if its ability to defend its insureds is impaired in the ways described above or in innumerable other ways that may not be readily foreseeable.

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<sup>18</sup> Under the *Monell* doctrine, a plaintiff can sue a municipality for promulgating unconstitutional policies or practices or inadequate training that precipitate civil rights violations by law enforcement officers. *See Monell v. Dep’t of Social Services*, 436 U.S. 658 (1978).

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**B. The Proposal is Excludable under Rule 14a-8(i)(2) Because, if Implemented, it Would Cause the Company to Violate State Law**

Rule 14a-8(i)(2) allows a company to exclude a shareholder proposal from its proxy materials “if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.” As discussed below and for the reasons set forth in the legal opinion provided by DLA Piper, the Company’s Maryland counsel, attached hereto as Exhibit B (“DLA Piper Opinion Letter”), we believe that the Proposal is excludable under Rule 14a-8(i)(2), as implementation of the Proposal would cause the Company to violate one or more state laws.

Pursuant to Rule 14a-8(i)(2), the Staff has consistently permitted the exclusion of shareholder proposals that would, if implemented, cause a company to violate state law to which it is subject. *See, e.g., Arlington Asset Investment Corp.* (Apr. 23, 2021) (concurring, under Rule 14a-8(i)(2), in the exclusion of a proposal to liquidate registrant’s investment portfolio as improper shareholder action under state law); *CTS Corp.* (Mar. 19, 2021) (concurring, under Rule 14a-8(i)(2), in the exclusion of a proposal to permit written consent by shareholders because it would cause the registrant to violate state law). As noted herein as well as the legal opinion attached hereto as Exhibit B, the implementation of a third-party audit as envisioned by the Proposal implicates state law and regulatory considerations and, on that basis alone, warrants exclusion of the Proposal from the Company’s Proxy Materials under Rule 14a-8(i)(2).

For example, as set forth in the attached DLA Piper Opinion Letter, Md. Code Ann., Ins. § 27-501(c)(1) expressly prohibits an insurer from making any “inquiry about race, creed, color, or national origin in an insurance form, questionnaire, or other manner of requesting general information that relates to an application for insurance.” Both the text of this statute and its legislative history require that it be interpreted broadly to prohibit an insurer from collecting information about race that “relates to an application for insurance.”

*First*, the term “relates to” is interpreted broadly under Maryland law. *See Friedman v. Hannan*, 412 Md. 328, 339 (Md. 2010) (“If the General Assembly had intended Section 4–105(4) to apply more narrowly, it had no reason to use the term ‘relating to.’ . . . Its choice . . . to use the broader ‘relating to’ language, must be respected and enforced by this Court.”); *Mayor of Ocean City v. Commissioners of Worcester Cty.*, No. 2751, 2020 WL 6041992, at \*4 (Md. Ct. Spec. App. Oct. 13, 2020) (holding that when the phrase “relating to” is left undefined, the courts “generally understand the phrase to be drafted broadly”). The Proposal would require the Company to conduct a racial equity audit and then utilize that race information to address alleged “gaps between the company’s non-discriminatory business practice policy and actual outcomes” in connection with homeowners and automobile insurance policies. It is reasonably likely that a Maryland court interpreting

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such a broad statute would conclude that such an exercise constitutes an “inquiry about race . . . that relates to an application for insurance” in violation of Section 27-501(c)(1).

*Second*, Section 27-501(c)’s legislative history supports this conclusion. When originally enacted in 1973, the Maryland General Assembly (the “General Assembly”) explained that the purpose of Section 27-501(c)(1) was to ensure that insurer “underwriter decisions are made without reasons based in whole or in part upon such irrelevant considerations as race, color, religion or creed . . .” H.B. 859, Ch. 752 (1973). Thus, the General Assembly made clear that the intent of Section 27-501(c) was to render information about race “irrelevant” to an insurer’s underwriting practices.

Further, Section 27-501(2) provides an exception to the prohibition against gathering race information in connection with health insurance policies. It states that “an insurer that provides health insurance, a non-profit health service plan, or a health maintenance organization may make an inquiry about race and ethnicity in an insurance form, questionnaire, or other manner requesting general information, provided the information is used solely for the evaluation of quality of care outcomes and performance measurements . . .” Although this exception, which was provided in the context of insurers that provide health insurance, would not apply to the Company if the Proposal were passed, its legislative history is instructive. The Fiscal and Policy Notes related to the House and Senate Bills that added this exception explained:

The bill prohibits these carriers from using race or ethnicity data to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms or conditions of, or otherwise affect a health insurance policy or contract.

Here again the General Assembly was clear that race or ethnicity data was *not* to be used for any purpose that could affect an insurance policy or contract, whether or not it “relates to an application for insurance.” And although this legislative history dealt with health insurance policies or contracts (as that was the purpose of the exception), there is nothing to suggest that a Maryland court would not take a similarly broad view of subsection (1) of Section 27-501(c).

Thus, in light of (i) the General Assembly’s original intent to render race information “irrelevant” in insurers’ underwriting decisions, (ii) the use of the broad term “relates to” in subsection (1), and (iii) the General Assembly’s clear intent that insurers, except in specifically defined circumstances, are not to collect or use information on race in a way that would relate to an application for insurance or “otherwise affect” an insurance policy, it is reasonably likely that the Proposal would violate Section 27-501(c)(1). Collecting information about race and then using that data to alter the underwriting, pricing or issuance of insurance policies would effectively render the race information directly relevant to

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underwriting decisions and “relate[] to” applications for insurance or otherwise affect an insurance policy or contract in violation of both the letter and the spirit of Section 27-501(c).

That such information would be collected by a third party (such as an outside auditor or third-party vendor) rather than Travelers itself would provide no exception to state-law anti-discrimination laws prohibiting the use of or collection of information about race. For example, recent guidance issued by the New York Department of Financial Services warns that an insurer may “not use an external data source, algorithm or predictive model in underwriting or rating unless the insurer has determined that the external tools or data sources *do not collect or utilize prohibited criteria*,” including race, in connection with certain lines of coverage. N.Y. Dep’t Fin. Serv., Circular Letter No. 1 (Jan. 18, 2019) (emphasis added).<sup>19</sup>

Putting aside the issues involved with the collection of race information, it is clear that the *use* of race data in underwriting decisions, which would be a necessary requirement for ameliorating any alleged disparities cited in the audit report requested by the Proposal, would run afoul of state law. Though the Proposal is at once sweeping and vague,<sup>20</sup> its focus is on alleged “gaps between the company’s non-discriminatory business practice policy and actual outcomes” in connection with homeowners and automobile insurance. In other words, the Proposal seeks a third-party audit to determine, among other things, whether underwriting criteria and pricing for Travelers’ insurance products result in disparate outcomes on the basis of race. Thus, for example, it cites a disputed news report, in which the Company is not even named, purporting to show that certain auto insurers “charged higher premiums . . . in minority communities versus whiter communities despite similar accident costs.”

The Proposal would require an independent audit that would result in a report including “recommendations for improving the racial impacts of [the Company’s] policies, practices, products, and services.” The Proposal does not elaborate on the measures that may ultimately be recommended by the audit report. The supporting statement of the Proposal, however, calls for corporations such as Travelers to “recognize and remedy industry- and company-specific barriers to everyone’s full inclusion in societal and economic participation.” Assuming that the audit requested by the Proposal claims to find the existence of disparities among policyholders based on race, the Proposal suggests that the Company would take steps to alter its underwriting criteria and/or pricing to achieve different outcomes when measured on the basis of race. In order to address alleged “gaps between the company’s non-discriminatory business practice policy and actual outcomes” in

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<sup>19</sup> Available at [https://www.dfs.ny.gov/industry\\_guidance/circular\\_letters/cl2019\\_01](https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2019_01).

<sup>20</sup> See Section IV.D below concerning Rule 14a-8(i)(3).

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connection with homeowners and automobile insurance or other lines of coverage as contemplated by the Proposal, Travelers would necessarily have to explicitly take race into account in the development, underwriting and/or pricing of its insurance products. Doing so, however, would be impermissible on several levels, not the least of which is that taking race into account in underwriting or rate-setting is unlawful under the insurance laws of virtually every state and would improperly inject racial considerations into insurance underwriting and pricing decision-making. *Cf. Inclusive Communities*, 576 U.S. at 543. As but one example, as quoted above and as discussed in the DLA Piper Opinion Letter, Maryland law prohibits an insurer from utilizing information regarding race (or other enumerated protected classifications) in its insurance underwriting and rate-making decisions. In one form or another, state laws prohibit insurers from distinguishing among “individuals or risks of the same class or of essentially the same hazard and expense element because of the race, color, religion, or national origin of such insurance risks or applicants.”<sup>21</sup> There is no safe harbor or other exception that would authorize an insurer to

<sup>21</sup> 215 Ill. Comp. Stat. 5/424(3); *see e.g.*, Alaska Stat. § 21.36.090; Ariz. Rev. Stat. § 20-384(C) (“[Risk] [c]lassifications shall not be based on race, color, creed or national origin.”); Arizona Rev. Stat. § 20-1631(C) (“An insurer shall not cancel or refuse to renew a motor vehicle insurance policy solely because of . . . race . . .”); Ark. Code Ann. § 23-66-206(14) (same); Cal. Code Regs. tit. 10 § 2632.4(a) (“[N]o insurer shall adopt any rating factor based in whole or in part upon the race . . . of any person.”); Colo. Rev. Stat. § 10-4-626 (prohibiting insurers from refusing to write or refusing to renew an insurance policy solely because of the race of an insured); Conn. Gen. Stat. Ann. § 38a-358 (same); 18 Del.C. § 2304 (making it unlawful for any insurer “to discriminate in any way because of the insured’s race”); D.C. Stat. § 31-2231.13 (“[A]n insurer shall not make or permit a differential in ratings, premium payments, or dividends based on [an applicant’s] race . . .”); Fla. Stat. Ann. § 626.9541 (prohibiting the “refusal to insure, or continue to insure, any individual or risk solely because of . . . [r]ace”); Ga. Code Ann., § 33-9-4 (“No insurer shall base any standard or rating plan on vehicle insurance, in whole or in part, directly or indirectly, upon race, creed, or ethnic extraction. . . .”); Haw. Rev. Stat. § 431:10C-207 (same); 215 Ill. Comp. Stat. 5/424(3) (prohibiting insurers from distinguishing among “individuals or risks of the same class or of essentially the same hazard and expense element because of the race” of the insured); Iowa Code § 515D.6 (prohibiting insurers from “refus[ing] to renew a policy solely because of . . . race” of an insured); Kan. Stat. Ann. 40-5104 (prohibiting insurers from using “an insurance score that is calculated using race as a factor”); Ky. Rev. Stat. Ann. § 304.12-085 (prohibiting insurers from “fail[ing] or refus[ing] to issue or renew insurance to any person because of race. . . .”); La. Rev. Stat. § 22:35 (same); Me. Rev. Stat. tit. 24-A, § 2303(1)(G) (“No risk classification may be based upon race, creed, national origin of the religion of the insured.”); Md. Code Ins. § 27-501 (prohibiting insurers from “cancel[ing] or refus[ing] to underwrite or renew a particular insurance risk or class of risk for a reason based wholly or partly on race, . . .”); Mass. Gen. Laws Ann. Ch. 175 § 4C (“No insurer . . . shall take into consideration when deciding whether to provide, renew, or cancel homeowners insurance the race” of the applicant or insured); Mich. Comp. Laws § 500.2027 (prohibiting insurers from “[r]efusing to insure, or refusing to continue to insure, or limiting the amount of coverage available to an individual or risk because of . . . [r]ace . . . .”); Minn. Stat. Ann. § 72A.20 (“No insurer shall refuse to issue any standard or preferred policy of motor vehicle insurance or make any discrimination in the acceptance of risks, in rates, premiums, dividends, or benefits of any kind, or by way of rebate: (1) between persons of the same class, or (2) on account of race . . . .”); Neb. Rev. St. § 44-7510 (same); Nev. Rev. Stat.

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take race into account in order to achieve different outcomes by race. It is the consideration of race itself that is unlawful, regardless of otherwise worthy motives.<sup>22</sup>

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686B.060 (same); N.H. Rev Stat § 417:4 (prohibiting insurers from “[r]efusing to insure risks solely because of . . . race . . . .”); N.J. Rev Stat § 17:29B-4(7)(c)-(d) (prohibiting “any discrimination against any person or group of persons because of race . . . in the issuance, withholding, extension or renewal of any policy of insurance, or in the fixing of the rates”); N.Y. Ins. L. § 2606 (No insurer “shall because of race, . . . make any distinction or discrimination between persons as to the premiums or rates charged for insurance policies or in any other manner whatsoever.”); N.M. Stat § 59A-17A-4 (prohibiting insurers that use credit information in underwriting from using “an insurance score that is calculated using . . . race” as a factor); N.C. Gen. Stat. § 58-3-25 (“No insurer shall refuse to insure or refuse to continue to insure an individual; limit the amount, extent, or kind of coverage available to an individual; or charge an individual a different rate for the same coverage, because of the race, color, or national or ethnic origin of that individual.”); Ohio Rev. Code § 3901.21 (prohibiting “any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance . . . .”); Okla. Stat. Ann. Tit. 36 § 985 (“No rate in a competitive market shall be considered unfairly discriminatory unless it classifies risk on the basis of race, color, creed, or national origin.”); 40 Pa. Stat. Ann. § 1171.5. (prohibiting “any unfair discrimination between individuals of the same class and essentially the same hazard with regard to underwriting standards and practices or eligibility requirements by reason of race, . . . .”); S.C. Code Ann. § 38-75-1210(B)(1) (“In determining the premium rates to be charged for an insurance policy . . . it is unlawful to consider . . . race . . . .”); Tenn. Code Ann. § 56-8-104 (prohibiting “[r]efusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the . . . race” of the insured); Tex. Ins. Code Ann. § 544.002 (“A person may not . . . charge an individual a rate that is different from the rate charged to other individuals for the same coverage because of the individual’s . . . race . . . .”); Va. Code Ann. §§ 38.2-2114; 38.2-2115; 38.2-2212 (prohibiting insurers from “refus[ing] to renew a policy . . . solely because of . . . [r]ace . . . .”); Wis. Stat. Ann. 632.35 (same); Wyo. Stat. Ann. § 26-14-105 (“Risks may be classified in any way except that no risk may be classified in whole or in part on the basis of race, color, creed or national origin.”).

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Moreover, because race and certain other characteristics (such as creed, color, national origin, and religion) may not be used in insurance underwriting or pricing, not only does the Company not possess such information, the ability to collect such information is limited in some states, at least where collected in connection with an insurance application. *See, e.g.*, Md. Code Ann., Ins. § 27-501(c)(1) (except in the context of health insurance, a nonprofit health service plan or a health maintenance organization, insurers “may not make an inquiry about race, creed, color, or national origin in an insurance form, questionnaire, or other manner of requesting general information that relates to an application for insurance”); *see also* Ca. Ins. Code § 10141 (insurers are prohibited from failing or refusing “to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation”); *see also AIA v. HUD* at 44–45 (noting state-law prohibitions against insurers’ collection and analyzing race-based data), vacated on other grounds, No. 14-5321 (D.C. Cir. Nov. 17, 2015). Further, insurers may not avoid such limitations or state anti-discrimination laws by relying on data collected by third parties. Increasingly, state regulators have confirmed that insurers remain responsible for ensuring



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**C. The Proposal is Excludable Under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement the Proposal**

Pursuant to Rule 14a-8(i)(6), exclusion of a shareholder proposal is permitted “[i]f the company would lack the power or authority to implement the proposal.” As such, the Staff has consistently concurred in the exclusion of a proposal under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) if the implementation of the proposal would violate state law and, accordingly, the company would lack the authority to implement the proposal. *See, e.g., Highlands REIT, Inc.* (Feb. 7, 2020). As discussed above in Section IV.B, the Proposal would, if implemented, cause the Company to violate state law pursuant to Rule 14a-8(i)(2), in which case the Company would lack the power or authority to implement the Proposal, thus implicating Rule 14a-8(i)(6). As noted above, the underlying intention of the Proposal, as reflected in the supporting statement, is to challenge the Company’s use of risk-based pricing and its underwriting practices. As discussed in detail above, however, both the Company’s insurance pricing as well as its underwriting practices are subject to significant regulatory oversight, such that the Company does not have the power or authority to modify its pricing and underwriting practices in the manner contemplated by the Proponents – *i.e.*, taking race into account. Further, as discussed in the DLA Piper Opinion Letter, even the collection of information about the race of insureds or potential insureds could run afoul of state insurance laws.

**D. The Proposal is Excludable under Rule 14a-8(i)(3) Because it is Vague and Indefinite and Contains Numerous False and Misleading Statements, Rendering it in Violation of the Proxy Rules**

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a registrant’s proxy materials “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” As described below, exclusion of the Proposal is warranted because the inclusion of the supporting statement *and* the proposed resolution contained in the Proposal in the Company’s forthcoming Proxy Materials would

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that data – whether or not collected by a third-party source – is accurate and not used in any manner that takes race into account. *See, e.g.,* Notice Concerning the Usage of Big Data and Avoidance of Discriminatory Practices, State of CT, Insurance Dep’t (April 14, 2021); *see also* Clifton Gruhn, Jamie Bigayer, Stephen Choi, Recent State Insurance Law Developments Affecting Product Development, Marketing, and Innovation, VCCH1104 ALI-CLE 1 (Nov. 5-10, 2020) (West) (discussing increased regulatory focus on the use of third-party data given concerns over accuracy and discrimination and noting that regulators have made clear that insurers remain primarily responsible for collection and analysis of data even if provided by third parties).

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result in the Company filing a proxy statement with materially false and misleading statements even if certain elements or statements included therein were to be excluded.

*1. The Proposed Resolution in the Proposal is Inherently Vague and Indefinite Because it Fails to Define Key Terms or Set Parameters*

The Commission has explained that exclusion of a proposal may be appropriate where “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004); *see also Cisco Systems, Inc.* (Oct. 7, 2016) and *Alaska Air Group, Inc.* (Mar. 10, 2016). The Staff has concurred in a registrant’s exclusion of a proposal on vague and indefinite grounds where the registrant and its shareholders might interpret the proposed resolution differently such that actions taken by the registrant could significantly differ from the action intended by the shareholders voting on the proposal. *See Puget Energy Inc.* (Mar. 7, 2002) (citing *Occidental Petroleum Corp.* (Apr. 4, 1990)). Recently, the Staff concurred in the exclusion of a shareholder proposal that sought to “improve guiding principles of executive compensation,” noting that such proposal “lack[ed] sufficient description about the changes, actions or ideas for the Company and its shareholders to consider that would potentially improve [such] guiding principles.” *Apple Inc.* (Dec. 6, 2019). Additionally, courts have ruled on cases involving vague proposals, finding that “shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote” and that a proposal should be excluded when “it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.” *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

*a. The Proposal fails to define which “policies, practices, products and services” and “stakeholders” referenced in the resolution are in scope*

The Staff has indicated that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal fails to define key terms. *See, e.g., Boeing Co.* (Feb. 23, 2021) (concurring, under Rule 14a-8(i)(3), in the exclusion of a proposal that failed to define key terms related to a requirement that the registrant’s directors have an “aerospace/aviation/engineering executive background” but setting forth “incomplete and often conflicting explanations” of such requirement); *AT&T Inc.* (Feb. 21, 2014) (concurring, under Rule 14a-8(i)(3), in the exclusion of a proposal requesting a review of policies and procedures related to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined); *Berkshire Hathaway Inc.* (Jan. 31, 2012) (concurring, under Rule 14a-8(i)(3), in the exclusion of a proposal seeking to require

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specified company personnel “to sign-off by means of an electronic key . . . that they have observed and approve or disapprove of [certain] figures and policies,” noting that the proposal “does not sufficiently explain the meaning of ‘electronic key’ or ‘figures and policies’ and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires”); *AT&T Inc.* (Feb. 16, 2010, *recon. denied* Mar. 2, 2010) (concurring, under Rule 14a-8(i)(3), in the exclusion of a proposal that sought disclosures on, among other things, payments for “grassroots lobbying” without sufficiently clarifying the meaning of that term); *Moody’s Corp.* (Feb. 10, 2014) (concurring, under Rule 14a-8(i)(3), in the exclusion of a proposal when the term “ESG risk assessments” was not defined).

Here, the proposed resolution within the Proposal is fundamentally vague and indefinite because it fails to define key terms or set parameters, making it impossible for the Company or its shareholders to understand what measures the Proposal seeks to implement or how broad it is intended to be. The Proposal requests a third-party audit relating to the racial impacts of the Company’s “policies, practices, products, and services,” without providing any additional clarity with respect to *which* of the Company’s countless “policies, practices, products, and services” it refers or otherwise setting parameters on which are in scope. Through the use of the vague word “policies,” the Proponents do not clarify whether it refers to the Company’s corporate policies, of which the Company has hundreds, or insurance policies, of which there are more than 10 million in force involving more than 100 distinct coverages involving a wide range of personal and business lines offerings.<sup>23</sup> Similarly, the Proposal’s reference to “practices” is even more nebulous, rendering it impossible for the Company to understand what actions it is being asked to undertake and for the shareholders voting on the Proposal to understand what they are being asked to vote upon.

Additionally, the Proposal suggests that input from stakeholders, which specifically includes “civil rights organizations, employees, and customers,” should be considered in designing the audit. This critical aspect of the Proposal requires the Company and its shareholders to understand the meaning of the term “stakeholders,” which, despite a few examples, is undefined and overly broad. The Company had approximately 30,000 employees and millions of customers across the United States as of December 31, 2021.

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<sup>23</sup> Through its operating insurance company subsidiaries, the Company has over 9 million personal insurance policies currently in effect in the United States and Canada that involve 17 unique products and eight lines of coverages. In addition, it has more than two million business insurance policies currently in force, involving over 100 commercial insurance products and more than 50 lines of major coverages, including Worker’s Compensation, General Liability, Commercial Multi-Peril, Commercial Auto, Umbrella, Professional Liability, Directors & Officers Liability, and Employment Practices Liability, as well as a range of public entity coverages and other specialized business and personal insurance products.

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There are also thousands of civil rights organizations across the country. Again, the Proposal lacks any specificity with respect to the number of employees or customers that should be consulted when designing the third-party audit, or any parameters on which subsets of these stakeholders should be included. Accordingly, shareholders could not possibly understand, first, exactly which stakeholders are expected to be involved in the decision-making process for implementing this Proposal, and second, what input those stakeholders would provide that would drive the implementation of the Proposal. Furthermore, the examples of stakeholders referenced in the Proposal may have competing interests. For instance, some customers may prioritize ensuring that the Company's insurance underwriting and pricing decisions are based solely on a risk-based analysis, whereas others may prioritize reducing potential disparities regardless of risk. Similarly, some "civil rights organizations" may believe that insurance decisions should not take race into account at all, while others may advocate for models designed to reduce inequalities, even if the disparities resulted from sound underwriting decisions. Moreover, as noted above, while the Proposal is focused on racial outcomes, addressing any perceived disparities on that basis and not based on factors predictive of risk could potentially impact other groups when assessed on the basis of such characteristics as sex (including sexual orientation and gender identity), religion, national origin, age, disability, marital status, or income.

The Company cannot even begin to guess what its many stakeholders' various stances would be with respect to assessing specific matters in a racial justice audit. The Proposal makes no mention of how the Company should handle inconsistent recommendations from the various stakeholders that the Company is expected to consult. As a result, the Company's shareholders could not possibly know what they are being asked to vote on, nor would the Company know how to implement the Proposal. Importantly, it is entirely possible that the Company, after receiving input from stakeholders, might prepare a report in a manner that differs significantly from what the shareholders voting on the Proposal contemplated.

Without any limitation or parameters, there are infinite permutations of policies, products and services to audit and of employees, civil rights organizations and customers with which to consult, and the implementation of the audit could therefore be far different than the outcome intended by the shareholders voting on the Proposal. The Proposal, in fact, goes beyond prior proposals with respect to which the Staff has granted no-action relief on the basis that shareholders would have had to search outside the proposal for a defined term to understand what they were being asked to vote on. Here, there is no way for either the Company or its shareholders to discern what the Proposal requires and how it will ultimately be implemented. A definition of "civil rights organizations" would not even provide insight into what some, of many, stakeholders would find important in structuring a racial justice audit. Absent clarity as to which of the Company's numerous policies, products and services the Proponents request to be audited by a third party and with whom

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to consult, the Company and its shareholders are left guessing as to the actions the Proposal is requesting.

*b. The proposed resolution is unclear as to who should prepare the requested report*

Further, the outcome sought by the proposed resolution itself is inherently conflicting or, at a minimum, vague. The resolution indicates that the Company's board of directors oversee a third-party audit, but that a "report on the audit" be prepared and published on the Company's website. This imprecise language is remarkably similar to the proposal excluded in *The Home Depot, Inc.* (Mar. 12, 2014, *recon. denied* Mar. 27, 2014), where the Staff concurred in the exclusion of a proposal on Rule 14a-8(i)(3) grounds. There, the proposal asked the registrant to prepare a requested report and suggested that the report then be reviewed and verified by an independent third party, but in another area of the proposal, also asked that an independent third party prepare the requested report. Here, there is no direction in the proposed resolution as to who should prepare such report. Is it the third-party auditor? The board of directors? Management? Some other group or individual?

Because of the sheer lack of clarity with respect to terms that are central to the proposed resolution in the Proposal, neither the shareholders voting for the Proposal, nor the Company's board of directors in implementing the Proposal (if adopted), would be able to establish with any reasonable certainty what actions the Proposal requires. Accordingly, the Company believes that the Proposal may be omitted from its Proxy Materials pursuant to Rules 14a-8(i)(3) and 14a-9.

*2. The Supporting Statement in the Proposal is False and Misleading Because the Supporting Statement Makes Unfounded Claims About the Company and its Agents*

As noted above, Rule 14a-8(i)(3) permits the omission of a shareholder proposal if the proposal, which includes its supporting statement, is contrary to any of the Commission's proxy rules, including Rule 14a-9 and its prohibition against the inclusion by registrants of false and misleading statements in their proxy statements. In other requests for relief, registrants have looked to the text of the language in the supporting statement, particularly in light of an inherently misleading proposed resolution. *See, e.g., Puget Energy Inc.* (Mar. 7, 2002) ("The Revised Proposal's resolution does not define 'improved corporate governance' and, therefore, any guidance must be found in the supporting statement."). Note (b) to Rule 14a-9 states that "misleading" material includes statements that "directly or indirectly impugn[] character, integrity or personal reputation, or directly or indirectly make[] charges concerning improper, illegal or immoral conduct or associations, without factual foundation." Unfounded statements – be it in the proposal itself or in the supporting

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statement – that directly or indirectly suggest the improper, illegal or immoral conduct or associations of a registrant or its directors or officers have long been viewed by the Staff as providing a basis for exclusion under this provision.

In one instance, the Staff concurred in the exclusion of a proposal under Rule 14a-8(c)(3) because the proposal (including the supporting statement) “suggest[ed] that the Company has acted improperly without providing any factual support for that implication.” *Detroit Edison Co.* (Ellison) (Mar. 4, 1983) (statements implied that the company engaged in the circumvention and evasion of regulations, obstruction of justice and unlawful influence of the political process without factual foundation). In another, the Staff focused on five statements in the resolution and supporting statement that were problematic under Rule 14a-9, including language in the supporting statement that “refers to a pending court action dealing with the question of ‘economic racism.’” *Standard Brands, Inc.* (Mar. 12, 1975) (“*Standard Brands*”). There, the Staff noted, “[t]he reference to this suit would seem to impugn the character, integrity and reputation of the company by implying, without the necessary factual support required by Rule 14a-9, that the company is one of those entities which would be prohibited under the suit from further practicing economic racism.” *Id.* To the extent statements are opinions of the Proponents, such statements need to be clearly stated as such or they should be excluded. *See D&N Financial Corp.* (Feb. 9, 1999) (determining that the proponent must revise portions of the proposal to clarify that such portions were the proponent’s opinion or such portion may be excluded from proxy materials).

The Proposal has a number of statements about the Company and/or its agents that are unfounded, including:

- “Despite national reforms, auto and homeowners’ insurance policies are still differently applied to minority policyholders”;
- “Company leaders . . . lack objectivity”;
- “[A]ny company without a third-party audit and plan for improvement of internal and external racial impacts could be at risk”;
- statements regarding the Company’s settlement with the National Fair Housing Alliance; and
- the statement that the Company “may be at risk for contributing to systemic racism” because it provides law enforcement liability insurance.

Each of those statements is addressed in turn below.

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- a. *“Despite national reforms, auto and homeowners’ insurance policies are still differently applied to minority policyholders.”*

The statement in the above-captioned section header is purportedly supported by the subsequent sentence of the Proposal, which notes, “An investigation found insurance companies charged higher premiums by up to 30 percent in minority communities versus whiter communities despite similar accident costs.” At the outset, the cited investigative article only refers to automobile insurance policies, whereas the sentence in the caption above refers to homeowners insurance policies as well.<sup>24</sup> Second, the analysis used in the article was flawed in numerous respects, including its reliance on ZIP codes and failure to adequately account for differences in driver behavior.<sup>25</sup> In addition, the supposed investigation was far from comprehensive. It analyzed premiums and payouts from only four states (California, Illinois, Texas and Missouri) and limited its study to only one type of driver: a 30-year-old woman with a safe driving record. The findings are even further qualified: “some” major insurers in those four of 50 states charged minority neighborhoods as much as 30% more than other areas with similar accident costs, and the Company was *not* one of the three insurance companies cited in the article as charging such rates.

Further, the implication that the Company discriminates against its customers is unfounded, offensive and irrefutably false – not to mention damaging to the Company’s shareholders and other stakeholders, including employees. As noted above, the Company operates in a highly regulated industry and is subject to specific laws and regulations that prohibit discriminatory practices. Specifically, it is illegal for the Company to discriminate on the basis of race or any other protected classification in the application or pricing of its insurance policies. Through its robust policies and practices, the Company ensures that it complies with all applicable laws and regulations prohibiting discriminatory practices and, as noted above, the Company does not even collect racial information of its insureds (except as required by law in one narrow circumstance). The Proponents’ statement attempts to influence the Company’s shareholders to vote for the Proposal based on misinformation. Accordingly, the implication presented in this sentence within the supporting statement of the Proposal is impermissibly false and misleading.

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<sup>24</sup> See Julia Angwin, *Minority Neighborhoods Pay Higher Car Insurance Premiums Than White Areas With the Same Risk*, Pro Publica, April 5, 2017 available at <https://www.propublica.org/article/minority-neighborhoods-higher-car-insurance-premiums-white-areas-same-risk>.

<sup>25</sup> See, e.g., James Lynch, *Why ProPublica Auto Insurance Report is Inaccurate, Unfair and Irresponsible*, Insurance Journal (April 5, 2017) (available at <https://www.insurancejournal.com/news/national/2017/04/05/447012.htm>).

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*b. "Company leaders . . . lack objectivity."*

The statement in the above-captioned section header is so broad and general that, by its plain reading, it is necessarily misleading. To insist that some, many or all Company leaders lack objectivity as it relates to this particular issue is groundless. Moreover, as it relates to the use of race in the underwriting and rating of our products and services, as discussed above, Travelers does not use race data and, except as required by law in the narrow circumstance referenced above, does not collect or possess any race information on its insureds. *See America West Holdings Corp.* (Apr. 14, 1998) (determining that the proposal's statement that the chairman's objectivity "is compromised when he is forced to scrutinize his own decisions" may be excluded under Rule 14a-8(c)(3) and Rule 14a-9 as materially false and misleading because it impugns the chairman's character and integrity by suggesting that he cannot fulfill his fiduciary obligations to the company). Accordingly, the suggestion that Travelers' leaders lack objectivity is impermissibly baseless and inflammatory.

*c. "[A]ny company without a third-party audit and plan for improvement of internal and external racial impacts could be at risk."*

The statement in the above-captioned section header is inherently misleading because it makes an assumption about the Company that is not true. The statement assumes that the Company does not have a "plan for improvement of internal and external racial impacts." With respect to its workforce and the communities it serves, the Company has dedicated a vast amount of resources to diversity and inclusion initiatives, so the implication that the Company is "without a . . . plan for improvement of internal and external racial impacts" is false and wholly misleading. Having long considered diversity and inclusion to be a business imperative, Travelers is committed to furthering efforts to address racial discrimination and to promote diversity, equality and inclusion and does not tolerate unlawful discrimination in its business practices. The Company takes seriously its commitment not only to comply with existing anti-discrimination laws, but also to affirmatively pursue a range of diversity and inclusion initiatives. It has established a Diversity Council chaired by the Company's Chairman and CEO and composed of the Company's 40 most senior executives. With the oversight of the Diversity Council along with its Vice President of Enterprise Diversity & Inclusion, the Company fosters an environment committed to bringing together people with different backgrounds and perspectives and enabling new ideas, innovation and a culture in which employees feel valued, respected, supported and empowered. The Company also strives to explore diverse markets, expects all of its employees to participate in a newly updated diversity education program, has established diversity networks for employees, recruits students and other employees from underrepresented communities, has pledged funds to support racial justice initiatives and engages in efforts to provide opportunities for businesses owned by people of diverse backgrounds to participate as contractors or suppliers of products and services to the



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Company. For these and numerous other efforts, the Company has been recognized as a leader for its inclusive and non-discriminatory culture.<sup>26</sup> Moreover, the Company's data demonstrates that it has made significant progress over the past decade. In each of the last ten years, for example, the Company has increased the percentage of people of color in its workforce. As of December 31, 2021, people of color represented 25% of the Company's U.S. workforce. The Company has also increased the percentage of people of color in management positions in each of the last ten years.

Further, the Company has a thoughtful and robust approach to ensuring that it compensates its employees without influence from bias. The Company has comprehensive compensation processes and controls in place and reviews its compensation practices annually with independent, outside experts, in each case to help ensure equitable pay across the Company. As disclosed in the Company's publicly available Equitable Pay Statement, the Company believes that it pays its employees equitably, regardless of gender, race or other protected classification.

Additionally, as discussed in detail earlier in this letter, as it pertains to any potential racial impacts of its insurance policies, existing law prohibits the Company from taking race into account in its underwriting and pricing practices. For these reasons, the Proposal's unfounded, accusatory language is intrinsically false, misleading and inflammatory.

*d. "In 2018, Travelers settled a National Fair Housing Alliance lawsuit alleging that Travelers denied insurance to landlords renting to Section 8 voucher recipients, who are predominantly Black women."*

The statement in the above-captioned section header is misleading in that it implies that the allegations in such legal proceeding – that the Company discriminated on the basis of race – were true. In fact, the Company made no admission or concession that its underwriting policies violated any law, statute, or regulation and made no admission of liability by resolving the lawsuit with the National Fair Housing Alliance. Additionally, the action was resolved after the State of California amended its insurance laws in a manner that required Travelers to alter the underwriting criteria at issue in that litigation. In the ordinary course, the Company (like many other companies) settles rather than litigates lawsuits for a variety of reasons. As in *Standard Brands*, such a statement necessarily "impugn[s] the character, integrity and reputation of the [C]ompany by implying, without the necessary factual support required by Rule 14a-9," that the Company committed unlawful acts alleged in the referenced lawsuit. Including this misleading and inflammatory statement here could result in shareholders and the general public incorrectly concluding that the Company

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<sup>26</sup> See <https://www.travelers.com/about-travelers/diversity>; <https://sustainability.travelers.com/drivers-of-sustained-value/diversity-and-inclusion/#diverse-talent-development--pipeline>.

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engaged in the unlawful conduct alleged in the lawsuit. *See also ConocoPhillips* (Mar. 13, 2012) (proposal excluded on Rule 14a-8(i)(3) grounds where it made vague references to an alleged violation of law and the inclusion of such allegations in the registrant's proxy statement "would be highly confusing, and of great concern, to the Company's shareholders").

- e. *The Company provides law enforcement liability insurance and "[i]n this pivotal role, [it] may be at risk for contributing to systemic racism, but also may provide solutions."*

Finally, the statement in the above-captioned section header that the Company may be at risk for contributing to systemic racism is misleading. The Company's law enforcement liability policies do not insure criminal, dishonest or malicious wrongful acts. Additionally, the Company has a robust underwriting process for its Public Entity Business, which includes law enforcement liability. The Company's law enforcement liability product is one of 11 coverages offered to public entities and it is not offered as a standalone product. Rather, it is part of a multi-line offering to small cities, counties, municipalities and other public entities with law enforcement exposure, and is a standard component for any insurance company providing public entity coverage. The Company has a robust and highly specialized process for underwriting public entity risks (including law enforcement liability) and also provides customized recommendations and resources. As a result of these efforts and the Company's commitment to excellence, the accreditation rate for the law enforcement risks in the Company's portfolio, as provided by the Commission on Accreditation for Law Enforcement Agencies, is more than twice the national average.

Moreover, and importantly, the article cited to support that sentence, "When It Comes To Police Reform, Insurance Companies May Play A Role" on [npr.com](http://npr.com), does not support the statement that insurance companies are, or even may be, contributing to "systemic racism"; rather, the article supports only the last clause of the sentence (that insurance companies "may provide solutions"). Notably, the referenced article addresses certain actions insurance companies are taking to inform and educate police departments to ultimately contribute to a reduced likelihood of paying out claims to those police departments, such as pamphlets about how to properly conduct searches, but nothing more. The Proposal is thus premised on unfounded allegations that the Company's law enforcement liability offerings may increase racist police brutality. In *Philip Morris Companies Inc.* (Feb. 7, 1991), the Staff agreed that a proposal was excludable under former Rule 14a-8(c)(3) because it implied that the company "advocates or encourages bigotry and hate." Here, coupled with the other statements in the Proposal, the Proponents are making similar allegations – namely, that the Company may be contributing to systemic racism, and worse, they are making this claim without any justification whatsoever and despite the fact that the Company has robust policies and practices in place to ensure its compliance with applicable laws and regulations. As noted above, quality of risk is paramount in the law

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enforcement liability underwriting process, and the Company has a robust and highly specialized process for underwriting public entity risks (including law enforcement liability). Accordingly, the entire statement referenced in the section header above is false and misleading.

*f. Viewed holistically, the Proposal is false and misleading and must be excluded pursuant to Rules 14a-8(i)(3) and 14a-9*

On the whole, the Proposal is categorically false and misleading and must be excluded in its entirety from the Company's Proxy Materials under Rules 14a-8(i)(3) and 14a-9. The Proposal asserts broad generalizations about the Company's management team and risk profile, makes misleading implications about the Company's legal proceedings and evasively suggests that the Company is contributing to a multifaceted societal issue without any justification. Among other unfounded conclusions, the Proposal falsely asserts that the Company discriminated against landlords renting to Section 8 participants. Including these statements in the Company's Proxy Materials would, as a matter of course, violate Rule 14a-9, and would otherwise require that Company management expend time and resources refuting such claims in its forthcoming proxy statement. The preponderance of false and misleading statements included in the Proposal justifies its exclusion – a position that the SEC has historically supported. *See, e.g., Ferro Corp.* (Mar. 17, 2015) (concurring in the exclusion of a proposal in its entirety under Rule 14a-8(i)(3) where “certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading”). In the alternative, if the Staff does not agree with the foregoing, the Company respectfully requests that the Staff direct the Proponents to revise the Proposal by eliminating each of the false and misleading statements noted above or, at a minimum, directing the Proponents to revise such statements to indicate that the statements are the opinion of the Proponents.

## **V. Conclusion**

We hereby respectfully request that the Staff express its intention not to recommend enforcement action if the Proposal is excluded from the Company's Proxy Materials in reliance on Rules 14a-8(i)(2), (3), (6) and (7).

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response. If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at 917-778-6764 or [ycohn@travelers.com](mailto:ycohn@travelers.com).

THE TRAVELERS COMPANIES, INC.

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel

Sincerely,

A handwritten signature in black ink, appearing to read "yafit cohn", written in a cursive style.

Yafit Cohn

Enclosures

cc: Hyewon Han, Trillium Asset Management, LLC  
Jeffery W. Perkins, Friends Fiduciary Corporation  
A.J. Kess, The Travelers Companies, Inc.

Exhibit A

Copy of the Proposal and Accompanying Correspondence



November 2<sup>nd</sup>, 2021

The Travelers Companies, Inc.  
485 Lexington Avenue  
New York, New York 10017  
Attn: Corporate Secretary

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Corporate Secretary:

Trillium ESG Global Equity Fund is submitting the attached shareholder proposal, for inclusion in the Company's 2022 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

Per Rule 14a-8, Trillium ESG Global Equity Fund holds more than \$25,000 of the Company's common stock, acquired more than one year prior to today's date and held continuously for that time. Trillium ESG Global Equity Fund intends to hold the required number of shares continuously through the date of the 2022 annual meeting. Verification of Trillium ESG Global Equity Fund's ownership will be sent separately.

Trillium ESG Global Equity Fund is available to meet with the Company on Tuesday, November 16, 2021 from 12-12:30PM EST or Thursday, November 18, 2021 from 12-12:30PM EST to discuss the proposal. Please let us know within 10 days if the Company would like to meet at one of these times. After 10 days we may no longer be able to hold these dates and times.

Trillium ESG Global Equity Fund will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

I can be contacted at [REDACTED] or by email at [REDACTED] and request a confirmation of receipt of this letter via email.

Sincerely,

[REDACTED]

Hyewon Han  
Associate Shareholder Advocate  
Trillium Asset Management, LLC

Active Portfolios, Global Impact: Putting Assets into Action since 1982

AMSTERDAM BOSTON EDINBURGH LONDON MELBOURNE PORTLAND SAN FRANCISCO SINGAPORE SYDNEY

[www.trilliuminvest.com](http://www.trilliuminvest.com)

## Racial Justice Audit

To combat systemic racism, corporations should recognize and remedy industry- and company-specific barriers to everyone's full inclusion in societal and economic participation. Racial gaps cost the U.S. economy an estimated \$16 trillion over the past twenty years.<sup>1</sup> Closing the Black- and Hispanic-white wealth gaps could add 4-6% to American GDP by 2028.<sup>2</sup>

One year after many companies made commitments to racial justice, the practical outcomes remain unclear. Fifty corporate pledges totaling \$49.5 billion were characterized by a 2021 analysis as falling short of addressing systemic racism.<sup>3</sup> Shareholders lack independent assessments that racial equity strategies are impactful, address appropriate topics, and unlock growth.

Addressing racism and its economic costs demands more than reliance on internal action and assessment. Audits engage companies in a process that internal actions may not replicate, unlocking value and uncovering blind spots that companies may have to their policies and practices. Company leaders are not diversity, equity, and inclusion experts and lack objectivity. Crucially, a racial justice audit examines the external impact a company has on minority communities.

Given companies across sectors are embroiled in race-related controversies, any company without a third-party audit and plan for improvement of internal and external racial impacts could be at risk.<sup>4</sup> Companies like Facebook, Starbucks, and Blackrock have committed to such audits, and guidelines have been developed by practitioners.<sup>5</sup>

Despite national reforms, auto and homeowners' insurance policies are still differently applied to minority policyholders. An investigation found insurance companies charged higher premiums by up to 30 percent in minority communities versus whiter communities despite similar accident costs.<sup>6</sup> In 2018, Travelers settled a National Fair Housing Alliance lawsuit alleging that Travelers denied insurance to landlords renting to Section 8 voucher recipients, who are predominantly Black women.<sup>7</sup> In 2020, Travelers generated 34.2 percent of revenue from personal home and auto insurance. Shareholders are concerned there may be gaps between the company's non-discriminatory business practice policy and actual outcomes, and that a racial justice audit covering both vendor relationships and insurance products may help the company identify and close potential gaps. Additionally, Travelers provides law enforcement liability insurance. In this pivotal role, the company may be at risk for contributing to systemic racism, but also may provide solutions.<sup>8</sup>

Resolved, shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining the specific matters to be assessed. A report on the audit, prepared at reasonable cost and omitting confidential/proprietary information, should be published on the company's website.

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<sup>1</sup> [https://ir.citi.com/NvIUkIHPIz14Hwd3oxqZBLMn1\\_XPqo5FrksZD0x6hhl84ZxaxEuJUWmak51UHvYk75VKeHCMi%3D](https://ir.citi.com/NvIUkIHPIz14Hwd3oxqZBLMn1_XPqo5FrksZD0x6hhl84ZxaxEuJUWmak51UHvYk75VKeHCMi%3D)

<sup>2</sup> <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap>

<sup>3</sup> <https://philanthropynewsdigest.org/news/corporate-pledges-for-racial-justice-fall-short-analysis-finds>

<sup>4</sup> <https://www.nytimes.com/2020/06/06/business/corporate-america-has-failed-black-america.html>

<sup>5</sup> <https://www.proxypreview.org/2021/contributor-articles-blog/racial-justice-audits-holding-companies-accountable-for-their-role-in-system-racism> and <https://www.bloomberg.com/news/articles/2021-08-05/how-aclu-veteran-laura-murphy-audited-facebook-s-race-problem?sref=cdlcj118>

<sup>6</sup> <https://www.propublica.org/article/minority-neighborhoods-higher-car-insurance-premiums-white-areas-same-risk>

<sup>7</sup> <https://nationalfairhousing.org/2018/02/23/travelers/>

<sup>8</sup> <https://www.npr.org/2016/04/01/472564258/when-it-comes-to-police-reform-insurance-companies-may-play-a-role>

# Friends Fiduciary

ADDING VALUES TO STRONG PERFORMANCE.

November 15, 2021

DELIVERY VIA PRIORITY MAIL

The Travelers Companies, Inc.  
485 Lexington Avenue  
New York, NY 10017  
Attn: Corporate Secretary

Dear Corporate Secretary,

Friends Fiduciary Corporation ("Friends Fiduciary") is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of The Travelers Companies, Inc. (the "Company") for its 2022 annual meeting of shareholders. Friends Fiduciary is co-filing the Proposal with lead filer Trillium ESG Global Equity Fund. In its submission letter, Trillium ESG Global Equity Fund will provide dates and times of ability to meet. We designate the lead filer to meet initially with the Company but may join the meeting subject to our availability.

Friends Fiduciary Corporation serves more than 430 Quaker meetings, churches, and organizations through its socially responsible investment services. We have over \$675 million in assets under management. Our investment philosophy is grounded in the beliefs of the Religious Society of Friends (Quakers), among them the testimonies of peace, simplicity, integrity and justice. We are long term investors and take our responsibility as shareholders seriously. When we engage companies we own through shareholder resolutions we seek to witness to the values and beliefs of Quakers as well as to protect and enhance the long-term value of our investments.

A representative of the filers will attend the shareholder meeting to move the resolution. We look forward to meaningful dialogue with your company on the issues raised in this proposal. Please note that the contact person for this proposal is Hyewon Han at Trillium Asset Management [REDACTED]. The lead filer is authorized to withdraw this resolution on our behalf.

Friends Fiduciary has continuously beneficially owned, for at least three years as of the date hereof, greater than \$2,000 worth of the Company's common stock. Verification of this ownership is attached. Friends Fiduciary intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

Sincerely,

[REDACTED]  
Jeffery W. Perkins  
Executive Director

Enclosures

cc: Hyewon Han, Trillium Asset Management, LLC

[REDACTED]



## Racial Justice Audit

To combat systemic racism, corporations should recognize and remedy industry- and company-specific barriers to everyone's full inclusion in societal and economic participation. Racial gaps cost the U.S. economy an estimated \$16 trillion over the past twenty years.<sup>1</sup> Closing the Black- and Hispanic-white wealth gaps could add 4-6% to American GDP by 2028.<sup>2</sup>

One year after many companies made commitments to racial justice, the practical outcomes remain unclear. Fifty corporate pledges totaling \$49.5 billion were characterized by a 2021 analysis as falling short of addressing systemic racism.<sup>3</sup> Shareholders lack independent assessments that racial equity strategies are impactful, address appropriate topics, and unlock growth.

Addressing racism and its economic costs demands more than reliance on internal action and assessment. Audits engage companies in a process that internal actions may not replicate, unlocking value and uncovering blind spots that companies may have to their policies and practices. Company leaders are not diversity, equity, and inclusion experts and lack objectivity. Crucially, a racial justice audit examines the external impact a company has on minority communities.

Given companies across sectors are embroiled in race-related controversies, any company without a third-party audit and plan for improvement of internal and external racial impacts could be at risk.<sup>4</sup> Companies like Facebook, Starbucks, and Blackrock have committed to such audits, and guidelines have been developed by practitioners.<sup>5</sup>

Despite national reforms, auto and homeowners' insurance policies are still differently applied to minority policyholders. An investigation found insurance companies charged higher premiums by up to 30 percent in minority communities versus whiter communities despite similar accident costs.<sup>6</sup> In 2018, Travelers settled a National Fair Housing Alliance lawsuit alleging that Travelers denied insurance to landlords renting to Section 8 voucher recipients, who are predominantly Black women.<sup>7</sup> In 2020, Travelers generated 34.2 percent of revenue from personal home and auto insurance. Shareholders are concerned there may be gaps between the company's non-discriminatory business practice policy and actual outcomes, and that a racial justice audit covering both vendor relationships and insurance products may help the company identify and close potential gaps. Additionally, Travelers provides law enforcement liability insurance. In this pivotal role, the company may be at risk for contributing to systemic racism, but also may provide solutions.<sup>8</sup>

Resolved, shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining the specific matters to be assessed. A report on the audit, prepared at reasonable cost and omitting confidential/proprietary information, should be published on the company's website.

<sup>1</sup> [https://lr.citi.com/NvUklHPilz14Hwd3oxqZBLMn1\\_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMl%3D](https://lr.citi.com/NvUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMl%3D)

<sup>2</sup> <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap>

<sup>3</sup> <https://philanthropynewsdigest.org/news/corporate-pledges-for-racial-justice-fall-short-analysis-finds>

<sup>4</sup> <https://www.nytimes.com/2020/06/06/business/corporate-america-has-failed-black-america.html>

<sup>5</sup> <https://www.proxypreview.org/2021/contributor-articles-blog/racial-justice-audits-holding-companies-accountable-for-their-role-in-system-racism> and <https://www.bloomberg.com/news/articles/2021-08-05/how-aclu-veteran-laura-murphy-audited-facebook-s-race-problem?sref=cdlcj118>

<sup>6</sup> <https://www.propublica.org/article/minority-neighborhoods-higher-car-insurance-premiums-white-areas-same-risk>

<sup>7</sup> <https://nationalfairhousing.org/2018/02/23/travelers/>

<sup>8</sup> <https://www.npr.org/2016/04/01/472564258/when-it-comes-to-police-reform-insurance-companies-may-play-a-role>

Exhibit B

Opinion of Counsel



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January 13, 2022

The Travelers Companies, Inc.  
485 Lexington Avenue  
New York, New York 10017

**Re: Stockholder Proposal of Trillium ESG Global Equity Fund**

Ladies and Gentlemen:

We are Maryland counsel to The Travelers Companies, Inc. (the "Company")<sup>1</sup> in connection with certain matters of Maryland law arising out of a stockholder proposal (the "Proposal") submitted by Trillium ESG Global Equity Fund for inclusion in the Company's proxy materials for the 2022 Annual Meeting of Stockholders. We have been asked to consider whether the Proposal, if implemented, would cause the Company to violate Maryland law. In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined the Proposal and such matters of law as we have deemed necessary or appropriate to issue this opinion.

**The Proposal**

The Proposal reads as follows:

Resolved, shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining specific matters to be assessed. A report on the audit, prepared at a reasonable cost and omitting confidential/proprietary information, should be published on the company's website.

**The Proposal, If Implemented, Would Cause the Company to Violate Maryland Law**

The Proposal requires the Company to conduct a racial equity audit to "identify and close potential gaps" between the Company's non-discriminatory business practices and policies and actual outcomes. To do so, however, would require the Company to collect and utilize race information in violation of the Maryland Insurance Code.

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<sup>1</sup> The Travelers Companies, Inc. is a holding company principally engaged, through subsidiaries, in providing a wide range of commercial and personal property and casualty insurance products and services to businesses, government units, associations and individuals. The use of the defined term "Company" or "Travelers" herein refers to The Travelers Companies, Inc.'s subsidiaries that are subject to Maryland law.



The Travelers Companies, Inc.  
January 13, 2022  
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Section 27-501(c)(1) of the Maryland Insurance Code expressly prohibits an insurer from making any "inquiry about race, creed, color, or national origin in an insurance form, questionnaire, or other manner of requesting general information that relates to an application for insurance." Both the text of this statute and its legislative history dictate that it be interpreted broadly to prohibit an insurer from collecting information about race that "relates to an application for insurance."

*First*, the term "relates to" is interpreted broadly under Maryland law. *Friedman v. Hannan*, 412 Md. 328, 339 (Md. 2010) ("If the General Assembly had intended Section 4–105(4) to apply more narrowly, it had no reason to use the term 'relating to.' . . . Its choice . . . to use the broader 'relating to' language, must be respected and enforced by this Court."); *Mayor of Ocean City v. Commissioners of Worcester Cty.*, No. 2751, 2020 WL 6041992, at \*4 (Md. Ct. Spec. App. Oct. 13, 2020) (holding that when the phrase "relating to" is left undefined, the courts "generally understand the phrase to be drafted broadly"). The Proposal, if implemented, would require the Company to conduct a racial equity audit and then utilize that race information to address alleged "gaps between the company's non-discriminatory business practice policy and actual outcomes" in connection with homeowners and automobile insurance policies. Such an exercise constitutes an "inquiry about race . . . that relates to an application for insurance" in violation of Section 27-501(c)(1).

*Second*, Section 27-501(c)'s legislative history supports this conclusion. When originally enacted in 1973, the General Assembly explained that the purpose of Section 27-501(c)(1) was to ensure that insurer "underwriter decisions are made without reasons based in whole or in part upon such irrelevant considerations as race, color, religion or creed . . ." H.B. 859, Ch. 752 (1973). Thus, the General Assembly made clear that the intent of Section 27-501(c) was intended to render information about race "irrelevant" to an insurer's underwriting practices.

Further, Section 27-501(c)(2) provides an exception to the prohibition against gathering race information in connection with health insurance policies. It states that "an insurer that provides health insurance, a non-profit health service plan, or a health maintenance organization may make an inquiry about race and ethnicity in an insurance form, questionnaire, or other manner requesting general information, provided the information is used solely for the evaluation of quality of care outcomes and performance measurements . . ." Although this exception would not apply to the Company if the Proposal were implemented (as it is not a health insurer), its legislative history is instructive to the meaning of Section 27-501(c). The Fiscal and Policy Notes related to the House and Senate Bills that added this exception explained:

The bill prohibits these carriers from using race or ethnicity data to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms or conditions of, or otherwise affect a health insurance policy or contract.

Here again the General Assembly was clear that race or ethnicity data was *not* to be used for any purpose that could affect an insurance policy or contract, whether or not it "relates to an application for insurance." And although this legislative history dealt with health insurance policies or contracts (as that was the purpose of the exception), there is nothing to suggest that a Maryland court would not take a similarly broad view of subsection (1) of Section 27-501(c).



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Thus, in light of (a) the General Assembly's original intent to render race information "irrelevant" in insurers' underwriting decisions, (b) the use of the broad term "relates to" in subsection (1), and (c) the General Assembly's clear intent that insurers, except in specifically defined circumstances, are not to collect or use information on race in a way that would relate to an application for insurance or "otherwise affect" an insurance policy, implementation of the Proposal would likely cause the Company to violate Section 27-501(c)(1). Collecting information about race and then using that data to alter the underwriting, pricing or issuance of insurance policies would effectively render the race information directly relevant to underwriting decisions and "relate[] to" applications for insurance or otherwise affect an insurance policy or contract in violation of the letter and the spirit of Section 27-501(c).

#### **Conclusion**

Based upon the foregoing analysis and subject to the limitations, assumptions and qualifications set forth herein, it is our opinion that the Proposal would, if implemented, cause the Company to violate Maryland law.

We note that no Maryland court has ruled on the issue of whether a racial equity audit would violate the Maryland Insurance Code, and the foregoing opinion is limited to our interpretation of the Maryland Insurance Code, its legislative history, and applicable judicial decisions in effect on the date hereof. Further, the foregoing opinion is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any provision of the Maryland Insurance Code, or any judicial interpretation of any provision of the Maryland Insurance Code, changes after the date hereof.

The opinion presented in this letter is solely for your use in connection with the Proposal and may not be relied upon by any other person or entity, or by you for any other purpose, without our prior written consent. However, we consent to the inclusion of this opinion with a request by you to the Securities and Exchange Commission (the "Commission") for concurrence by the Commission with your decision to exclude the Proposal from the proxy materials for your next annual meeting of stockholders.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'BSW'.

**DLA Piper LLP (US)**



February 18, 2022

Via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Request by The Travelers Companies, Inc. to omit Shareholder Proposal Submitted by Trillium ESG Global Equity Fund and Friends Fiduciary Corporation.

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trillium ESG Global Equity Fund and Friends Fiduciary Corporation (together, the "Proponents") submitted a shareholder proposal (the "Proposal") to The Travelers Companies, Inc. ("Travelers" or the "Company"). In a letter to the Staff dated January 18, 2020 (the "No-Action Request"), the Company stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the 2022 annual meeting of shareholders. Travelers argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(2), (6), (7), as well as (3) and Rule 14a-9. However, as discussed below, Travelers has not met *its burden* under Rule 14a-8(g) of proving it is entitled to exclude the Proposal. Therefore, the Proponents ask that its request for relief be denied.

The Proposal states:

Resolved: Shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining the specific matters to be assessed. A report on the audit, prepared at reasonable cost and omitting confidential/proprietary information, should be published on the company's website.

### **The Company's Arguments are Based on a Gross Misrepresentation of the Proposal**

Throughout the No-Action Request the Company makes countless attempts to pigeonhole the Proposal as being prescriptive and exclusively focused on the minutia of rate setting and pricing. For example, on page 10 "the Proposal would require the Company or a third-party auditor to utilize information about

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race” and “the Proposal contemplates that the Company would necessarily take race into account in its underwriting and pricing decisions after it undergoes the racial justice audit.” On page 11 “requiring the Company to collect information about race...” and on page 12 that the Proposal would “interfere with the process by which insurance actuaries and underwriters assess risk.”

In doing so, the Company leaves the reader with the impression that the proposal is (1) prescriptive and action forcing, and (2) only focused on the Company’s business practices to the exclusion of everything else.

By the Company’s reading and ignoring the actual text of the proposal one would be completely unaware that:

- The third-party review recommended by the Proposal could (and should) also focus on internal racial diversity, equity, and inclusion. The Company’s myopic description of proposal reads out words like “employees” “racial gaps” and the role of employees in determining the scope of the third-party audit.
- The proposal is written recognizing the appropriate and significant deference provided to management and the board. The company’s cramped view ignores the language in the resolved clause that “A report on the audit, prepared at reasonable cost and omitting confidential/proprietary information, should be published on the company’s website.” Not only does this language indicate that it would be our preference that a report on the audit as opposed to the text of the audit being published, but it completely ignores the language that the company can and should omit information that would be confidential, proprietary, and otherwise impermissible.

For example, Travelers has put forth a number of business activities in pursuit of racial justice which include the establishment of several diversity, equity, and inclusion (DEI) councils and networks, board oversight, inclusionary trainings, talent development, and supplier diversity programs. Many of these activities appear to originate from the Diversity Council chaired by the CEO. Listed objectives of these activities include developing business unit-specific strategies and targets, assigning accountability for recruitment and promotion, and cultivating a culture of inclusion in the value and supply chain. In 2020, the entire company was required to participate in the “Conscious Inclusion and Unconscious Bias” training as part of a suite of different inclusion trainings Travelers offers. To attract, retain, and promote a diverse workforce, Travelers incorporates Inclusive Leadership goals into its review process, provide mentoring and career planning opportunities, and has created bespoke programs such as EDGE for underrepresented students. Lastly, Travelers engages in supplier diversity and community engagement

initiatives to support businesses owned by individuals from historically disadvantaged backgrounds via programs like Travelers Small Business Risk Education.<sup>1</sup>

This is where a Racial Justice Audit can be helpful – it could provide a third-party review of all of the activities that the Company is engaged in to help assess and evaluate whether the programs, activities, and commitments are an effective and good use of Company resources. In addition, the public reporting helps investors understand whether management is pursuing useful and impactful actions. For example, ISS recently issued its analysis of a third-party civil rights audit shareholder proposal filed at Apple, Inc. After examining at length the extensive set of programs that Apple had developed to address racial equality, ISS concluded that investors should support the proposal because “It could also help shareholders assess the effectiveness of Apple's efforts to address the issue of racial inequality for its stakeholders and its management of related risks.” The same is true for Travelers. The company has publicly undertaken a number of initiatives and investors would greatly benefit from a third-party analysis of those efforts.

**The Proposal is not excludable under Rule 14a-8(i)(7).**

In Staff Legal Bulletin (“SLB”), 14L (November 2021), the Division of Corporation Finance stated that it will apply the ordinary business standard the Commission provided in 1976, which articulated an exception for shareholder proposals that raise significant social policy issues, and which the Commission reaffirmed in its 1998 Interpretive Release of the rule. This significant social policy exception protects the critically important shareholder right to bring significant issues before other shareholders via the proxy statement even though it may implicate the day-to-day business matters that are the typical province of management. As such, pursuant SLB 14L, the staff will not focus on the particular implications of the policy issue on the day-to-day business matters of the company but instead, it will place analytical emphasis on the social policy significance of the issue that is the shareholder proposal focuses on. Accordingly, in keeping with the 1976 and 1998 Commission articulations of the 14a-8(i)(7) standard, the staff will seek to determine whether the company has met its burden of demonstrating that societal impact identified in the proposal does not transcend the ordinary business of the company. Finally, SLB 14L made clear that the Staff “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.”

It is abundantly clear that not only is racial justice a significant policy issue, but that racial justice audits are the subject of widespread public interest and attention.

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<sup>1</sup> <https://www.travelers.com/about-travelers/diversity>, <https://www.travelers.com/about-travelers/community/academic-career-success/travelers-edge>, and <https://www.travelers.com/about-travelers/diversity/suppliers>



- In June 2021, Senators Cory Booker (NJ), Ron Wyden (OR), Mark Warner (VA), Ed Markey (MA), and Richard Blumenthal (CT) urged Alphabet to conduct a racial equity audit. The senators expressed concern about bias and discrimination in Google’s approach to products and workplace diversity that particularly harmed Black people. They wrote, “As Congress and the federal government do more to protect communities of color from civil rights violations online, companies need to do their part by examining areas for improvement and ensuring their workplaces are safe for members of these communities.” <https://www.npr.org/2021/06/02/1002525048/senate-democrats-to-google-investigate-racial-bias-in-your-tools-and-company>
- House representatives are keen to have racial equity audit results from companies and are holding them accountable. Rep. Bobby L. Rush (IL) expressed frustration that Twitter had promised to conduct a civil rights audit in 2018 but had not conducted one by the March 2021 hearing. <https://rush.house.gov/media-center/press-releases/rush-mr-dorsey-where-audit>
- Rep. Joyce Beatty (OH) introduced legislation (Diversity and Inclusion Data Accountability and Transparency Act) in the House Financial Services Subcommittee on Diversity and Inclusion in June 2021 that would require financial services companies to conduct biennial independent audits of their policies and practices related to civil rights, equity, diversity, and inclusion. The bill mandates that companies be fined \$20,000 per day for failing to comply with the law. <https://thehill.com/policy/finance/561026-lawmakers-debate-bill-mandating-racial-equity-audits-at-firms?rl=1>
- Prominent civil rights groups, such as Color of Change, are calling on companies to complete racial equity audits to assess discrimination in policies and products. The group is also advocating for companies to recruit more diverse workforces, hire personnel with civil rights experience and expertise, include anti-discrimination goals in performance evaluations, and cut financial support to law enforcement. <https://www.bloomberg.com/news/articles/2021-06-16/civil-rights-group-calls-on-tech-giants-to-conduct-race-audits>
- These kinds of audits are also gaining widespread traction not only in the private but also public sector. In June 2021, House Reps. Jamaal Bowman (NY), Yvette Clarke (NY), and Brenda Lawrence (MI) sent a letter to the Federal Communications Commission to conduct a racial equity audit to understand how FCC’s policy decisions and programs have disproportionately affected Black Americans and other communities of color. <https://www.usnews.com/news/business/articles/2021-06-29/congressional-leaders-urge-fcc-to-perform-equity-audit>
- Other civil rights groups examples are available in pg. 16 of Laura Murphy’s report: <http://www.civilrightsdocs.info/pdf/reports/Civil-Rights-Audit-Report-2021.pdf>

It is also clear that racial justice is a significant policy issue for the insurance industry’s business.

- Civil society organizations have shown that the use of credit history as a factor in actuarial principles has been cited to increase racism within the insurance industry. Black, brown, and Indigenous people have disproportionately lower credit scores. In Washington state, Consumer Federation of America found that insurance companies charge safe drivers 79% more if they had Poor credit scores as opposed to Excellent. [https://consumerfed.org/press\\_release/insurance-companies-charge-79-more-to-safe-drivers-in-washington-state-due-to-low-credit-scores-state-farm-nearly-triples-premium-for-good-drivers-with-credit-problems/](https://consumerfed.org/press_release/insurance-companies-charge-79-more-to-safe-drivers-in-washington-state-due-to-low-credit-scores-state-farm-nearly-triples-premium-for-good-drivers-with-credit-problems/)
- In August 2021, The National Association of Insurance Commissioners voted unanimously to adopt measures to study racial discrimination in the industry. Specifically, one item adopted included to “continue research and analysis of insurance, legal, and regulatory approaches to addressing unfair discrimination, disparate treatment, proxy discrimination and disparate impact,” including how using credit scores to determine insurance rates negatively affects people of color. <https://www.nbcnews.com/politics/politics-news/regulators-move-study-racism-insurance-industries-experts-say-it-s-n1277016> and <https://www.wsj.com/articles/insurance-group-to-scrutinize-rate-guidelines-for-racial-bias-11595494800>
- According to legal advocates, discriminatory housing practices, including homeowners insurance, is covert. One example of a problem in the insurance industry is “price optimization,” in which personal consumer information is mined for the purpose of selecting prices for specific groups of insurance consumers that differ at a granular level, which creates (illegal) racial disparities in insurance prices. <https://www.clccrul.org/blog/2021/7/23/no-home-insurers-are-not-exempt-from-anti-discrimination-laws> and <https://static1.squarespace.com/static/5871061e6b8f5b2a8ede8ff5/t/60fad243cfaaf110f69cc262/1627050564456/2021-07-16+233.PCIA+v.+HUD.Amicus+Brief.pdf>
- California Insurance Commissioner Ricardo Lara commissioned an investigation of auto insurance discounts to understand if there was discrimination in who received them. In September 2019, the CA Department of Insurance found that drivers residing in ZIP codes with lower per capita incomes, lower levels of educational attainment, and larger communities of color were less likely to receive insurance discounts. Conversely, drivers in certain affinity groups (such as white-collar workers or “highly-skilled workers”) received discounts from auto insurers. <http://www.insurance.ca.gov/0400-news/0100-press-releases/2019/release071-19.cfm> and <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/data-transparency-key-to-end-racial-disparities-in-insurance-regulator-says-59604349>
- A University of Iowa study found that with the rise of big data and artificial intelligence, any industry using large amounts of data for predictive outcomes is at risk of perpetuating proxy discrimination. When insurers set premiums that are based on algorithms processing huge datasets of errant data, discriminatory patterns are reinforced. <https://ilr.law.uiowa.edu/print/volume-105-issue-3/proxy-discrimination-in-the-age-of-artificial-intelligence-and-big-data>

Finally, it is evident that racial diversity within the industry is of concern.

- The insurance industry has made only modest gains in racial diversity. Employees who are non-white, including Black, Asian, and other underrepresented minorities, represented 21% of the workforce at US insurance companies in 2019, which is an increase from 19.8% in 2018 and 15.3% in 2010. This is compared to the 24.9% of employees who are non-white in banking and other related industries. <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/black-representation-in-insurance-grows-slowly-as-industry-seeks-to-diversify-60718539>
- Executive diversity is lacking in the insurance industry, much like in others – cementing the fact that racial equity in hiring and promotions must remain a key priority. For example, only three of 168 senior executives of the top 10 U.S. insurers and brokers by market value are Black, according to Reuters. At the same companies, 13 of 119 total board members are Black. <https://www.reuters.com/article/us-events-insurance-diversity-idINKBN27Y2P8>

**The Proposal is not excludable as it will not interfere with the Company's litigation strategy.**

It is clear that litigation is not a trump card that companies can deploy to exclude a proposal. For example, in JPMorgan Chase & Co. (March 14, 2011) the company requested permission to exclude a shareholder proposal requesting that the board oversee the development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to loans owned by the company and those serviced for others, and report policies and results to shareholders. Although the company urged exclusion under Rule 14a-8(i)(7) due to the potential for the requested actions to be interpreted as admissions, the proposal was not deemed excludable because the proposal went to core issues in the overwhelming social policy issue posed by the housing crisis and its relationship to mortgage lending practices. As an advisory proposal, the board and management retained full flexibility in implementation of the Proposal to withhold disclosure of information that would constitute an admission regarding the litigation and the alleged gender pay gaps for its California employees. This example showed that disclosures that might theoretically be used as an admission in litigation are not enough to block a shareholder proposal.

With respect to the example of Chevron Corp. (March 30, 2021) provided by the Company, it is important to note that in that case the proposal only used language for "omitting proprietary information" and did not refer to confidential information. In addition, it is important to highlight that there was no staff letter issued to discuss the exclusion of that proposal, so the precise nature of the staff's concerns were not clear.

Accordingly, the Company's efforts over pages 15 through 25 of the No-Action Request are inapposite because the Proposal acknowledges the discretion of the board and management and recognizes its

ability to omit confidential information. The board and management retain full flexibility in implementation of the Proposal to withhold disclosure of information that would be legally problematic.

Finally, there is the recent example of The Walt Disney Company (January 19, 2022) where the company's argument that a proposal seeking disclosure on racial and gender pay gaps would interfere with actual pending litigation involving the company and accusations of gender pay discrimination was rejected.

**If Implemented by the Board Applying its Discretion, the Proposal Can be Implemented Without Violating the Law and the Company Has the Power and Authority to do so.**

The Company's entire argument in pages 26 through 31 is premised on the notion that its hands are completely tied by the proposal and that the pProposal is exclusively focused on one thing. In doing so, it ignores the fact that the proposal is precatory and leaves appropriate levels of discretion to the board and management. It also disregards its ability to omit confidential information.

However, if one applies the proposal as actually written, one finds that even taking everything that the Company says at face value regarding collecting, considering, or evaluating any race related information, the application of the proposal is feasible, legal, and within its power. For example, the Company could bring in a third-party to conduct the audit and in defining the scope of the audit identify certain parameters that restrict the collection of certain information or the kind of analysis the auditor can do with the information, the auditor can then proceed accordingly. It may be that these restrictions in and of themselves provide useful information for the audit. For example, the auditor may recommend that the Company share with its regulators a report that explains that it is seeking to address racial justice in its business and how the current laws and regulations make that difficult and challenging. It could also inform the regulators of some recommended changes or safe harbors or methods for collecting the information that would allow it to do a more expansive audit. As we pointed out earlier, the California Insurance Commissioner has already indicated an interest in understanding the racial justice impacts in the insurance industry. Travelers is likely to be in a position, through conducting its own audit, to help interested insurance commissioners around the country to understand how to better address racial justice in the industry.

Furthermore, the Company has not presented any argument that the law limits its ability to focus the audit on its own human capital management systems and the racial justice implications of those systems. We know that the Company collects and reports to the Equal Employment Opportunity Commission information about employee race, ethnicity, and gender. In addition, following shareholder proposal votes of 36%, 36%, and 51% in 2017, 2018, and 2019 respectively asking the company to disclose that EEO-1 report publicly, the company began to do so. There is a whole body of work the Company can (and we believe should) do to examine racial equity within its staff, manager, and

leadership ranks. Regardless of how the company is limited in examining its products and services (which we do not concede), it can clearly conduct a third-party audit of its internal policies, practices, and performance as they relate to racial equity within the firm. Surely state laws designed to protect the public cannot be used to shield a company from a precatory proposal that it fully acknowledges on page 11 of the No-Action Request is well intentioned and, on its face, focuses on a significant social policy issue.

Finally, we would point out that Travelers is not the only insurance company to receive this shareholder proposal. Anthem, Inc. received an identical proposal containing parallel arguments in support of the proposal. Anthem has not sought a no-action letter from the Staff regarding this proposal despite it being a company that has successfully availed itself of the no-action process multiple times including in 2011, 2012, 2017, 2018, and 2019. If the concerns expressed by Travelers were as dire, compelling, and fraught as it professes, we are hard pressed to understand why Anthem would not also make those arguments.

**The Proposal is not Vague or Misleading or otherwise in violation of the proxy rules.**

Any discussion of the Company's arguments in pages 31-41 of the No-Action Request should begin with Staff Legal Bulletin 14B (September 15, 2004).

As this SLB states:

... many companies have begun to assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify exclusion of the proposal in its entirety. Our consideration of those requests requires the staff to devote significant resources to editing the specific wording of proposals and, especially, supporting statements. During the last proxy season, nearly half the no-action requests we received asserted that the proposal or supporting statement was wholly or partially excludable under rule 14a-8(i)(3).

We believe that the staff's process of becoming involved in evaluating wording changes to proposals and/or supporting statements has evolved well beyond its original intent and resulted in an inappropriate extension of rule 14a-8(i)(3). In addition, we believe the process is neither appropriate under nor consistent with rule 14a-8(l)(2), which reads, "The company is not responsible for the contents of [the shareholder proponent's] proposal or supporting statement." Finally, we believe that current practice is not beneficial to participants in the process and diverts resources away from analyzing core issues arising under rule 14a-8.

It goes on to provide clarification for companies about how to appropriately use rule 14a-8(i)(3):

... because the shareholder proponent, and not the company, is responsible for the content of a proposal and its supporting statement, we do not believe that exclusion or modification under rule 14a-8(i)(3) is appropriate for much of the language in supporting statements to which companies have objected. 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(i)(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.

SLB 14B perfectly describes the problem with the Company's arguments. Accordingly, we will not contribute further to a situation that "requires the staff to devote significant resources" to this question and will simply point out that the company has run afoul of exactly the behavior the staff sought to stop almost 20 years ago.

We would only add that there is no requirement under rule 14a-8 that terms be defined or even universally agreed upon. See Microsoft Corporation (September 14, 2000) where the Staff required inclusion of a proposal that requested the board of directors implement and/or increase activity on eleven principles relating to human and labor rights in China. In that case, the company argued "phrases like 'freedom of association' and 'freedom of expression' have been hotly debated in the United States" and therefore the proposal was too vague. See also, Yahoo! (April 13, 2007), which survived a challenge on vagueness grounds where the proposal sought "policies to help protect freedom of access to the Internet"; Cisco Systems, Inc. (Sep. 19, 2002) (Staff did not accept claim that terms "which allows monitoring," "which acts as a `firewall,'" and "monitoring" were vague); and Cisco Systems, Inc. (Aug. 31, 2005) (Staff did not accept claim that term "Human Rights Policy" was too vague). Similarly, "policies, practices, products, and services" and "beyond legal and regulatory matters" are reasonably well understood terms, not only in the investor community, but amongst the general public as well.

See also, AT&T Inc. (January 24, 2022) where the company argued that "the Proposal fails to define a number of key terms and phrases essential to the Proposal." Specifically, the staff rejected the

company's argument that the proponent failed to define the terms in the sentence "improve executive compensation program, such as to include the executive pay ratios factor and voices from employees". Also see, The Bank of New York Mellon Corporation (January 24, 2022).

## **Conclusion**

For the reasons set forth above, the Proponents respectfully ask that Travelers' request for relief be denied.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at 413-522-2899.

Sincerely,

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

Jonas D. Kron

Cc: Yafit Cohn  
Chief Sustainability Officer & Group GC  
The Travelers Companies, Inc.  
ycohn@travelers.com



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VIA E-MAIL

March 4, 2022

Re: The Travelers Companies, Inc. – Omission of Shareholder Proposal from Proxy Materials Pursuant to Rule 14a-8

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

Ladies and Gentlemen:

The Travelers Companies, Inc. (“Travelers” or the “Company”) is filing this letter with respect to the shareholder proposal and supporting statement (collectively, the “Proposal”) co-filed by Trillium ESG Global Equity Fund and Friends Fiduciary Corporation (the “Proponents”) for inclusion in the proxy statement and form of proxy to be distributed by the Company in connection with its 2022 Annual Meeting of Shareholders (collectively, the “Proxy Materials”).

On January 18, 2022, the Company submitted a letter (the “No-Action Request”) to the Staff (the “Staff”) of the Division of the Corporation Finance of the Securities and Exchange Commission (the “Commission”), requesting that the Staff not recommend any enforcement action against the Company if it omits the Proposal in its entirety from the Proxy Materials. The No-Action Request set forth the Company’s arguments that the Proposal should be excluded from the Proxy Materials in reliance on:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations;
- Rule 14a-8(i)(2) because the Proposal would, if implemented, cause the Company to violate state law;
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal; and



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- Rule 14a-8(i)(3) and Rule 14a-9 because the Proposal is vague and indefinite and contains numerous false and misleading statements, rendering the Proposal in violation of the proxy rules.

On February 18, 2022, the Proponents submitted a letter to the Staff, responding to the No-Action Request (the “Proponents’ Response Letter”). The Company wishes to respond to certain of the assertions made in the Proponents’ Response Letter and to further elaborate upon some of the reasons that the Company believes it may omit the Proposal in its entirety from the Proxy Materials.

Pursuant to Rule 14a-8(j), we are simultaneously providing the Proponents with a copy of this submission. The Company will promptly forward to the Proponents any response received from the Staff to this request that the Staff transmits by email or fax only to the Company.

**I. The Proponents’ Response Letter Ignores the Breadth of the Proposal**

As an initial matter, what the Proponents do not contest is telling. For example, the Proponents’ Response Letter lacks any substantive response to several arguments made in the Company’s No-Action Request, including that:

- the foundation of risk-based pricing and underwriting falls squarely within the purview of state insurance regulators and legislators;
- the Company is engaged in litigation and regulatory proceedings, and the implementation of the Proposal would implicate the Company in such proceedings;
- it would be unlawful for the Company to collect or use race-based data in its underwriting; and
- the supporting statement in the Proposal is false and misleading as it makes unfounded claims about the Company and its agents.

The Proponents have effectively conceded the accuracy of these points factually or legally, and instead make various arguments that, as discussed below, fail to rebut the Company’s showing that the Proposal should be omitted from the Proxy Materials for multiple, independent reasons.

Most notably, in their response letter, the Proponents attempt to rewrite and narrow their Proposal and, on that basis, accuse the Company of “pigeonhol[ing] the Proposal as being prescriptive and exclusively focused on the minutia of rate setting and pricing.”

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Proponents' Response Letter, pg. 1. Though the Proposal may not have been exclusively focused on the Company's products and business practices, it is evident from the Proposal, including the supporting statement, that the Proposal's primary concern relates to the Company's products and business practices rather than internal employment-related diversity and inclusion matters. At its core, the resolution of the Proposal specifically directs the proposed audit to "assess[] and produce[] recommendations for improving the racial impacts of [the Company's] policies, practices, *products, and services*" (emphasis added). Furthermore, the supporting statement devotes an entire discussion to the argument that the audit is needed to determine whether the Company's insurance policies and products are applied differently to minority policyholders. Citing shareholders' alleged concern that "there may be gaps between the [C]ompany's non-discriminatory business practice policy and actual outcomes," the supporting statement moreover contends "that a racial justice audit covering both vendor relationships and insurance products may help the company identify and close potential gaps."

The Proponents argue that the No-Action Request "leaves the reader with the impression that the [P]roposal is (1) prescriptive and action forcing, and (2) only focused on the Company's business practices to the exclusion of everything else." Proponents' Response Letter, pg. 2. This framing is disingenuous and ignores the Proposal's clear directive for an audit of the Company's products and services and its core business policies and practices concerning such products and services. Whether the Proposal is exclusively focused on the Company's business practices or purports to leave some room to include internal employment-related practices, the Proposal would plainly require the Company's products and services and its core business practices to be subjected to the proposed audit. The Company recognizes that the Proposal may be read to also include "internal racial diversity, equity, and inclusion," but that does not detract from its focus on the Company's products and services.

Similarly, the Proponents point to the Proposal's "appropriate and significant deference provided to management and the board," highlighting that a report on the audit could be "prepared at a reasonable cost and [should] omit[] confidential/proprietary information." Proponents' Response Letter, pg. 2. The cost and confidentiality of the report do nothing to negate the fact that the audit would violate state law, undermine the very nature of insurance and interfere with the Company's ongoing litigations and regulatory activities, as discussed in the No-Action Request. While the Proposal may cede deference to Company management and the board with regard to the audit report, it does not and cannot justify violating state laws that restrict the Company's ability to collect and utilize data concerning the racial makeup of the Company's policyholders or potential policyholders.

As the Proponents concede, the Company is committed to furthering efforts to address racial discrimination and to promote diversity and has affirmatively pursued a range of diversity and inclusion initiatives as a business imperative. While the Proponents suggest

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that a racial justice audit could nonetheless be helpful in evaluating whether the Company's diversity and inclusion initiatives are an effective use of its resources, assessing the Company's internal policies and programs is not the focus of the Proposal on which shareholders would be asked to vote. Rather, as drafted, the Proposal touches on every aspect of the Company's business.

**II. The Proponents' Response Letter Fails to Address the Unique Nature of the Insurance Industry's "Ordinary Business" Operations**

Under Rule 14a-8(i)(7), a registrant may omit from its proxy materials a shareholder proposal that relates to the registrant's "ordinary business" operations. As established in the No-Action Request, the Proposal is excludable under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations by: (i) interfering with risk-based pricing at the core of management's day-to-day business operations and seeking to address issues that are within the exclusive purview of state insurance regulators and legislators; (ii) implicating the Company's legal and litigation strategies in current and future litigation and regulatory matters; and (iii) compromising the Company's litigation strategies in lawsuits it is defending on behalf of its insureds, thus potentially impeding contractual duties to its insureds.

Relying on Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Proponents' Response Letter asserts that the Proposal is not excludable under Rule 14a-8(i)(7) due to the social policy significance of the racial justice issues the Proposal purports to address. While the Company acknowledges the Staff's guidance in SLB 14L, the Company believes that it is uniquely situated and that the nature of the insurance business distinguishes it from its counterparts in other industries, because: (i) as an insurance company, the Company is heavily regulated in all 50 states; (ii) risk-based underwriting and pricing, which the Proposal challenges, underpin the Company's insurance business and are subject to a range of state statutes and regulatory oversight; (iii) the Company has active litigation and regulatory proceedings that could be adversely impacted by the Proposal, and the Company is likely to continue to be subject to such litigation and regulatory proceedings in the ordinary course of its business; and (iv) the Company's legal duty to defend its insureds in litigation could be adversely impacted by the Proposal. Despite the bevy of articles cited by the Proponents as evidence that racial justice is a significant policy issue (which, incidentally, concern insurance rating, pricing and underwriting practices rather than internal diversity initiatives), the Proposal is nonetheless excludable because the issue does not transcend the Company's ordinary business operations given the nature of the insurance business and the Company's ongoing litigation strategy in both litigation against the Company and against its insureds.

As discussed in the Company's No-Action Request, the public policy implications the Proposal seeks to address fall exclusively within the realm of insurance regulatory and

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legislative policymakers—not the Company’s shareholders. The highly regulated nature of the insurance industry requires insurers to seek and obtain approval of their rates by state insurance regulators based on actuarial analysis to demonstrate that the filed rates are adequate and neither excessive nor unfairly discriminatory. Precisely because state insurance regulatory authorities and legislative bodies have principal responsibility and unique expertise in considering these issues, courts have prohibited private parties from challenging rates approved by these regulatory agencies, and any remedy that would give one class of insurance policyholders a preference over others, particularly if based on race, would be incompatible with existing laws. Whether insurance pricing or underwriting criteria should be modified in order to address racial issues in the manner the Proposal seeks to explore through an audit are matters for legislators and regulators and not individual insurance companies or their shareholders.

In the Proponents’ Response Letter, the Proponents claim that “litigation is not a trump card that companies can deploy to exclude a proposal” and refer to *JPMorgan Chase & Co.* (Mar. 14, 2011) (“*JPMorgan*”) as an example of when the Staff did not concur with a company’s argument for exclusion under Rule 14a-8(i)(7) vis-à-vis a company’s litigation strategy. The Proponents seek to dismiss the numerous litigation strategy and other legal concerns outlined in the Company’s No-Action Request by noting that the “board and management retain full flexibility in implementation of the Proposal to withhold disclosure of information that might theoretically be used as an admission” or which “would be legally problematic.” Proponents’ Response Letter, pg. 7. As previously explained, however, the mere collection itself of race-based data and the publication of a report would impair the Company’s legal positions and potentially subject the Company to additional claims and discovery in disparate impact litigation, employment-related disputes and regulatory matters and in defense of its insureds, irrespective of whether some confidential information may be omitted from the audit report. The Proponents’ Response Letter does not substantively refute the vast majority of these concerns, which the Company detailed in the No-Action Request.

Moreover, the Proponents’ reliance on *JPMorgan* is misplaced. The shareholder proposal in *JPMorgan* requested that the company’s board of directors “oversee development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to both loans owned by the corporation and those serviced for others” and “report policies and results to shareholders by [a specified date].” The registrant requested exclusion of the proposal under Rule 14a-8(i)(7), among other provisions, as the registrant was subject to various investigations and litigations challenging the company’s practices, compliance, or performance under loan modification programs. Ultimately, the Staff noted the public debate surrounding foreclosure and modifications processes and cited “significant policy considerations” as its basis not to concur with the exclusion of the proposal under Rule 14a-8(i)(7). There, however, the

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proponent raised substantive arguments to distinguish the cases cited by the company and the proposal at hand, such as that the company failed to adequately link the conduct that was the subject of the ongoing litigation to the conduct subject to the proposal at hand, which is not the case here. Further, in *JPMorgan*, the proposal called for the registrant's board of directors (and not a third party, as in the Proposal) to develop and enforce policies and procedures related to the subject matter of ongoing litigation, rather than the commissioning of a report as contemplated by the Proposal. Here, the Proponents' Response Letter neither addresses the ongoing litigation discussed in the No-Action Letter nor attempts to distinguish it in any way, but instead merely states that ongoing litigation is not a "trump card" and pivots by suggesting that the racial justice report the Proponents seek could simply ignore matters related to the litigation. Proponents' Response Letter, pg. 6. The litigation concerns described by the Company in detail in its No-Action Request, however, would be directly implicated by the Proposal given its breadth and subject matter.

The Proponents also reference *The Walt Disney Company* (Jan. 19, 2022) ("*Walt Disney*") in support of their contention that ongoing litigation should not be a basis for exclusion under Rule 14a-8(i)(7). In *Walt Disney*, the proponent sought a report on median and adjusted pay gaps across race and gender, but specifically noted that the report could "omit[] litigation strategy ... information." The company claimed that it was involved in litigation alleging that it discriminated against women with respect to pay, and any report could be viewed as an admission with respect to such litigation. The Staff, however, noted that the proposal did "not deal with the Company's litigation strategy or the conduct of litigation to which the Company is a party." Notwithstanding the Proponents' use of *Walt Disney* in support of their argument, the *Walt Disney* shareholder proposal is distinguishable from the Proposal here for several reasons. First, the proponent in *Walt Disney* argued that the litigation cited by the company only impacted a subset of the company's employee population and thus did not implicate company-wide practices as was the case in *Walmart Inc.* (Apr. 13, 2018), where the Staff concurred with the exclusion of a proposal as relating to litigation strategy. Here, the disparate impact litigation that the Company referenced in the No-Action Request implicates company-wide practices, making the Proposal and the Company's response more analogous to *Walmart* than to *Walt Disney*. Second, the proposal in *Walt Disney* specifically contemplated the exclusion of information related to "litigation strategy" and involved the production of a much more limited report. In contrast, the Proposal at hand is drafted so broadly, without any carve out for information that could affect litigation strategy, such that the deleterious impact of the Proposal on the Company's litigation posture would be much more severe and wide-ranging.

As for *Chevron Corp.* (Mar. 30, 2021), which the Company cites in support of its argument in the No-Action Request, the Proponents simply note in passing that the proposal there only used language for omitting "proprietary information" rather than "confidential" information. Proponents' Response Letter, pg. 6. It is readily apparent, however, that the

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litigation strategy concerns raised in *Chevron* in connection with the racial justice audit proposed there went well beyond any concern over the release of proprietary information. Rather, they were based on the potential interference with management's responsibility for defending litigation involving the same subject matter as the proposed racial justice audit, the danger that a report could be construed as an implied admission and the fact that the company would be required to take positions outside of the discovery process that could implicate its litigation positions—all of which apply here. In fact, the Proponents do not address, let alone refute, the Company's position that the litigation risks identified by *Chevron* in connection with a nearly identical proposal that the Staff considered just last year pale in comparison to the legal implications such an audit would have on the Company.

**III. The Proponents' Response Letter Does Not Present Cognizable Arguments to Refute the Company's Showing that the Proposal Would Cause the Company to Violate State Law**

As discussed in the No-Action Request, Rule 14a-8(i)(2) allows a company to exclude a shareholder proposal from its proxy materials "if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." The Proponents fail to refute the Company's argument and the legal opinion provided by DLA Piper that, at its core, the Proposal calls for actions that would cause the Company to violate state law, *i.e.*, the collection and use of race-based data.

First, the Proponents argue that the Company ignores the precatory nature of the Proposal and disregards its ability to omit confidential information. Regardless of the precatory nature of the Proposal or the Company's ability to omit confidential information, however, the central feature of the Proposal—namely to "*assess* [...] the *racial* impacts of [the Company's] policies, practices, products and services" (emphasis added)—would necessarily entail the collection and use of race-based information in a manner prohibited by state insurance laws. The Staff has repeatedly permitted exclusion of precatory or advisory shareholder proposals pursuant to Rule 14a-8(i)(2) if the action called for in the proposal would violate state, federal or foreign law, even in scenarios where the proposals themselves explicitly included a savings clause. *See, e.g., The Goldman Sachs Group, Inc.* (Feb. 1, 2016) (concurring under Rule 14a-8(i)(2) with the company's request to exclude a precatory proposal to "reform the [company's] compensation committee" even where the proposal included the caveat that the reform be crafted "in accordance with applicable law"); *Abbott Laboratories* (Feb. 1, 2013) (concurring under Rule 14a-8(i)(2) with the company's request to exclude a precatory proposal to adopt majority voting provisions although the proposal called for changes "consistent with applicable laws"); *Citigroup Inc.* (Feb. 22, 2012) (concurring under Rule 14a-8(i)(2) with the company's request to exclude a precatory proposal that could potentially amend governing document provisions related to director indemnification although the proposal included language limiting its application "to the

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fullest extent permissible under the General Corporation Law of the State of Delaware and other applicable laws”); *Ball Corp.* (Jan. 25, 2010, *recon. denied* Mar. 12, 2010) (concurring under Rule 14a-8(i)(2) with the company’s request to exclude a precatory board declassification proposal even where the proposal included the caveat “in compliance with applicable law”).

Second, the Proponents suggest that once a third-party auditor “identif[ies] certain parameters”—or state laws—“that restrict the collection of certain information,” the auditor may proceed accordingly by recommending that the Company essentially lobby state insurance regulators to *change* the law to allow the collection of race-based data necessary for this sort of audit. Proponents’ Response Letter, pg. 6. The Proponents allege that “Travelers is likely to be in a position, through conducting its own audit, to help interested insurance commissioners around the country to understand how to better address racial justice in the industry.” Proponents’ Response Letter, pg. 7. The question, however, is not whether the proposed audit will put the Company in a position to call on regulators to *change* state law, but rather, whether the audit would cause the Company to violate existing state law. The No-Action Request and its accompanying letter from outside counsel establish that the Proposal, if implemented, would violate existing state law, particularly given the scope of the Proposal.

Third, the Proponents again cling to the argument that the Company is permitted to “focus the audit on its own human capital management systems and the racial justice implications of those systems.” Proponents’ Response Letter, pg. 7. As explained above, the Proposal must be considered in its entirety. The Proposal is expansive, plainly encompasses the Company’s products and services, and contemplates the collection and use of race-based data; on its face, the Proposal certainly cannot be read as limited to the Company’s own “human capital management systems.” If such a critical part of the proposed audit would be in violation of state law, it is irrelevant whether some narrow portion of the proposed audit would be lawful.

Lastly, the Proponents cite to the fact that Anthem, Inc. did not seek no-action relief with respect to an identical proposal, as evidence that the concerns expressed by Travelers are not “as dire, compelling, and fraught as it professes.” Proponents’ Response Letter, pg. 8. As an initial matter, unlike Travelers, Anthem provides health insurance and is otherwise not subject to the same business practices, litigation and regulatory concerns or legal considerations applicable to property casualty insurers like Travelers. Furthermore, whether another company has or has not sought no-action relief from the Staff for a similar proposal is not and should not be relevant to the merits of the Company’s arguments with respect to this Proposal.

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**IV. The Proponents' Response Letter Highlights and Exacerbates the Vague and Indefinite Nature of the Proposal, which Render it Excludable under Rule 14a-8(i)(3)**

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a registrant's proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." In the No-Action Request, the Company set forth a variety of reasons to exclude the Proposal due to its largely vague and indefinite nature and its multiple materially false and misleading statements. Ironically, in seeking to recharacterize and reframe the Proposal, the Proponents' Response Letter actually highlights the vague and indefinite nature of the underlying Proposal, as discussed further below.

*1. Background on Rules 14a-8(i)(3) and 14a-9*

As previously described in the No-Action Request, the Commission has explained that exclusion of a proposal under Rule 14a-8(i)(3) may be appropriate where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). The Staff has concurred in a registrant's exclusion of a proposal on vague and indefinite grounds where the registrant and its shareholders might interpret the proposed resolution differently, such that actions taken by the registrant could significantly differ from the action intended by the shareholders voting on the proposal. *See Puget Energy Inc.* (Mar. 7, 2002) (citing *Occidental Petroleum Corp.* (Apr. 4, 1990)).

*2. The Proponents have effectively rewritten the Proposal, which further renders it vague and indefinite*

The Company's arguments in the No-Action Request that the Proposal is vague and indefinite considered the Proposal at face value, namely that the resolution contained in the Proposal seeks the commissioning of a report that "assesses and produces recommendations for improving the racial impacts of its *policies, practices, products, and services*" (emphasis added). The Proponents, however, have now evidently retreated from the gravamen of their proposed resolution by attempting to rewrite it completely. The Proponents' Response Letter indicates on the one hand that the report would analyze "all of the activities that the Company is engaged in," but then indicates that "the proposal is written recognizing the appropriate and significant deference to management and the board" and otherwise primarily focuses on a potential review of the Company's internal diversity and inclusion initiatives and human capital. Proponents' Response Letter, pgs. 2, 3. The Proponents' Response



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Letter says as much: “Regardless of how the company is limited in examining its products and services (which we do not concede), it can clearly conduct a third-party audit of its internal policies, practices and performance as they relate to racial equity within the firm.” Proponents’ Response Letter, pg. 8. Under this new lens, the Proposal’s resolution is therefore remarkably different from the more limited proposal envisioned in the Proponents’ Response Letter. The Proponents’ Response Letter thus exacerbates what was already a vague and misleading proposal by obfuscating its original wording and leaving it beyond recognition. As drafted, the Company’s shareholders will be voting on a proposal that seeks a report on the Company’s policies, practices, products and services—a proposal that is problematic in its own right, as set forth above and in the No-Action Request—but the Proponents now envision the implementation of a proposal that could very well be limited to the Company’s internal practices, which is not evident on the face of the Proposal.

Further, the supporting statement included in the Proposal focuses almost exclusively on the Company’s practices, products, and services (*e.g.*, it highlights the alleged disparity in pricing of auto and homeowners’ insurance policies based on race, alleged discrimination in the rental housing context and law enforcement liability vis-à-vis racial equity). As noted in SLB 14B, the “[vague and indefinite] objection also may be appropriate where the proposal and the supporting statement, when read together” also result in neither stockholders voting on the proposal, nor the company in implementing the proposal, being able to determine with any reasonable certainty exactly what actions or measures the proposal requires. When the Proponents’ Response Letter, which focuses on an audit of the Company’s internal policies, is read together with the Proposal’s supporting statement, which focuses on effectively everything *other* than the Company’s internal policies, one is left feeling as though there were two distinctly different proposals that were submitted to the Company. These are outcomes that Rules 14a-8(i)(3) and 14a-9 seek to avoid. The Company accordingly believes the Proposal may be omitted from its Proxy Materials pursuant to such rules.

Finally, in the Proponents’ Response Letter, the Proponents cite various no-action requests—*Microsoft Corporation* (Sep. 14, 2000) (“*Microsoft*”), *Yahoo!* (Apr. 13, 2007) (“*Yahoo!*”), *Cisco Systems, Inc.* (Sep. 19, 2002) (“*Cisco P*”), *Cisco Systems, Inc.* (Aug. 31, 2005) (“*Cisco IP*”), *AT&T Inc.* (Jan. 24, 2022) (“*AT&T*”) and *The Bank of New York Mellon Corporation* (Jan. 24, 2022) (“*BoNY Mellon*”)—as examples of times when the Staff did not concur with the exclusion of shareholder proposals for vagueness reasons under Rules 14a-8(i)(3) and 14a-9. Rather than bolstering the Proponents’ argument, however, the text of these shareholder proposal examples actually serve to highlight the vagueness inherent in the text of the Proposal. Each of the six cited examples included proposals which, on their face, were either specifically outlined or related to a discrete internal company matter and, in each case, unambiguously left implementation decisions to the discretion of the board and/or the company. *See Microsoft* (proposal specifically outlined the 11 principles sought to be

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adopted by the company related to human and labor standards in China); *Yahoo!* (proposal outlined the specific six minimum standards sought to be adopted by the company related to the protection of freedom of access to the Internet); *Cisco I* (proposal outlined the specific details to be included in and the contours of the requested report regarding the company's dealings with countries that censor information); *Cisco II* (proposal requested that the board provide a report to shareholders on the board's progress towards developing and implementing a specific policy (*i.e.*, one related to human rights) and the plan for implementation of such policy with partners and resellers); *AT&T* (proposal requested that the board improve a specific program (*i.e.*, the company's executive compensation program)); *BoNY Mellon* (proposal requested that the board amend the company's governing documents to give owners with a specific amount of ownership (*i.e.*, 10% or greater) the power to call a special meeting). Notably, none of these six examples related to a proposal that requested the involvement of external stakeholders to determine the specific matters to be addressed by the proposal. As set forth in the No-Action Request and herein, it is unclear which "policies, practices, products, and services" are to be considered in the report, and the Proposal obfuscates the objectives further by indicating that the "specific matters to be assessed" should incorporate input from external stakeholders. Unlike the six no-action examples cited by the Proponents, which involve specific and clear proposals, the ambiguities on the face of the Proposal make it difficult, if not impossible, for shareholders (and the Company) to determine with any reasonable certainty exactly what specific measures or actions the Company would take in the event the Proposal was approved, which is precisely the problem that Rule 14a-8(i)(3) is intended to protect against.

## V. Conclusion

For the reasons discussed above, the Company respectfully reiterates its request that the Staff express its intention not to recommend enforcement action if the Proposal is excluded from the Company's Proxy Materials in reliance on Rules 14a-8(i)(2), (3), (6) and (7).

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at 917-778-6764 or [ycohn@travelers.com](mailto:ycohn@travelers.com).

THE TRAVELERS COMPANIES, INC.

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel

Sincerely,

A handwritten signature in black ink, appearing to read "yafit cohn", written in a cursive style.

Yafit Cohn

cc: Hyewon Han, Trillium Asset Management, LLC  
Jonas D. Kron, Trillium Asset Management, LLC  
Jeffery W. Perkins, Friends Fiduciary Corporation  
A.J. Kess, The Travelers Companies, Inc.



March 21, 2022

Via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Request by The Travelers Companies, Inc. to omit Shareholder Proposal Submitted by Trillium ESG Global Equity Fund and Friends Fiduciary Corporation.

Dear Sir/Madam:

This letter is submitted on behalf of Trillium ESG Global Equity Fund and Friends Fiduciary Corporation to respond to the letter dated March 4, 2022 sent to the Office of Chief Counsel by the Company, in which Travelers reiterates its contention that the Proposal may be excluded from the Company's 2022 Proxy.

Being cognizant of the Staff's request that the parties limit correspondence to critical arguments so the Staff is not reviewing information that has already been stated previously, the Proponents believe that upon a review of the Company's letter of March 4, 2022 that it does not add any new or critical arguments or information to the Company's position. We do not concede any of the points made by the Company even though it continues to engage in the misdirection and excessive argumentation it exhibited in its first letter. Accordingly, we believe Travelers has not met its burden under Rule 14a-8(g) of proving it is entitled to exclude the Proposal.

The Proponents maintain that despite Traveler's protestations, the Proposal does in fact focus on a significant social policy issue confronting Verizon; does not seek to micro-manage the Company; is otherwise permissible under Rule 14a-8(i)(7); and that it is unnecessary to provide any further argument. Similarly, the Proposal is not excludable under 14a-8(i)(2) and (6) because the Proposal acknowledges the discretion of the board and management and recognizes its ability to omit confidential information, the board and management retain full flexibility in implementation of the Proposal to withhold disclosure of information that would be legally problematic.

In addition, the Proposal does not run afoul of 14a-8(i)(3) and 14a-9 as we have seen similar proposal go to votes at multiple company annual meetings and receive very high levels of support: Apple 2022 (53%) and in 2021 at Amazon (44%), JPMorgan (40%), Citigroup (38%), State Street (36%), Johnson & Johnson (33%), Goldman Sachs (31%), and Bank of America (26%). Clearly investors fully comprehend what is being proposed in these shareholder proposals.

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We therefore, respectfully request the Staff to inform the Company that Rule 14a-8 requires a denial of the Company's no-action request. Please contact me at (503) 592-0864 or [jkron@trilliuminvest.com](mailto:jkron@trilliuminvest.com) with any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,

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

Jonas D. Kron

Cc: Yafit Cohn  
Chief Sustainability Officer & Group GC  
The Travelers Companies, Inc.  
[ycohn@travelers.com](mailto:ycohn@travelers.com)