



DIVISION OF
CORPORATION FINANCE

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

March 2, 2022

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

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

Dear Mr. Gerber:

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

The Proposal urges the board to adopt a policy that no financial performance metric shall be adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive incentive compensation award. The Proposal provides that the board shall have discretion to modify the application of this policy in specific circumstances for reasonable exceptions, in which case the board shall provide a statement of explanation.

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 does not seek to micromanage the Company.

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: Maureen O'Brien
Segal Marco Advisors

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
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WASHINGTON, D.C. 20005-2111

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BY EMAIL (shareholderproposals@sec.gov)

December 2, 2021

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

RE: Johnson & Johnson – 2022 Annual Meeting
Omission of Shareholder Proposal of
the Vermont Pension Investment Commission

Ladies and Gentlemen:

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

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

notice of Johnson & Johnson's intent to omit the Proposal from the 2022 proxy materials.

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

I. The Proposal

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

RESOLVED that shareholders of Johnson & Johnson ("J&J") urge the Board of Directors to adopt a policy that no financial performance metric shall be adjusted to exclude Legal or Compliance Costs when evaluating performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award. "Legal or Compliance Costs" are expenses or charges associated with any investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution, including legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgement of claims of the kind described above. "Incentive Compensation" is compensation paid pursuant to short-term and long-term incentive compensation plans and programs. The policy should be implemented in a way that does not violate any existing contractual obligation of the Company or the terms of any compensation or benefit plan. The Board shall have discretion to modify the application of this policy in specific circumstances for reasonable exceptions and in that case shall provide a statement of explanation.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur with Johnson & Johnson's view that the Proposal may be excluded from the 2022 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to Johnson & Johnson's ordinary business operations.

III. Background

On October 21, 2021, Johnson & Johnson received the Proposal, accompanied by a cover letter from the Proponent and a letter from BlackRock Institutional Trust Company, N.A., dated October 21, 2021, verifying the Proponent's continuous ownership of at least the requisite amount of shares for at least the requisite period preceding and including the date of submission (the "Broker Letter"). Copies of the Proposal, cover letter, Broker Letter and related correspondence are attached hereto as Exhibit A.

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

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

In accordance with these principles, the Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* 1998 Release; *see also JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *RH* (May 11, 2018); *JPMorgan Chase & Co.* (Mar. 30, 2018); *Amazon.com, Inc.* (Jan. 18, 2018). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." 1998 Release.

Recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff explained that a proposal can be excluded on the basis of micromanagement based "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

In particular, the Staff has permitted exclusion on the basis of micromanagement of shareholder proposals urging the adoption of policies substantially similar to the policy sought by the Proposal. For example, in *AbbVie Incorporated* (Feb. 15, 2019) and *Johnson & Johnson* (Feb. 14, 2019), the proposals asked the company's board of directors to adopt a policy that no financial performance metric be adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive incentive compensation award. In those instances, the companies explained that specific judgments concerning whether and how, if at all, to adjust financial performance metrics entails a complex process. In granting relief to exclude the proposals under Rule 14a-8(i)(7), the Staff noted that the proposals sought to "impose specific methods for implementing complex policies." *See also Johnson & Johnson* (Feb. 12, 2020) (permitting exclusion under Rule 14a-8(i)(7) on the basis of micromanagement of a proposal asking the company's board of directors to adopt a policy that when a financial performance metric is adjusted to exclude "legal or compliance costs" when evaluating performance for purposes of determining the amount or vesting of any senior executive compensation award, it provide an explanation of why the precise exclusion is warranted and a breakdown of the litigation costs, noting that "[a]lthough the [p]roposal would not prohibit the adjustment of financial performance metrics to exclude legal or compliance costs, we agree that the [p]roposal nonetheless micromanages the [c]ompany by seeking intricate detail of those costs identified in the [p]roposal").

In this case, the Proposal seeks to micromanage Johnson & Johnson by imposing specific methods for implementing complex policies, seeking intricate and granular detail and inappropriately limiting the discretion of the Compensation & Benefits Committee (the "Committee") of Johnson & Johnson's Board of Directors (the "Board"). It does so, first, by requesting a policy that would prohibit Johnson & Johnson from adjusting financial performance metrics used to "evaluat[e] performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award" to "exclude Legal or Compliance Costs." In particular, the Proposal would prohibit adjustments relating to "expenses or charges associated with *any* investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution," including any and all "legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgement of claims of the kind described" (emphasis added).

Specific judgments concerning whether and how, if at all, to adjust financial performance metrics entails a complex process involving the business judgment of the Committee as informed by the views and experience of the Committee's

independent compensation consultant and other advisors, as well as the input of Johnson & Johnson's management. In particular, determinations regarding whether and how to exclude litigation outcomes are especially complex, as such outcomes are unpredictable and often relate to events that occurred years or decades before the relevant performance periods, and in some instances well before the executive team was in place. The Proposal's attempt to prohibit adjustments of the broad categories of expenses covered by the Proposal would impose specific methods for implementing complex policies and therefore, probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

The Proposal also seeks intricate and granular detail and would inappropriately limit the discretion of the Committee. While the Proposal contemplates the possibility of "modify[ing] the application of [the] policy in specific circumstances," the Proponent's attempt to evade the Staff's decisions regarding substantially similar proposals, as well as the standards set forth in the 1998 Release and SLB 14L, falls short. The Board would be obligated to "provide a statement of explanation" any time it determined to make an exception to the policy, thereby seeking intricate and granular detail and continuing to micromanage Johnson & Johnson. The Proposal's request for "a statement of explanation" any time an adjustment to a financial performance metric is made to exclude legal or compliance costs is a thinly veiled attempt to inappropriately constrain the decision-making process of the Committee and would not afford the Committee with sufficient flexibility or discretion to exercise its business judgment.

Preventing the Committee from exercising its business judgment is particularly problematic in the context of litigation disclosure where publicly revealing information beyond what otherwise is required to be disclosed by law could be competitively harmful to Johnson & Johnson. Given the sensitive nature of such information, the requested policy effectively would force the Committee to decide between either, on the one hand, publicly disclosing legal and compliance information that could harm Johnson & Johnson (e.g., from a litigation strategy perspective) or, on the other hand, refraining from adjusting a financial performance metric for those costs even though an adjustment might be warranted in the Committee's judgment (and, in fact, such adjustment typically would be incorporated for purposes of reporting non-GAAP financial measures) and not making the adjustment could result in a different harm to Johnson & Johnson (e.g., from a recruiting and retention perspective). In addition, because the outcomes of legal proceedings are inherently unpredictable, requiring Johnson & Johnson to include those outcomes in financial performance metrics would limit the Committee's ability to align incentive compensation with Johnson & Johnson's

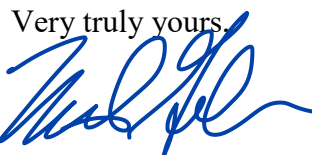
underlying business performance during the relevant period. Thus, the Proposal would inappropriately limit the discretion of the Committee and, by requiring “statement[s] of explanation” that could disclose sensitive information, seeks a level of intricate and granular detail that would micromanage Johnson & Johnson. Even under the “measured approach” described in SLB 14L, the Proposal seeks a level of granularity and inappropriately limits the discretion of the Committee such that it micromanages Johnson & Johnson.

Accordingly, consistent with the precedent described above, Johnson & Johnson believes that the Proposal is excludable under Rule 14a-8(i)(7) as relating to Johnson & Johnson’s ordinary business operations.

V. Conclusion

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

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

Very truly yours,

Marc S. Gerber

Enclosures

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

Thomas Golonka
Chair
Vermont Pension Investment Commission

Office of Chief Counsel
December 2, 2021
Page 7

Maureen O'Brien
Vice President, Corporate Governance Director
Segal Marco Advisors

EXHIBIT A

(see attached)

THOMAS GOLONKA
VPIC CHAIR



KIMBERLY GLEASON
VPIC VICE-CHAIR

STATE OF VERMONT
VERMONT PENSION INVESTMENT COMMISSION

October 21, 2021

Via regular mail and email: MOrland3@ITS.JNJ.COM, RBrutus1@its.jnj.com

Johnson & Johnson
Office of the Corporate Secretary
Matthew Orlando
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

RE: Shareholder Proposal Submission for 2022 Stockholder's Meeting

Dear Mr. Orlando:

In my capacity as Chair of the Vermont Pension Investment Commission (the "Fund"), I write to give notice that pursuant to the 2021 proxy statement of Johnson & Johnson (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2022 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting. Please note the Vermont Pension Investment Commission is the lead filer on this proposal and others may co-file the same proposal.

A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock is included in this mailing. The Fund intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally.

The Vermont Pension Investment Commission is available to meet with the Company via teleconference on November 3, 2021 10:30 am EST, November 4, 2021 12:00 pm EST, and November 5, 2021 10:00 am EST. The Vermont Pension Investment Commission can be reached at vpic@vermont.gov and 802-828-3668.

Representation – Important Notice

Please be advised that we will hereafter be using a representative regarding the management of this proposal. Please send a copy of any correspondence regarding this proposal including deficiency notices, no action requests or engagement scheduling to Maureen O'Brien, mobrien@segalmarco.com or 312-612-8446. I authorize the representative to speak on my behalf, negotiate withdrawal of the proposal and engage with the company and its representatives.

Sincerely,



Thomas Golonka
Vermont Pension Investment Commission Chair

RESOLVED that shareholders of Johnson & Johnson (“J&J”) urge the Board of Directors to adopt a policy that no financial performance metric shall be adjusted to exclude Legal or Compliance Costs when evaluating performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award. “Legal or Compliance Costs” are expenses or charges associated with any investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution, including legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgement of claims of the kind described above. “Incentive Compensation” is compensation paid pursuant to short-term and long-term incentive compensation plans and programs. The policy should be implemented in a way that does not violate any existing contractual obligation of the Company or the terms of any compensation or benefit plan. The Board shall have discretion to modify the application of this policy in specific circumstances for reasonable exceptions and in that case shall provide a statement of explanation.

SUPPORTING STATEMENT

We support compensation arrangements that incentivize senior executives to drive growth while safeguarding company operations and reputation over the long-term. J&J adjusts certain financial metrics when calculating progress for executive incentive compensation. While some adjustments may be appropriate, we believe senior executives should not be insulated from legal costs that shareholders bear.

These considerations are especially critical at J&J given the potential reputational, legal and regulatory risks it faces over its role in the nation's opioid epidemic. The Company received a 43.3% opposition vote to its advisory vote on executive compensation at the 2021 shareholder meeting. The Office of Illinois State Treasurer urged shareholders to vote against the say-on-pay resolution in response to the Company’s practice of excluding opioid-related litigation charges in executive pay.

The proxy solicitation reported:

“... Johnson & Johnson is subject to thousands of lawsuits filed by state, local and tribal governments across the country alleging it helped fuel the U.S. opioid epidemic. In August 2019, an Oklahoma judge ruled that Johnson & Johnson’s subsidiary Janssen Pharmaceuticals engaged in the “false, deceptive and misleading” marketing of opioids and ordered it to pay the state \$465 million. The Company has appealed the decision. In addition, Johnson & Johnson agreed to pay \$5 billion as part of a global settlement to resolve outstanding opioid litigation, taking \$4 billion and \$1 billion charges in fiscal 2019 and fiscal 2020, respectively. Together, these charges represent one of the Company’s largest ever litigation expenses and equal approximately a third of 2020 net income.”(<https://www.sec.gov/Archives/edgar/data/0000200406/000121465921004175/s413210pc14a6g.htm>).

The Investor for Opioid and Pharmaceutical Accountability (IOPA) also opposes the exclusion of opioid-related legal costs from executive incentive pay. The IOPA is a coalition of 61 investors

with \$4.2 trillion in assets under management that engages with opioid manufacturers, distributors and retail pharmacies on opioid business risks.

We urge shareholders to vote for this proposal.

October 21st, 2021

Via regular mail

Johnson & Johnson
Office of the Corporate Secretary
Matthew Orlando
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

RE: Shareholder Proposal Submission for 2022 Stockholder's Meeting

Dear Mr. Orlando:

I write concerning a shareholder proposal (the "Proposal") submitted to Johnson & Johnson (the "Company") by The State of Vermont, Vermont Pension Investment Committee.

As custodian of The State of Vermont, Vermont Pension Investment Committee ("the Fund"), we are writing to report that as of the close of business on October 21st, 2021 the Fund held shares of Company stock in our account at stock in our account at Depository Trust Company and registered in its nominee name of Cede & Co.

As of October 21st, 2021, the Fund beneficially owned, and had beneficially owned continuously for at least two years, shares worth \$15,000 of Company common stock.

...

If there are any other questions or concerns regarding this matter, please feel free to contact me at 646-231-0317.

Sincerely,

BlackRock Institutional Trust Company, N.A.

By: 
Name: Don Perault
Title: Managing Director

Date: October 21, 2021



STATE OF VERMONT
VERMONT PENSION INVESTMENT COMMISSION

December 16, 2021

Via e-mail at 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 Johnson & Johnson to omit proposal submitted by The Vermont Pension Investment Commission

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, The Vermont Pension Investment Commission ("VPIC" or the "Proponent") submitted a shareholder proposal (the "Proposal") to Johnson & Johnson ("J&J" or the "Company"). The Proposal states:

RESOLVED that shareholders of Johnson & Johnson ("J&J") urge the Board of Directors to adopt a policy that no financial performance metric shall be adjusted to exclude Legal or Compliance Costs when evaluating performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award. "Legal or Compliance Costs" are expenses or charges associated with any investigation, litigation or enforcement action related to drug manufacturing, sales, marketing or distribution, including legal fees; amounts paid in fines, penalties or damages; and amounts paid in connection with monitoring required by any settlement or judgement of claims of the kind described above. "Incentive Compensation" is compensation paid pursuant to short-term and long-term incentive compensation plans and programs. The policy should be implemented in a way that does not violate any existing contractual obligation of the Company or the terms of any compensation or benefit plan. The Board shall have discretion to modify the application of this policy in specific circumstances for reasonable exceptions and in that case shall provide a statement of explanation.

In a letter to the Division dated December 2, 2021 (the "No-Action Request"), J&J stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders. J&J argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), as relating to ordinary business operations.

As discussed more fully below, J&J has not met its burden of proving its entitlement to exclude the Proposal and the Proponent respectfully requests that the Company's request for relief be denied.

J&J argues in its No Action Request that the Proposal "is a thinly veiled attempt to inappropriately constrain the decision-making process of the Committee." The only veil is the one behind which the Compensation Committee adjusts executive compensation metrics to exclude legal or compliance costs ("legal costs") without explanation. The Proposal allows the board full discretion to make exceptions to the policy of including legal costs. It merely seeks explanatory disclosure. The resolved clause states: "The Board shall have discretion to modify the application of this policy in specific circumstances for reasonable exceptions and in that case shall provide a statement of explanation."

Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L") provides the most recent guidance on the discretion aspect outlined in J&J's No Action Request. "Specifically, we believe that the rescinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement." Rather, the Commission makes clear its decision rests on two central considerations. First, consideration is given to the proposal's subject matter. Second, consideration is given as to whether the subject matter micromanages 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." On these considerations, the Proposal does not micromanage.

The Investors for Opioid and Pharmaceutical Accountability ("IOPA"), a coalition of 67 members representing treasurers, comptrollers, asset managers, faith-based, public and union funds with more than \$4.2 trillion in assets under management and advisement, began taking note of J&J's practice of excluding opioid-related legal costs in 2017. The IOPA has been tracking corporate actions to hold senior executives accountable for decision-making on how to abate (or not) the opioid crisis. Board decisions to factor out the impact of legal settlements related to opioids is a key indicator to investors of whether the company believes senior leadership should have skin in the game. The opioid crisis has led to 841,000 deaths since 1999.¹ As reference point, as of Dec. 14, the United States has seen 797,000 death from COVID-19.² J&J manufactured the prescription opioids NUCYNTA and DURAGESIC through its pharmaceutical subsidiary, Janssen,³ and until 2016, the Company supplied approximately 60% of the raw opiate ingredients used in opioids like oxycodone and codeine through its former subsidiaries Noramco and Tasmanian Alkaloids.⁴

The Illinois State Treasurer filed an exempt solicitation with the SEC in advance of J&J's 2021 shareholder meeting. The solicitation urged investors to vote against the advisory vote on executive compensation ("say-on-pay") in response to J&J's practice of excluding opioid-related legal costs. As stated in the exemption: "The Company has failed to explain its decision to

¹ "Drug Overdose Deaths," Centers for Disease Control and Prevention, available at: <https://www.cdc.gov/drugoverdose/deaths/index.html>

² "Coronavirus in the U.S.: Latest Map and Case Count." *The New York Times*, December 14, 2021, available at: <https://www.nytimes.com/interactive/2021/us/covid-cases.html>

³ In 2020, Johnson & Johnson announced it would delist and stop selling all prescription pain medicines in the U.S.

⁴ <https://www.washingtonpost.com/graphics/2020/business/opioid-crisis-johnson-and-johnson-tasmania-poppy>

remove the impact of opioid litigation, which over the past two years has caused \$5 billion in charges to be booked to earnings.¹ By excluding these costs from the earnings calculations used in the incentive plans, the Committee has inexplicably chosen to insulate named executives from the fallout of Johnson & Johnson's role in the opioid crisis. For long-tenured CEO Alex Gorsky, the exclusion boosts payouts by more than \$2 million over the past two years.”⁵

The vote outcome showed an opposition vote of 43.3 percent. In its recommendation to oppose the vote, proxy advisor ISS wrote, “The company has provided insufficient disclosure in the proxy statement regarding multiple years of large litigation-related expenses, including \$4 billion charges in each of 2019 and 2020 for opioid-related litigation and Talc-related litigation, respectively, and an additional \$1 billion in 2020 related to opioid litigation. While adjusted incentive metrics are commonly used in incentive programs, investors may expect recognition and explanation by the committee of the magnitude of the adjustment to 2019 and 2020 incentive program metric results and the impact on executives' awards.” Proxy advisors Glass Lewis and PIRC recommended votes against and abstain, respectively.

Of the top 123 investors in J&J—which includes all shareholders with stakes of 0.1 percent and higher—70 (57 percent) voted against the say-on-pay, one voted to abstain and five fund providers logged split votes, according to data provider Proxy Insight. Available data shows more than 100 funds specifically referenced the litigation expense calculation in their rationale for opposing the say-on-pay in 2021, according to Proxy Insight and Segal Marco Advisors.

In addition, investors logged sizable opposition votes at other firms following their decisions to likewise exclude opioid-related legal costs from executive pay calculations. At AmerisourceBergen's 2021 shareholder meeting the opposition vote was 48.4 percent and at Cardinal Health's 2020 shareholder meeting the opposition vote was 38.6 percent. In their exempt solicitation urging a vote in opposition to the say-on-pay ahead of the AmerisourceBergen meeting, the Connecticut Retirement Plans and Trust Funds and the Rhode Island Employees' Retirement Systems Pooled Trusts wrote: “One way or another, we believe it is critical that long-tenured executives share responsibility for the billions in costs the company has incurred as a result of its opioid distribution practices, not to mention the societal damage associated with the company's business practices. Failure to do so suggests a startling sense of entitlement and a worrying lack of self-awareness and accountability at AmerisourceBergen. Accountability starts at the top.”

Cardinal Health and McKesson Corporation announced changes to executive compensation in light of opioid-related legal charges and following shareholder engagement on the issue. McKesson, the nation's largest wholesale drug distributor, disclosed that current and former executives would forfeit nearly \$7 million in bonuses after the company booked \$8.1 billion in charges for anticipated settlement costs of opioid-related litigation. The cuts include a \$2 million reduction to CEO Brian Tyler's incentive payouts. Cardinal Health reduced the CEO's annual cash incentive award by 65 percent and other named executive officers by 20 percent. Cardinal Health

⁵ Notice of Exempt Solicitation, Johnson and Johnson, available at: <https://www.sec.gov/Archives/edgar/data/0000200406/000121465921004175/s413210pc14a6g.htm>

acknowledged investor concern on excluding legal costs from executive pay calculations as a reason for the low vote result. The 2021 proxy statement reads:

“In response to the disappointing 2020 say-on-pay vote, our Human Resources and Compensation Committee Chair and [Board Chair] undertook a broad-based and multi-faceted effort to meet with investors and understand and address their concerns. In these meetings, shareholders expressed support for the fundamentals of our executive compensation program and its alignment of pay and performance but thought that we should have disclosed how the Committee considered opioid legal accruals in our compensation determinations last year. Based on what we heard from shareholders as well as on progress on the opioid legal settlement, the Human Resources and Compensation Committee took a set of actions. We provide detailed disclosure in this proxy statement about how the impact of the opioid legal on the company and its shareholders was considered in fiscal 2021 compensation decisions.”⁶

Shareholders are making informed judgements on the adjustment to exclude legal charges. They are well positioned to make such judgements and empowered to use those judgements to inform votes on the say-on-pay and board elections. Allowing this Proposal to go to a vote is the most direct way to gauge shareholder perspective on the narrow issue of adjusting to exclude legal costs from incentive compensation. Note the Council of Institutional Investors (“CII”) filed a petition with the SEC in 2019 calling for transparency on the use of adjusted GAAP metrics for executive compensation. The petition seeks “...a requirement for clear explanations and GAAP reconciliations that would permit a shareholder to understand the company’s approach and factor that into its say-on-pay vote and/or buy/sell decision.”

Each of the no action requests cited in the J&J’s No Action Request date prior to the publication of SLB 14L. Furthermore, the Proposal differs from *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *JPMorgan Chase & Co.* (Mar. 22, 2019), *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019), *AbbVie Incorporated* (Feb. 15, 2019), *Johnson & Johnson* (Feb. 14, 2019), *JPMorgan Chase & Co.* (Mar. 30, 2018); *Amazon.com, Inc.* (Jan. 18, 2018); and *Johnson & Johnson* (Feb. 12, 2020) in that it provides the Board discretion to make an exception to the policy. The proposal in *RH* (May 11, 2018) does provide for board discretion “...the Board is strongly encouraged” however the Company was likely granted relief because the proposal called for the cessation of sales of down products.

Investors are eager to assess J&J’s strategic approach to holding senior managers accountable through executive compensation incentives, without impinging on board discretion. Investors are more educated on the use of adjusted GAAP metrics than in years prior to the CII petition (2019), the incorporation of the issue into proxy advisory reports (2017) and the use of exempt solicitations highlighting the issue (2017).

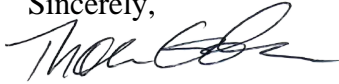
* * *

For the reasons set forth above, J&J has not satisfied its burden of showing that it is entitled to omit the Proposal. The Proponent thus respectfully requests that the Company’s

⁶ 2021 Proxy Statement, Notice of Annual Meeting of Shareholder, Cardinal Health, available at: https://www.sec.gov/Archives/edgar/data/721371/000130817921000318/lcah2021_def14a.htm

request for relief be denied. The Proponents appreciate the opportunity to be of assistance in this matter.

Sincerely,



Thomas J. Golonka
VPIC Chair
vpic@vermont.gov

cc: Marc S. Gerber
Marc.Gerber@skadden.com

Matthew Orlando
Worldwide Vice President, Corporate Governance and Corporate Secretary
Johnson & Johnson
MOrland3@ITS.JNJ.COM

Maureen O'Brien
Vice President and Corporate Governance Director
Segal Marco Advisors
mobrien@segalmarco.com