



DIVISION OF
CORPORATION FINANCE

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

April 1, 2022

Courtney M. Hetrick
Goodwin Procter LLP

Re: Repligen Corporation (the "Company")
Incoming letter dated January 20, 2022

Dear Ms. Hetrick:

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

The Proposal requests that the board's Compensation Committee ("Committee") issue a report annually assessing the distribution of stock-based incentives throughout the workforce (such as but not limited to performance share units, employee stock purchase plans, restricted stock units, and options), which should include a matrix, sorted by EEO-1 employee classification or another appropriate classification scheme with four or more categories chosen by the Committee, showing aggregate amounts of stock ownership granted and utilized by all U.S. Company employees and including associated voting power, if any.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

January 20, 2022

Via Email (shareholderproposals@sec.gov)

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

Re: Repligen Corporation – 2022 Annual Meeting Omission of Shareholder Proposal Submitted by Ms. Myra K. Young (with John Chevedden as proxy)

Ladies and Gentlemen:

On behalf of our client Repligen Corporation, a Delaware corporation (the “Company”), and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we hereby request confirmation that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend enforcement action against the Company if, in reliance on Rule 14a-8 under the Exchange Act, the Company omits the proposal submitted by Myra K. Young (the “Proponent”), with John Chevedden designated as proxy, from the Company’s proxy statement and form of proxy for its annual meeting of shareholders (the “2022 Annual Meeting”) expected to be held in May 2022 (the “2022 Proxy Materials”). The Company currently anticipates that it will file its definitive 2022 Proxy Materials with the Commission no earlier than 80 calendar days after the date of this letter.

In accordance with Section C of Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at *shareholderproposals@sec.gov*. A copy of this letter is also being sent concurrently to the Proponent as notice of the Company’s intent to exclude the Proponent’s proposal from the 2022 Proxy Materials.

Rule 14a-8(k) of the Exchange Act and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proponent’s proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) of the Exchange Act and SLB 14D.

I. The Proposal

On December 15, 2021, the Company received by email a letter from the Proponent containing a shareholder proposal (the “Proposal”) for inclusion in the 2022 Proxy Materials. The Proposal

and accompanying cover letter are attached hereto as Exhibit A. The text of the resolution set forth in the Proposal is set forth below:

Resolved: Repligen Corporation ("Company") shareholders request the Board's Compensation Committee ("Committee") issue a report annually assessing the distribution of stock-based incentives throughout the workforce (such as but not limited to performance share units, employee stock purchase plans, restricted stock units, and options). The report should include a matrix, sorted by EEO-1 employee classification or another appropriate classification scheme with four or more categories chosen by the Committee, showing aggregate amounts of stock ownership granted and utilized by all U.S [sic] Company employees and including associated voting power, if any. The Committee should issue the report before or concurrent with the next annual proxy statement.

II. Basis for Exclusion

On behalf of the Company, we hereby respectfully request that the Staff concur with the Company's view that it may exclude the Proposal from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

III. Legal Analysis

A. Background of Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials if the proposal relates to the company's "ordinary business operations". According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" does not necessarily refer to business that is "'ordinary' in the common meaning of the word," but instead "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Exchange Act Release No. 40018* (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the ordinary business exclusion rests on two central considerations: (i) 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, and (ii) 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". *See* 1998 Release. The Commission has expressly cited "management of the workforce" as an example of a function that is fundamental to management's ability to run a company on a day-to-day basis. *See* 1998 Release. Accordingly,

the Staff has routinely permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to general employee compensation. *See* Yum! Brands, Inc. (Feb. 24, 2015), CytRx Corporation (Jun. 26, 2018); Verizon Communications Inc. (Feb. 23, 2015); Microsoft Corp. (Sept. 17, 2013); ENGlobal Corp. (Mar. 28, 2012); International Business Machines Corp. (Jan. 22, 2009); Ford Motor Co. (Jan. 9, 2008); Wal-Mart Stores, Inc. (Mar. 15, 1999).

In analyzing shareholder proposals relating to equity or cash compensation, the Staff has long “applied a bright-line analysis” that distinguishes between proposals that relate to general employee compensation and proposals that “concern only senior executive and director compensation”, stating that the former implicate a company’s ordinary business operations and are thus excludable. *See* Staff Legal Bulletin No. 14A (July 12, 2002) (“SLB 14A”) (stating that companies “may exclude proposals that relate to general employee compensation matters in reliance on Rule 14a-8(i)(7)” but “may [not] exclude proposals that concern only senior executive and director compensation”). In Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB 14J”), the Staff reiterated this distinction, noting that companies generally may rely on Rule 14a-8(i)(7) to exclude shareholder proposals in which the focus is on aspects of compensation that are available or apply to senior executive officers, directors, and the general workforce.

In addition, the Commission has stated that a shareholder proposal requesting the production or publication of a report is excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the company. *See* 1998 Release (noting that the first consideration underlying the ordinary business exclusion “relates to the subject matter of the proposal”); Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”).

B. The Proposal May Be Excluded Because Its Subject Matter Relates to General Employee Compensation

The Proposal, by its very terms, relates to general employee compensation beyond the limited ranks of senior executives and directors. The Proposal requests that the Compensation Committee of the Company’s Board of Directors (the “Compensation Committee”) annually issue a report that assesses distribution of equity-based compensation “throughout the workforce”, including a matrix grouping employees “by EEO-1 employee classification or another appropriate classification scheme with four or more categories”, and reporting “stock ownership granted and utilized by all U.S [sic] Company employees”. As noted above, the Staff has stated its position in both SLB 14A and SLB 14J that shareholder proposals that relate to compensation of a company’s general workforce – and not solely compensation of the company’s senior executives and directors – relate to a company’s ordinary business operations and are appropriate for exclusion under Rule 14a-8(i)(7). Applying this analysis, the Staff has

consistently permitted exclusion of shareholder proposals that focus on general employee compensation, even if the scope of the proposal would include executive compensation.

For example, in Yum! Brands, Inc. (Feb. 24, 2015), the proposal requested that the compensation committee of the company's board prepare a report on the company's executive compensation policies and suggested that the report include a comparison of senior executive compensation and "store employees' median wage." The Staff concurred that the proposal was excludable pursuant to Rule 14a-8(i)(7), noting that the proposal "relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors". *See also*, CytRx Corporation (Jun. 26, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company's board limit the annual salary and benefit packages of each employee of the company, noting that the proposal relates to the "compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); Verizon Communications Inc. (Feb. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a review of the company's executive compensation policies including a comparison of the total compensation package of the top senior executives and the company's employees' median wage, noting that the proposal "relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); Microsoft Corp. (Sept. 17, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting, among other things, that the company's board and/or compensation committee limit the average individual total compensation of senior management, executives and "all other employees the board is charged with determining compensation for," noting that the proposal "relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); ENGGlobal Corp. (Mar. 28, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to amend the stated purpose of the company's equity incentive plan to "attract and retain key employees, directors, consultants and non-employees by providing them with additional incentives to promote the success of the [c]ompany's business," noting that the proposal "relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors"); International Business Machines Corp. (Jan. 22, 2009) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting to limit salary increases for employees of "level equivalent to a 3rd [l]ine [m]anager or above," noting that the proposal relates to the company's "ordinary business operations (i.e., general compensation matters)"); Ford Motor Co. (Jan. 9, 2008) (concurring with the exclusion of a proposal requesting that the company stop awarding all stock options where the proposal did not limit the applicability of this ban on stock option awards to senior executive officers and directors, but instead applied the ban generally to all company employees, as relating to "ordinary business operations (i.e., general compensation matters)"); Wal-Mart Stores, Inc. (Mar. 15, 1999) (concurring with the exclusion of a proposal requesting a report that was to

include, among other things, a description of “[p]olicies to implement wage adjustments to ensure adequate purchasing power and a sustainable living wage” and noting the proposal was excludable under Rule 14a-8(i)(7) because the quoted language “relate[d] to ordinary business operations”).

The instant Proposal is sweeping in scope and would require the Company to prepare a report that reflects the equity compensation of both senior executives of the Company and employees below the executive level. The Company has over 1,700 employees in the United States. By requiring aggregate equity ownership details for “all U.S [sic] employees”, the Proposal goes well beyond the Company’s senior executive officers and directors, and instead encompasses the Company’s general workforce. Indeed, the supporting statements to the Proposal reference “inflation-adjusted wages for *nonsupervisory American workers*” (emphasis added) and state that “[e]xpanding the Committee’s perspective *beyond executive compensation*” (emphasis added) would provide the Compensation Committee with “a better grasp on how human talent matters for the company’s business strategy and operations.” The supporting statements explicitly state the intent of the Proposal: “We ask our Company to track and disclose similar information and associate voting power for *all* U.S. employees using meaningful classifications” (emphasis added). The statements above make it clear that the focus of this Proposal is on the compensation of the Company’s general workforce, which is a core component of the Company’s ordinary business operations. In accordance with the above-cited Staff guidance and consistent with established precedent, the Proposal relates to general employee compensation and is therefore excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Raise a Significant Social Policy Issue that Transcends the Company’s Ordinary Business Operations

Recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff explained that it will “focus on the social policy significance of the issue that is the subject of the shareholder proposal” and that this analysis will center on “whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the Company”.

Though, as noted above, the text of the Proposal relates to the Company’s compensation of its general workforce and therefore squarely implicates the Company’s ordinary business operations, we note that in assessing whether the focus of a proposal is a significant social policy under Rule 14(a)-8(i)(y), the Staff considers the “proposal and the supporting statement as a whole.” See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). While the supporting statements to the Proposal reference the social policy issue of wealth inequality, the mere reference to a significant social policy issue does not alter the fundamentally ordinary business focus of the Proposal. For example, in Marriott International, Inc. (Jan. 13, 2021), the Staff concurred with the exclusion of a shareholder proposal that requested production of a report on

the “external social costs” created by the company’s compensation policy. The proposal purported to address “social issues of great importance” Marriott International, Inc. (Jan. 13, 2021); however, the Staff concurred with the Company’s assertion that referencing social policy issues that “have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.” Marriott International, Inc. (Jan. 13, 2021); *see also* Ford Motor Co. (Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

Here, the supporting statements to the Proposal cite to a host of social injustices, including “racial and gender wealth gaps”, “political polarization”, and flat “inflation-adjusted wages”. However, it is unclear how the report requested by the Proposal would address these issues, since the report would merely reflect aggregate employee equity ownership, grouped by categories of employees at the discretion of the Compensation Committee. The mere references to a range of social policy matters does not diminish the narrow focus of the Proposal on the ordinary business operations of the accompany. Accordingly, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

IV. Conclusion

For the reasons discussed above, the Company respectfully requests that the Staff concur with its view that the Proposal may be properly omitted from the Company’s 2022 Proxy Materials and that the Staff not recommend any enforcement action to the Commission if the Company omits the Proposal from its 2022 Proxy Materials.

If you have any questions, or if the Staff is unable to concur with the Company’s conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any response to this letter. Please do not hesitate to contact the undersigned at (617) 570-3953.

Respectfully submitted,



Courtney M. Hetrick, Esq.

Office of Chief Counsel
Division of Corporation Finance
January 20, 2022
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Enclosure

cc: Myra K. Young
John Chevedden
Tony J. Hunt, President and Chief Executive Officer, *Repligen Corporation*
Squire Servance, Esq., Senior Vice President, General Counsel, *Repligen Corporation*
Arthur R. McGivern, *Goodwin Procter LLP*

Exhibit A

The Proposal

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

[REDACTED]

Repligen Corporation
Attention: Corporate Secretary
Squire Servance <[REDACTED]>
41 Seyon Street, Building #1, Suite 100
Waltham, Massachusetts
Phone: (718) 250-0111
Fax: (718) 250-0115
cc: investors@repligen.com


Dear Corporate Secretary:

I am submitting the attached shareholder proposal, which I support, for a vote at the next annual shareholder meeting requesting that Repligen Corporation **Create an Ownership Culture**, as specified. I pledge to continue to hold the required amount of stock until after the date of that meeting.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. I am available to meet with the Company's representative via phone on December 30, at 10:30am or 11:00 Pacific or at another day or time that is mutually convenient.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including presentation at the forthcoming shareholder meeting but not regarding submission, negotiations or modification, which will require my approval. Please direct future communications regarding my rule 14a-8 proposal to John Chevedden (PH: [REDACTED] [REDACTED]) at: [REDACTED] to facilitate prompt communication. My husband, James McRitchie at [REDACTED], will enter any negotiations with the Company on my behalf.

You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED]. That will prompt me to request the required letter from my broker and to submit it to you. **Per the most recent SEC SLB 14L <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>, Section F, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."** I am requesting acknowledgement of receipt.

Sincerely,


Myra K. Young

December 15, 2021

Date

[RGEN: Rule 14a-8 Proposal, December 15, 2021]
[This line and any line above it – *Not* for publication.]



Proposal 4* - **Create an Ownership Culture**

Resolved: Repligen Corporation ("Company") shareholders request the Board's Compensation Committee ("Committee") issue a report annually assessing the distribution of stock-based incentives throughout the workforce (such as but not limited to performance share units, employee stock purchase plans, restricted stock units, and options). The report should include a matrix, sorted by EEO-1 employee classification or another appropriate classification scheme with four or more categories chosen by the Committee, showing aggregate amounts of stock ownership granted and utilized by all U.S. Company employees and including associated voting power, if any. The Committee should issue the report before or concurrent with the next annual proxy statement.

Supporting Statement:

Our Company recognizes stock ownership as an incentive for directors and named executives, reporting annually on utilization. We ask our Company to track and disclose similar information and associate voting power for all U.S. employees using meaningful classifications.

Widespread employee ownership is correlated with better firm performance, fewer layoffs, better employee compensation and benefits, higher median household wealth, longer median job tenure, and reduced racial and gender wealth gaps.¹ It also has a long history of bipartisan support.² Our Company should educate and promote ownership plans and progress towards an engaged employee ownership culture.³

Wealth inequality in the United States has increased dramatically,⁴ is widely recognized as a *significant social policy issue*,⁵ and brings many problems, such as political polarization.⁶ Employee ownership is key to addressing this social policy in a bipartisan manner.⁷

Providing stock ownership incentives to boards and executives but not to all U.S. company employees has led to glaring inequality. Our Company's "pay ratio" is relatively small, 1 to 45. A

¹ <https://secureservercdn.net/192.169.220.85/111.986.myftpupload.com/wp-content/uploads/2021/10/WhitePaper-TurningEmployeesIntoOwners.pdf> and <https://www.nceo.org/article/research-employee-ownership>

² <https://www.thirdway.org/report/having-a-stake-evidence-and-implications-for-broad-based-employee-stock-ownership-and-profit-sharing>

³ <https://smlr.rutgers.edu/faculty-research-engagement/institute-study-employee-ownership-and-profit-sharing>

⁴ <https://inequality.org/facts/wealth-inequality/>

⁵ <https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s/>

⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2649215

⁷ <https://thehill.com/blogs/congress-blog/politics/512413-employee-ownership-the-wealth-gap-and-the-current-crisis>

similar ratio comparing stock ownership by named executives with those of typical U.S. employees would be much higher at our Company and nationally at other companies.

From 1973 to 2018, inflation-adjusted wages for nonsupervisory American workers were flat. Meanwhile, a dollar's worth of stock grew (in real terms) to \$14.09. Hourly wages stagnated. Income from capital ownership accelerated. The top 10% of American households earned 97% of capital gains. Typical White families own nearly 10x the average Black family. Single women own only 36% of what typical men own. That gap is greater for women of color.⁸ Strengthening employee ownership would help address these inequities,⁹ while generating higher value for all shareholders.

Employee engagement and trust are crucial to success. Expanding the Committee's perspective beyond executive compensation would give them "a better grasp on how human talent matters for the company's business strategy and operations."¹⁰ Our Company could benefit shareholders, employees, and the economy by leading on this issue.

Increase Long-Term Shareholder Value
Vote to **Create an Ownership Culture** – Proposal [4*]
[This line and any below, *except for footnotes*, are *not* for publication.]
Number 4* to be assigned by Company

The graphic included above is intended to be published with the rule 14a-8 proposal. It would be the same size as the largest management graphic (or highlighted management text) used in conjunction with a management proposal or opposition to a Rule 14a-8 shareholder proposal in the 2022 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal. Reference SEC Staff Legal Bulletin No. 14I (CF) [\[16\]](#).

Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the Company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal conform with Staff Legal Bulletin No. [14B](#) (CF), September 15, 2004 including (emphasis added):

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

⁸ <https://ownershipamerica.org/the-problem/>

⁹ https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Institute_Employee_Ownership/rutgerskelloggreport_april2019.pdf

¹⁰ <https://www.edelman.com/trust/2021-trust-barometer/belief-driven-employee/new-employee-employer-compact>



James McRitchie, CorpGov.net

- the Company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

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

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

I also take this opportunity to remind you of the SEC's recent guidance and my request that you acknowledge receipt of this shareholder proposal submission. SLB 14L Section F, <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov

Office of Chief Counsel

Division of Corporation Finance

US Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

cc: [REDACTED] PII, [REDACTED] PII, sservance@repligen.com,
chetrick@goodwinlaw.com

Re: Shareholder Proposal to Repligen Corporation of Myra K. Young Regarding "Create an Ownership Culture"

Ladies and Gentlemen:

I am acting as an authorized agent of Myra K. Young, who is the beneficial owner of common shares of Repligen Corporation, (the "Company") and submitted a shareholder proposal (the "Proposal") to the Company. We are responding to the letter dated Jan. 20, 2022, (the "Company Letter") sent to the Securities and Exchange Commission (the "Commission") by Courtney M. Hetrick, Esq. In that letter, the Company contends Ms. Young's Proposal may be excluded from the Company's 2022 proxy statement. Any response to this letter should copy Myra K. Young and John Chevedden at the email addresses noted above.

The Proposal requests the Company create and file an annual report disclosing and assessing the distribution of stock ownership incentives throughout the US workforce. The Proposal requests the data be included in a matrix and be sorted by EEO-1 employee classification or another appropriate classification scheme. The Company Letter asserts the Proposal relates to general employee compensation policies and practices or management of the workforce, which are solely matters of ordinary business, and that the Proposal does not address an issue that transcends ordinary business.

However, I believe the Proposal provides shareholders with the opportunity to vote on whether the Company should adopt a new and appropriate corporate governance model for disclosure that would ensure investors receive appropriate information on the significant social policy issue of wealth inequality. This would shed light on the skewed distribution of employee stock ownership toward upper management and board members compared to the general workforce. The Company Letter conflates the purpose of the Proposal with the Company's own interpretation as one focused on granting equity awards to a broad group of employees. On the contrary, it simply asks the Company to *report* on the current distribution of such awards, if any, including voting power.

As the proponent, I view this as an essential corporate governance reform. Investors have good reason to want to be informed on how our company distributes shareholder-approved stock among employees.

Investors need this information to inform voting decisions

This is clearly an issue of disclosures that are important to investors. Shareholders are already required under NASDAQ and NYSE filing requirements, approved by the Securities and Exchange Commission in 2003, to vote on the approval of equity compensation plans before they can be awarded. It would be incongruous and inappropriate to bar shareholders from requesting a report that would provide, in clear tabular form, the data needed for investors to begin to assess the subsequent impact of their votes on those compensation plans.¹

Although I agree with the Company that the Proposal is not intended to be limited in its scope of disclosure to senior executives and directors, the Company exaggerates the idea that there is a bright-line rule against proposals addressing compensation of rank-and-file employees. Mine is not a general proposal on wages, such as supporting minimum wages or public policies associated with employee wages and working hours. Instead, it is appropriately framed and consistent with proposals seeking disclosure of matters central to the significant social policy issue of wealth inequality.

Staff Legal Bulletin 14A, cited by the Company, which discussed the idea of a bright-line rule was issued in 2002, prior to the SEC's approval of the NASDAQ and NYSE requirements for shareholder approval of equity compensation plans. As such, this so-called bright-line rule has never been brought into alignment with the approved NASDAQ and NYSE rules, which necessitate *informed* shareholder voting on equity compensation plans. The current proposal provides the Staff with an opportunity to do so by allowing shareholders to decide if they want this important additional information that would inform their votes.

Staff rulings do not consistently bar proposals on disclosure relative to employee compensation

Contrary to the Company's assertions, the Proposal's request for *disclosure* of distribution of stock ownership incentives throughout the workforce does not equate to excludable ordinary business under Rule 14a-8(i)(7).² For example, a proposal that requested disclosure of the distribution of 2003 stock options by the recipient's race and gender, which discussed recent trends in stock options granted to women and employees of color, was found not excludable under Rule 14a-8(i)(7). *Verizon Communications, Inc.* (Jan. 26, 2004).

The Company cites *Yum! Brands* (Feb. 24, 2015) where the disclosure report sought a comparison of executive compensation with store employees' median wage and the Staff allowed exclusion under Rule 14a-8(i)(7). However, subsequent Staff decisions significantly blurred the "bright line" to clarify that consideration of underlying significant policy issues can cause such a proposal to transcend ordinary business. Subsequent disclosure-related requests

¹ *Frequently Asked Questions on Equity Compensation Plans*, NYSE (last revised Dec. 1, 2021), <https://www.nyse.com/publicdocs/nyse/regulation/nyse/equitycompfaqs.pdf>; NASDAQ Listing Rule 5635(c), https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-5600-series#nasdaq-rule_5635.

² Precedents cited by the Company, such as *Yum! Brands, Inc.* (Feb. 24, 2015), which seeks a comparison of senior executive compensation and "our store employees' median wage" being excludable as relating to ordinary business, are contradicted by numerous proposals allowing integration of rank-and-file employee-related compensation disclosures or considerations.

applying to the whole workforce have been found *not* excludable under Rule 14a-8(i)(7), where the focus was on pay differentials between upper- and lower-level employees. For instance, in *Wells Fargo* (Feb. 21, 2019), the proposal requested disclosure of the global median gender pay gap—including associated policy, reputational competitive and operational risks, and risks related to recruiting and retaining female talent—and was found not excludable under Rule 14a-8(i)(7). That proposal also included disclosure of equity compensation through an inclusive definition: "A report adequate for investors to assess company strategy and performance would include the percentage *global median* pay gap between male and female employees across race and ethnicity, including base, bonus, and equity compensation" (emphasis added).

Additionally, subsequent rulings also found non-excludable proposals directed toward CEO or senior executive compensation have included provisions that either imply decision-making or disclosure based on nonmanagement employee compensation levels or disclosure that would reveal the contrast between senior executive compensation and other employees. For instance, in *BB & T Corporation* (Jan. 17, 2017), an ordinary business exclusion was rejected for a proposal asking the company to "take into consideration the pay grades and/or salary ranges of all classifications of company employees when setting target amounts for CEO compensation." Similarly, in *Siebel Systems, Inc.* (Apr. 15, 2003), a proposal designating the intended use of equity and management compensation programs, including certain principles, was not excludable under ordinary business despite the focus principles for *management* compensation, which required discussion of "the proportion of the equity of the company intended to be available for transfer to employees through stock plans, as measured by possible percentage dilution; and the distribution of that wealth opportunity intended within the company, between the CEO, Senior Executives, and other employees."³

Moreover, I note that many other general workforce-related proposals have been deemed permissible under Rule 14a-8(i)(7) as addressing significant policy issues, such as workforce diversity and racial equity, as well as general standards for the workforce. For example, the Staff made clear in several precedents that proposals asking a company to adopt and enforce a workplace code of conduct based on the International Labor Organization's (ILO) Convention on Workplace Human Rights are not excludable under the ordinary business rule. See, e.g., *E. I. Du Pont de Nemours* (Mar. 11, 2002). The ILO Convention includes a series of principles applicable to workforce management, such as no use of child labor, no discrimination or intimidation in employment, workers' right to form and join unions, workers representatives not subject to discrimination, access to workplaces to carry out representation, and no use of forced labor.

Disclosures on wealth inequality are a significant policy issue

In its 1998 Release, the Commission noted certain tasks are generally considered 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 (e.g., the hiring, promotion, and termination of employees, as well as decisions on retention of suppliers, and production quality and quantity).

³ The proposal requested a statement about the proportion of the equity of the company intended to be available for transfer to employees through stock plans, as measured by possible percentage dilution; and the distribution of that wealth opportunity intended within the company, between the CEO, Senior Executives, and other employees.

However, proposals related to such matters, but *focused on sufficiently significant social policy issues* (i.e., significant discrimination matters), are generally not excludable.

In this instance, the significant policy issue is wealth inequality and its relationship to the distribution of employee stock ownership. While the Company Letter attempts to dismiss this focus, it is evident that the Proposal is concentrated on this issue, including that the Proposal is titled "Create an Ownership Culture." Stock compensation packages are a powerful means of creating or reducing wealth inequality. The central purpose behind the Proposal is to inform shareholders about the role the Company is playing in reducing or exacerbating income inequality in its stock-based compensation packages.

Further, the Proposal references EEO categories, an appropriate framework for the reporting system. The EEO categories are the most commonly employed definitions articulating employee categories (e.g., "Executive/Senior level officials and managers" as one category). They also have the most used racial and ethnic categories.⁴

The Company Letter generally cites precedents where rejected proposals attempted to otherwise limit, amend, request, or place a moratorium on employee compensation. Here, the Proposal does no such thing. It merely requests the Company compile a report showing the distribution of stock-based compensation packages among employees. Contrary to the Company's citations and arguments, the Proposal does not ask the Company to implement any sort of reform to its current compensation packages. Instead, the Proposal merely requests that the Company publishes a report detailing which employees receive stock compensation packages or similar compensation.

Though as the proponent, I believe Myra Young would be entitled to do so, in this instance, the Proposal does not request that the Company implement any actual changes to its current compensation practices. The current Proposal is not directive. It does not attempt to alter the outcome of stock ownership arrangements. But at least one Staff decision demonstrates that, under certain circumstances, even such a proposal can transcend ordinary business.⁵ The

⁴ In 1966, the Equal Employment Opportunity Commission (EEOC) began requiring companies with 100 or more employees to submit an EEO-1 report, classifying each of their employees as one of nine job categories. Classification is generally based on three criteria: responsibilities and primary duties, knowledge and training and level of skill the job requires.

⁵ In *International Business Machines* (Feb. 16, 2000), the proposal asked the board to adopt a policy that: (1) all employees, regardless of age, will receive the same retirement medical insurance and pension choice as employees who are within five years of retirement; and (2) the portable cash-balance plan will provide a monthly annuity equal to that expected under the old pension plan or a lump sum that is actuarially equivalent. In that instance, there was significant controversy associated with the company's newly announced pension and retirement plans for IBM employees, including Wall Street Journal coverage reporting that some employees would face losses as high as 50% under the new policy. IBM had also acknowledged to some employees that its new individual medical insurance accounts would probably run out of money as they approach old age. The new plan's limited medical insurance is especially a problem for lower-paid workers.

Feeding the outrage was IBM's declaration that it planned to use the \$200 million saved to fund stock options for executives and other targeted employees. Many of IBM's most talented employees did not feel comfortable with their deserved bonus being tied to the reduction of promised retirement pay and medical insurance for fellow employees. The Staff noted "widespread public debate concerning the conversion from traditional defined benefit pension plans to cash-balance plans and the increasing

current Proposal contrasts with proposals that request a specific outcome in stock options, such as canceling equity compensation that affects all employees. *Amazon.com, Inc.* (Mar. 7, 2005). The current Proposal does not require any particular outcome other than appropriate disclosures for investors.

There can be no doubt that wealth inequality, especially in the US, is a significant policy issue. Moreover, the United Nations has recognized wealth inequality as a significant social policy issue that creates many tangible problems, particularly in the United States:

"Income inequality has been compounded by wealth inequality, particularly in countries with already high inequality levels such as the United States of America . . . It is clear that inequality can be a serious threat to social and political stability."

As a result of recognizing such concerns, reducing inequality is one of 17 Sustainable Development Goals⁶ established by the United Nations in 2015. This is a distinct problem facing any corporation headquartered in the United States since income inequality in the US is the highest of *all* the G7 nations.⁷ The wealth gap between "America's richest and poorest families have *more than doubled* from 1989 to 2016" (emphasis added).⁸ This gap has grown even more significant during the pandemic.⁹

The business case for addressing this issue is clear. Widespread employee stock ownership is correlated with better employee and firm performance, fewer layoffs, better employee compensation and benefits, higher median household income, longer median job tenure, and reduced racial and gender wealth gaps. All these positive outcomes would have the effect of reducing wealth inequality in the US.

I have gathered data regarding wealth distribution on a national level. For instance, according to the Congressional Budget Office, 10% of families currently hold 76% of the total wealth in this country.¹⁰ But little data is available on a corporate level, where many of the critical policy

recognition that this issue raises significant social and corporate policy issues, it is our view that proposals relating to the conversion from traditional defined benefit pension plans to cash-balance plans cannot be considered matters relating to a registrant's ordinary business operations."

⁶ See *United Nations Sustainable Development Goals*, <https://upload.wikimedia.org/wikipedia/commons/d/d5/N1529189.pdf>

⁷ *Organization for Economic Co-operation and Development*, <https://www.oecd.org/social/income-distribution-database.htm>

⁸ Katherine Schaeffer, *6 Facts About Economic Inequality in the U.S.*, Pew Research Center (Feb. 7, 2020), <https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s/>

⁹ See Peter Coy, *Wealth Inequality Is the Highest Since World War II*, N.Y. Times (Feb. 2, 2022), <https://www.nytimes.com/2022/02/02/opinion/inequality-wealth-pandemic.html>

¹⁰ See *Turning Employees Into Owners: Rebuilding the American Dream*, Ownership America (Oct. 2021), <https://secureservercdn.net/192.169.220.85/111.986.myftpupload.com/wp-content/uploads/2021/10/WhitePaper-TurningEmployeesIntoOwners.pdf>. Among data compiled by the Bureau of Labor Statistics—surveying workers aged 28–34 that were born between Jan. 1, 1980, and Dec. 31, 1984—employee-owners have, relative to workers who are not employee-owners:

- 92% higher median household wealth
- 33% higher income from wages
- 52% longer median job tenure

decisions are made, and the distribution of stock ownership is clearly a key element. For example, Rutgers' analysis of the General Social Survey estimated that, in 2018, nearly 23 million employees—representing more than 19% of all US workers—owned some share in their employer. However, the bottom 37% of workers had less access to company stock programs.

Below are a few key findings:

- Employee-owners of color have a 30% higher wage income than non-employee owners of color.
- Women employee-owners have a 17% higher wage income than women who are not employee-owners.
- Employee ownership was generally linked to higher income, benefits, gain/profit sharing, training, and involvement in company decision-making.
- Of the low- and moderate-income worker-owners surveyed, those aged 60 to 64 had 10 times more wealth than typical Americans in that age group.¹¹

The trickle-down notion for justifying wealth inequality is accompanied by the assumption that rewarding top corporate employees with abundant cash and stock benefits will ultimately boost the economy and raise all ships. Actual data supports an opposite finding. Economic growth is also hindered as the wealth gap grows.¹² On the other hand, increasing employee ownership—including stock ownership—could significantly improve the distribution of wealth in society.¹³

Moreover, the issue of wealth inequality in the US is tied to another critically important social policy issue: racial inequality. This is demonstrated by a recent editorial board opinion piece in the Washington Post, titled "Narrowing the US Wealth gap is important. Narrowing the racial

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- Almost twice the household net worth

Employee Ownership & Economic Well-Being, Nat. Center for Employee Ownership (May 14, 2017), https://www.ownershipeconomy.org/wp-content/uploads/2017/05/employee_ownership_and_economic_wellbeing_2017.pdf

¹¹ See *Race and Gender Wealth Equity and the Role of Employee Share Ownership*, <https://www.aspeninstitute.org/publications/race-and-gender-wealth-equity-and-the-role-of-employee-share-ownership/>

¹² According to data from the International Monetary Fund:

“An inverse relationship between the income share accruing to the rich (top 20 percent) and economic growth. If the income share of the top 20 percent increases by 1 percentage point, GDP growth is actually 0.08 percentage point lower in the following five years, suggesting that the benefits do not trickle down. Instead, a similar increase in the income share of the bottom 20 percent (the poor) is associated with 0.38 percentage point higher growth.”

Causes and Consequences of Income Inequality: A Global Perspective, IMF (June 2015), <https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf>

¹³ One study, using data from the Survey of Consumer Finances, found that if businesses were to become 30% employee-owned, it would produce a significant change in the concentration of wealth. Specifically, the wealth share of those with below-median wealth would increase from 1% to 6% of total wealth, and the net wealth of the average black family would increase by more than 400%, from \$24,100 to \$106,271. Additionally, those with only high school diplomas would see similar wealth increases. In 2016, the median white family had \$147,000 in wealth, compared with \$3,600 for Black families and \$6,600 for Latinx families. White women had a median wealth of \$66,930, while that of Black and Latinx women was just \$6,000 and \$6,700, respectively. Thomas Dudley & Ethan Rouen, *Employee Ownership and Wealth Inequality: A Path to Reducing Wealth Concentration*, Harvard Business School Accounting and Management Unit Working Paper No. 22-021 (Sept. 30, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3942536

wealth gap is urgent."¹⁴ Although many publicly traded companies made racial justice commitments, few report using stock incentives as a means of addressing those commitments. Disseminating access to this data and shedding light on the issue is an essential first step in identifying necessary improvements.

In sum, there is ample evidence the current Proposal is focused on wealth inequality, which is a significant social policy issue in the US today.

Conclusion

Under Rule 14a-8(g), the burden of proof falls on the company to show the proposal may be excluded. Here, the Company has failed to demonstrate the Proposal is excludable under Rule 14a-8(i)(7). Therefore, we request Staff inform the Company that SEC proxy rules require denial of the Company's no-action request.

We would be pleased to respond to Staff questions or negotiate mutually agreeable terms for withdrawing the Proposal with Repligen Corporation, as we have done with other companies.

Sincerely,



James McRitchie
Shareholder Advocate

¹⁴ *Narrowing the Wealth Gap is Important. Narrowing the Racial Wealth Gap is Urgent*, Washington Post (July 30, 2021) <https://www.washingtonpost.com/opinions/2021/07/30/us-wealth-gap-race/>

February 23, 2022

Via Email (shareholderproposals@sec.gov)

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

Re: Repligen Corporation – 2022 Annual Meeting; Supplement to Letter dated January 20, 2022 Relating to Shareholder Proposal Submitted by Ms. Myra K. Young (with John Chevedden as proxy)

Ladies and Gentlemen:

We refer to our letter dated January 20, 2022 (the “No-Action Request”) submitted on behalf of our client, Repligen Corporation (the “Company”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that the shareholder proposal submitted by Myra K. Young (the “Proponent”), with John Chevedden designated as proxy, (the “Proposal”) may be excluded from the Company’s proxy materials for its 2022 annual meeting of shareholders (the “2022 Proxy Materials”).

On February 15, 2022, James McRitchie submitted a letter to the Staff (the “McRitchie Letter”), in which Mr. McRitchie argues that the Staff should require the Company to include the Proposal with its 2022 Proxy Materials. This letter is in response to the McRitchie Letter and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter is also being sent to the Proponent.

The McRitchie Letter attempts to overcome the ordinary business exclusion by misconstruing the Staff’s well established guidance on Rule 14a-8(i)(7), citing to distinguishable precedent, and mischaracterizing the focus of the Proposal as one focused on social policy matters. Accordingly, the Company reiterates its position that the Proposal is excludable pursuant to Rule 14a-8(i)(7).

The McRitchie Letter Attempts to Elevate Form over Substance in the Staff's Analysis

The McRitchie Letter chooses to ignore Staff guidance and precedents in claiming that it is the form of the Proposal, rather than its substance, that is determinative in this instance. Here, the Proposal seeks production of a report focused squarely on general employee compensation. As noted in the No-Action Request, the Commission and the Staff have stated that a proposal requesting dissemination of a report may be properly excluded under Rule 14a-8(i)(7) if the subject matter of the report focuses on the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983). Indeed, the Staff has stated that requests for disclosure may be properly excluded under Rule 14a-8(i)(7) where “the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business.” Here, the Proposal requests disclosure of “aggregate amounts of stock ownership granted and utilized by all U.S[.] Company employees and including associated voting power,” in a report sorting employees into “four more categories chosen by the [Compensation] Committee.”

The McRitchie Letter argues that, because the Proposal “does not ask the Company to implement any sort of reform to its current compensation packages” the myriad precedents cited in the No-Action Request are not relevant in this instance. This assertion seeks to put form before substance in the Staff’s analysis. This is not consistent with the Staff’s stated position. The subject matter of the Proposal is stock compensation of the Company’s general U.S. workforce; as a result, the Proposal falls well within the Company’s ordinary business matters, which the Staff has consistently held to be excludable under Rule 14a-8(i)(7). See Yum! Brands, Inc. (Feb. 24, 2015) (The Staff concurred with exclusion under Rule 14a-8(i)(7) of a proposal that the company’s board prepare a report on executive compensation policies and suggested that the report include a comparison of senior executive compensation and “store employees’ median wage.” The Staff noted that the proposal “relate[d] to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors.”)

The McRitchie Letter Cites Only Distinguishable Precedent

Further, after attempting to discredit the line of precedent cited by the Company in the No-Action Request on the basis of form over substance, the McRitchie Letter cites to only clearly distinguishable precedent. The McRitchie Letter relies on Staff decisions in Wells Fargo (Feb, 21, 2019), BB&T Corporation (Jan. 17, 2017), and Siebel Systems, Inc. (Apr. 15, 2003) to persuade the Staff to reject the Company’s request via its No-Action Request. However, none of these outcomes carry precedential value, as each one is clearly distinguishable.

In Wells Fargo (Feb. 21, 2019), the company failed to demonstrate that a proposal requesting disclosure of, among other things, “the global median gender pay gap, including [. . .] risks related to recruiting and retaining female talent” was excludable from the company’s proxy materials. There, the company attempted to justify exclusion on grounds that (i) under Rule 14a-8(c) the proposal in fact constituted of multiple separate proposals (which is not relevant to the instant Proposal or No-Action Request), and (ii) that the proposal sought to micromanage the

Company. This latter justification is just one of the two central considerations underlying Rule 14a-8(i)(7); the Company's No-Action Request instead cites to the other central consideration: that proposals relating to certain tasks that are "so fundamental to management's ability to run a company on a day-to-day basis" that they may be properly excluded as relating to a company's ordinary business matters. The proponent in *Wells Fargo* alludes to this important distinction in a response letter to the Staff, noting "[n]otably, the Company in its response, does not argue the gender pay gap is not a significant policy issue for the Company. Instead, the Company's argument is that the proposal micromanages by its focus on this metric. This is a fatally flawed argument." See *Wells Fargo* (Feb. 21, 2019). In fact, the Staff's decision in *Wells Fargo* was not predicated on a finding that the proposal transcended ordinary business matters; rather, the Staff stated, "In our view, the Proposal does not seek to micromanage the Company to such a degree that exclusion of the Proposal would be appropriate." *Id.* Thus, the *Wells Fargo* decision, where the company sought exclusion on completely different grounds than those in the No-Action Request, lacks precedential value over the outcome here.

The Commission and Staff have consistently found that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to the company's management of its workforce, including matters relating to general employee compensation. The Commission recognized in *Exchange Act Release No. 40018* (May 21, 1998) (the "1998 Release") that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Similarly, in *United Technologies Corp.* (Feb. 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "employee health benefits, *general compensation issues not focused on senior executives*, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and *motivation*" (emphasis added). The text of the Proposal, the supporting statements to the Proposal (the "Supporting Statements"), and the McRitchie Letter all reinforce that the Proposal focuses on the compensation of the Company's general workforce. This is not disputed. However, in support of the Proposal the McRitchie Letter cites precedent where exclusion hinged on whether a proposal concerned compensation of the company's senior executives or compensation of the general workforce (such that the subject matter of the proposal related to a company's ordinary business matters). Such precedent decisions are not relevant to the instant Proposal.

In both *BB&T Corporation* (Jan. 17, 2017) and *Siebel Systems, Inc.* (Apr. 15, 2003), shareholder proposals were not excludable because they focused on executive compensation, rather than compensation of the general workforce. The proposal in *BB&T Corporation* was focused on influencing target CEO pay by requiring that CEO target compensation be informed by the compensation levels of all company employees (rather than seek to increase or otherwise influence non-executives' pay). Thus, the Staff stated that it was unable to concur that the subject proposal was excludable under Rule 14a-8(i)(7) because "the proposal focuse[d] on senior executive compensation." Similarly, in *Siebel Systems, Inc.* the company informed the Staff that the proponent had agreed "to revise its proposal so that it is limited to 'senior

executives’.” See Letter from Cooley Godward LLP to the Staff, dated March 31, 2003, on behalf of Siebel Systems, Inc. The proposals in BB&T and Siebel Systems, Inc., on their face, focused on executive compensation matters. In contrast, as described in the No-Action Request and as the McRitchie Letter freely admits, the Proposal focuses on compensation of the Company’s general workforce and “is not intended to be limited in its scope of disclosure to senior executives and directors.” See McRitchie Letter.

Lacking precedent to support the Proponent’s argument, the McRitchie Letter urges the Staff to deviate from its long-established precedent (with which BB&T and Siebel Systems are consistent) and use the instant Proposal as an opportunity to create *new* policy and abandon the Staff’s current position in applying a bright-line rule to matters pertaining to executives and directors versus matters pertaining to management of the general workforce. This bright-line rule has served as a consistent guide for companies and shareholder proponents alike in determining whether a proposal is appropriate for shareholder consideration. Contrary to the assertion in the McRitchie Letter that this “bright-line” approach is outdated, the Staff has reaffirmed and clarified this approach in numerous recent precedents, including those cited in the No-Action Request. Therefore, the Company reiterates its position that, consistent with clearly articulated guidance in Staff Legal Bulletin No. 14A (July 12, 2002) and in its previous no action responses, the Proposal is properly excludable under Rule 14a-8(i)(7) as relating to general workforce compensation, which is a core component of the Company’s ordinary business matters.

The Focus Of The Proposal Is On Employee Stock Compensation, Not On A Significant Social Policy Matter

The well-established precedents set forth in the No-Action Request demonstrate that the Proposal squarely addresses the ordinary business matter of general workforce compensation and, therefore, is properly excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving significant social policy issues. While “proposals [. . .] focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable pursuant to Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release.

This distinction was most recently reaffirmed by the Staff in Legal Bulletin No. 14L (Nov. 3, 2021), in which the Staff clarified that “[i]n making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company. For example, proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.”

The Staff has established that merely referencing topics that raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business. See *Amazon.com, Inc.* (Mar. 1, 2017) (The Staff concurred with the exclusion of a proposal requesting adoption and publication of principles for minimum wage reform, noting that “the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters” despite the proponent’s assertion that minimum wage was a significant policy issue). See also *CVS Health Corp.* (Mar. 1, 2017) (same); *The Home Depot, Inc.* (Mar. 1, 2017) (same); *The TJX Companies, Inc.* (Mar. 1, 2017) (same).

Despite various statements related to wealth inequities in the McRitchie Letter and the scattered references to wealth gaps in the Supporting Statements, the focus of the Proposal is on the Company’s practice of granting stock-based compensation to its general workforce. Indeed, the McRitchie Letter admits that the intent behind the Proposal is an attempt to “shed light on the skewed distribution of employee stock ownership toward upper management and board members compared to the general workforce”. This stated purpose is in stark contrast to the sweeping references to racial-, gender- and age-based wealth inequalities within the McRitchie Letter.

The subject of the Proposal is a report containing at least four classifications of Company employees, and showing the aggregate stock ownership granted and utilized by each such classification. Such a report, particularly one grouped by EEO-1 classifications as suggested by the Proponent and the McRitchie Letter, would not provide any insight into the relative “wealth” of any particular employee group as it would include only one component of employee compensation – stock-based compensation – while ignoring any other compensation, benefits or characteristics of such classifications. In support of the Proposal, the McRitchie Letter cites articles that highlight “median household wealth, income from wages, and job tenure”; however, none of these variables would be assessed, disclosed or addressed by the report requested by the Proposal. Rather, the Proposal requests a report that discloses aggregate stock ownership across employee classifications determined by the Compensation Committee of the Company’s Board of Directors. The manner in which the Company compensates its workforce generally, and the utilization of stock-based incentive compensation granted to its employees specifically, are not issues with broad societal impact.

The Proposal and Supporting Statement’s references to employee voting power, employee engagement and benefits to the Company accruing from employee stock ownership indicate the focus of the Proposal is not on any particular broad social policy issue, but on the Company’s general workforce management through its compensation policies and practices. In addition to asking for information on the distribution of stock-based incentives throughout the workforce, the Proposal and Supporting Statement also ask for information on the “associated voting power” of U.S. Company employees. Employee voting power relates to employees’ voice and engagement on shareholder voting matters. While information on employees’ voting power would provide information on employees’ ability to have their views expressed on shareholder

voting matters, it does not relate to societal wealth inequality, which the Proponent claims is the purported focus of the Proposal. The Supporting Statement includes references to the benefits to the Company accruing from employee stock ownership, including that “[w]idespread employee ownership is correlated with better firm performance, fewer layoffs, better employee compensation and benefits, higher [employee] median household wealth, longer median job tenure,” The Supporting Statement also emphasizes the way employee engagement benefits the Company, stating that “[e]mployee engagement and trust are crucial to success,” and that “[e]xpanding the Committee's perspective beyond executive compensation would give them ‘a better grasp on how human talent matters for the company’s business strategy and operations.’” These references to workforce management issues demonstrate that the Proposal is not focused on any particular social policy issue. The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to the company’s management of its workforce. See *Starwood Hotels & Resorts Worldwide, Inc.* (Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company’s U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it “relates to procedures for hiring and training employees” and “[p]roposals concerning a company’s management of its workforce are generally excludable under Rule 14a-8(i)(7)”; *Northrop Grumman Corp.* (Mar. 18, 2010) (concurring with the exclusion of a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company’s reduction-in-force review process, noting that “[p]roposals concerning a company’s management of its workforce are generally excludable under [R]ule 14a-8(i)(7)”; *Merck & Co., Inc.* (Jan. 23, 1997) (concurring in the exclusion of a proposal requesting the adoption of a policy “to encourage employees to express their ideas on all matters of concern affecting the company”); and *W.R. Grace & Co.* (Feb. 29, 1996) (concurring with the exclusion of a proposal requesting that the company implement a “high-performance” workplace based on policies of workplace democracy and worker participation).

The compensation of the Company’s workforce across functions, geographies, and business groups and the compositional elements of that compensation involve complex and multifaceted considerations that are a fundamental responsibility of the Company’s management. The Proposal focuses directly on such considerations and not on any social policy matter that would transcend the ordinary business matter of stock-based compensation. In contrast to the proposal in *Wells Fargo*, which explicitly concerned the gender pay gap within the company’s workforce, the Proposal does not focus on, and any responsive report would not address, the social policy issue of wealth inequalities.

For the reasons discussed above and in the No-Action Request, the Company respectfully requests that the Staff concur with its view that the Proposal may be properly omitted from the Company’s 2022 Proxy Materials and that the Staff not recommend any enforcement action to the Commission if the Company omits the Proposal from its 2022 Proxy Materials.

Office of Chief Counsel
Division of Corporation Finance
February 23, 2022
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If you have any questions, or if the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any response to this letter. Please do not hesitate to contact the undersigned at (617) 570-3953, or Arthur R. McGivern, Esq. of Goodwin Procter LLP at (617) 570-1971.

Respectfully submitted,



Courtney M. Hetrick, Esq.

cc: Myra K. Young
John Chevedden
James McRitchie
Tony J. Hunt, President and Chief Executive Officer, *Repligen Corporation*
Squire Servance, Esq., Senior Vice President, General Counsel, *Repligen Corporation*
Arthur R. McGivern, Esq., *Goodwin Procter LLP*