



DIVISION OF
CORPORATION FINANCE

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

March 12, 2025

James J. Killerlane III
American Express Company

Re: American Express Company (the "Company")
Incoming letter dated December 20, 2024

Dear James J. Killerlane III:

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

The Proposal requests the board of directors conduct an evaluation and issue a report evaluating how it oversees risks related to discrimination against ad buyers and sellers based on their political or religious status or views.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). Under the approach described in Staff Legal Bulletin No. 14M (Feb. 12, 2025), the Company has not explained whether the policy issue raised by the Proposal is significant to the Company. Therefore, in our view, the Company has not demonstrated that the Proposal relates to its ordinary business operations. Additionally, 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/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Jerry Bowyer
Bowyer Research, Inc.

December 20, 2024

Via Online Shareholder Proposal Form

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

Re: Shareholder Proposal Submitted by Bowyer Research, Inc.

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), American Express Company, a New York corporation (the “Company”), hereby gives notice of the Company’s intention to exclude from its proxy statement for its 2025 annual meeting of shareholders (the “2025 Proxy Statement”) a shareholder proposal (the “Proposal”) submitted by Bowyer Research, Inc. (the “Proponent”). A copy of the Proposal, together with the supporting statement included in the Proposal, is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if the Company excludes the Proposal from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company’s ordinary business operations and seeks to micromanage the Company.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2025 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (Nov. 7, 2008) and related Staff guidance, we have submitted this letter and its attachments to the Commission electronically through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal from the 2025 Proxy Statement to be proper.

The Company intends to file its definitive 2025 proxy materials on March 14, 2025 and print shortly thereafter.

THE PROPOSAL

The proposed resolution included in the Proposal provides as follows:

Resolved: Shareholders request the Board of Directors of American Express conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and confidential information, evaluating how it oversees risks related to

discrimination against ad buyers and sellers based on their political or religious status or views.

BASIS FOR EXCLUSION

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.

ANALYSIS

Under Rule 14a-8(i)(7), the Proposal may be excluded because it deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.

1) Rule 14a-8(i)(7) Background

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's prior guidance, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." See Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Section D.2 of *Staff Legal Bulletin No. 14C* (Jun. 28, 2005).

In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." 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."

More recently, in *Staff Legal Bulletin No. 14L* (Nov. 3, 2021) ("SLB No. 14L"), the Staff rescinded prior guidance that a company may exclude a shareholder proposal in respect of its ordinary business operation if the proposal did not raise a policy issue that was significant to a particular company. In SLB No. 14L, the Staff realigned its approach for determining whether a proposal relates to ordinary business to provide an exception for proposals that raise significant social policy issues that transcend the ordinary business of the company. In explaining the change, the Staff noted, "[W]e have found that focusing on the significance of a policy issue to a particular company has drawn the Staff into factual considerations that do not advance the policy objectives

behind the ordinary business exception,” which “did not yield consistent, predictable results.”

In addition, in SLB No. 14L, the Staff provided guidance on its position on micromanagement when evaluating requests to exclude a proposal on that basis under the ordinary business exception. The Staff stated that it will no longer view proposals that seek detail or seek to promote timeframes or methods as *per se* micromanagement. Instead, the Staff will focus on the level of detail and granularity sought in the proposal and may look to well-established frameworks or references in considering what level of detail may be too complex for shareholder input. The Staff also noted that it will look to the sophistication of investors generally, the availability of data and the robustness of public discussion in considering whether a proposal’s matter is too complex for shareholders, as a group, to make an informed judgment.

2) *The Proposal may be excluded because it involves issues within the Company’s ordinary business operations.*

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”); *see also Rite Aid Corp.* (May 2, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the company’s customer service ranking within the drugstore industry); *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

Moreover, the Staff has consistently concurred in exclusion of shareholder proposals under Rule 14a-8(i)(7) relating specifically to advertising practices, finding that the manner in which a company markets its products and services is an ordinary business operation excludable under Rule 14a-8(i)(7). *See, e.g., Tesla, Inc.* (Mar. 25, 2024) (concurring in exclusion of a proposal requesting that the board authorize and implement an educational, data driven, comprehensive advertising strategy for the company’s vehicles and report to shareholders on the progress and results of such strategy); *The Home Depot, Inc.* (Mar. 17, 2021) (concurring in exclusion of a proposal requesting an independent third-party report assessing how and whether the company ensures its advertising policies are not contributing to violations of civil or human rights); *The Walt Disney Co.* (Jan. 8, 2021) (concurring in exclusion of a proposal requesting that the board issue a report assessing how it ensures the company’s advertising policies are not contributing to violations of civil or human rights, including the spread of hate speech, disinformation, white supremacist recruitment efforts or voter suppression); *Amazon.com, Inc.* (Mar. 23, 2018) (concurring in exclusion of a proposal requesting that the board take the steps necessary to establish a policy to ensure that the company does not place promotional or other marketing material on sites or platforms that disseminate content that expresses hatred or

intolerance for certain protected groups); *Ford Motor Co.* (Feb. 2, 2017) (concurring in exclusion of a proposal requesting that the board assess the political activity resulting from the company's advertising and any resulting exposure to risk); *FedEx Corp.* (Jul. 11, 2014) (concurring in exclusion of a proposal requesting a report on the reputational damage to the company from its sponsorship of the Washington, DC NFL franchise team given controversy over the team's name); and *PG&E Corp.* (Feb. 14, 2007) (concurring in exclusion of a proposal requesting that the company cease its advertising campaign promoting solar or wind energy sources).

In this instance, the Proposal requests that the Company's Board of Directors (the "Board") evaluate and issue a report concerning how it oversees risks related to discrimination of ad buyers and sellers based on their political or religious status or views. The Proposal, viewed in its entirety with the supporting statement, focuses on the Company's advertising practices and the manner in which it markets its products and services, including where and how the Company spends its advertising dollars.

The supporting statement falsely claims that the Company, as a member of the Global Alliance for Responsible Media ("GARM"), "colluded with the world's largest advertising buyers, agencies, industry associations, and social media platforms" to "demonetize platforms, podcasts, news outlets, and others for expressing disfavored political and religious viewpoints." The supporting statement concludes that the Company's alleged collusion with GARM "create[s] legal exposure under antitrust and anti-discrimination laws." Almost every paragraph of the supporting statement is focused on describing what the Proponent claims to be GARM's goals and policies relating to companies' advertising spending decisions. Thus, while the Proposal makes passing reference to alleged discrimination based on political or religious views, its primary focus is on the Company's advertising practices.

The Company is a globally integrated payments company with card-issuing, merchant-acquiring and card network businesses that offer products and services to a broad range of customers, including consumers, small businesses, mid-sized companies and large corporations around the world. The Company offers its products and services to diverse customer groups through various channels, including mobile and online applications, affiliate marketing, customer referral programs, third-party service providers and business partners, direct mail, telephone, in-house sales teams and direct response advertising. The Company's revenue growth is dependent on attracting new customers and promoting the use of its cards and services by existing customers. Advertising decisions, including how to advertise and which advertising channels to use, are fundamental to the Company's day-to-day operations and must take into account, among other things, the Company's advertising budget, the potential effects to the Company's brand and the overall effectiveness of its advertising initiatives. As such, these decisions cannot, as a practical matter, be subject to shareholder oversight. As a result, the Company believes the Proposal may be properly excluded from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(7).

Further, framing a proposal as a request for an evaluation of risk, or as a request for a report on risk assessment, does not change the nature of the proposal. When evaluating a proposal that relates to a company's assessment of risk, the Staff has focused on the subject matter to which the risk pertains, or that gives rise to the risk, to determine whether the proposal relates to the company's ordinary business. *See Staff Legal Bulletin No. 14E* (Oct. 27, 2009); *see also Fox Corp.*

(Jul. 2, 2024) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the negative social impact and risks to the company from continuing to inadequately distinguish between the company's on-air news content and its opinion content, and the viability and benefits of providing public differentiation between its news and the entertainment-based nature of its non-news shows). The subject matter of the risks cited by the Proposal is the Company's advertising practices, which, as noted above, are ordinary business matters. Even treating the Proposal as targeting the Company's governance of risk itself rather than underlying operations, the Proposal is excludable pursuant to Rule 14a-8(i)(7). The Company evaluates risk, including risks related to its business activities and advertising, in the due course of ordinary business operations. *See, e.g., McDonald's Corp.* (Mar. 22, 2019) (finding that a proposal requesting that the company disclose the economic risks resulting from campaigns targeting the company over concerns about cruelty to chickens focused primarily on matters relating to the company's ordinary business operations); *Ford Motor Co.* (Feb. 2, 2017) (finding that a proposal requesting a report on the company's assessment of political activity resulting from its advertising and its exposure to risk resulting therefrom related to the company's ordinary business practices); *Exxon Mobil Corp.* (Jan. 23, 2012) (finding that a proposal requesting a report discussing possible short and long term risks to the company's finances and operations posed by the environmental, social and economic challenges associated with oil sands related to the company's ordinary business operations); and *Pfizer Inc.* (Feb. 16, 2011) (finding that a proposal requesting an annual assessment of risks created by actions taken by the company to avoid or minimize U.S. federal, state and local taxes related to the company's ordinary business operations). The Company has extensive policies and procedures in place to ensure its advertising complies with its risk management framework, and the development and implementation of these policies involves consideration of numerous factors relating to the Company's advertising creative and campaign strategies and media buying strategies on an ongoing basis. The Company's robust framework for evaluating risk exposure as a result of its advertising practices demonstrates that the risk oversight evaluation requested by the Proposal squarely relates to the ordinary business of the Company and may therefore be excluded from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(7).

3) *The Proposal may be excluded because it seeks to "micromanage" the Company.*

The Proposal also can be excluded under Rule 14a-8(i)(7) because it seeks to micromanage the Company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* 1998 Release. In SLB No. 14L, the Staff clarified that in evaluating companies' micromanagement arguments, it will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff further noted that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." In assessing whether a proposal seeks to micromanage a company's ordinary business operations, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company's activities and management discretion. *See Deere & Co.* (Jan. 3, 2022) (finding that a proposal requesting annual publication of the written and oral content of any employee-training materials offered to any subset of the company's employees by the company or with its consent, as well as any such

materials which the company sponsored in the creation in whole or part, micromanaged the company); *The Coca-Cola Co.* (Feb. 16, 2022) (finding that a proposal requesting that the company submit any proposed political statement to the next shareholder meeting for approval prior to issuing the subject statement publicly micromanaged the company).

Moreover, “granularity” is only one factor evaluated by the Staff. As clarified in SLB No. 14L, the Staff’s assessment of micromanagement is also based on whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgement. The Staff has consistently granted no-action relief for shareholder proposals that probe matters too complex for shareholders. *See, e.g., Verizon Communications Inc.* (Mar. 17, 2023) (concurring with exclusion of a proposal requesting that the board commission a workplace non-discrimination audit analyzing the company’s impacts, including the impacts arising from company-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business); *American Express Co.* (Mar. 11, 2022) (concurring with exclusion of a proposal requesting that the company annually publish the written and oral content of employee-training materials offered to the company’s employees by the company or with its consent, as well as any such materials that were sponsored by the company in whole or part); and *JPMorgan Chase & Co.* (Mar. 13, 2019) (concurring with exclusion of a proposal requesting that the board institute transparent procedures to avoid holding or recommending investments in companies that substantially contribute to genocide or crimes against humanity).

The Proposal implicates precisely the type of day-to-day business operations that the 1998 Release indicated are too impractical and complex to subject to direct shareholder oversight. The Company’s multi-faceted advertising strategy is integrally entwined with its ordinary business operations and fundamental to management’s ability to run the Company’s operations on a day-to-day basis. Requiring the Board to evaluate and issue a report on its oversight of risks related to the Company’s advertising spending, which is already squarely under the purview of management, would impermissibly interfere with the fundamental discretion of management to direct the course of such evaluation. The Proposal thereby micromanages how the Company evaluates and manages risks related to its advertising, and accordingly is excludable under Rule 14a-8(i)(7).

4) The Proposal does not raise policy issues that transcend the Company’s ordinary business matters.

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not be excludable, because the proposals would “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” This approach allows shareholders to have the “opportunity to express their views . . . [on] proposals that raise sufficiently significant social policy issues.” *See* the 1998 Release. The Staff reiterated this guidance in November 2021 and retracted prior guidance with respect to the “nexus requirement,” stating that the “[S]taff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In 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.” Section B.2. of SLB No. 14L.

The Staff has made clear that the mere mention of an issue with a broad societal impact, or the mere fact that an ordinary business issue might tangentially impact society more broadly, is insufficient to transform a proposal that is otherwise about ordinary business issues into one that pertains to “high-level direction on large strategic corporate matters” that the Staff confirmed in SLB No. 14L as deserving shareholder oversight and vote. While “proposals...focusing on sufficiently significant social policy issues...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 in their entirety in reliance on Rule 14a-8(i)(7) if the significant social policy issues do not cause the proposal to “transcend the day-to-day business matters.” See the 1998 Release. The Staff has reaffirmed its position that proposals that reference or touch on topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business after the publication of SLB No. 14L with its decisions in *Deere & Co.* (Jan. 3, 2022) and *American Express Co.* (Mar. 11, 2022), where the Staff agreed that proposals seeking the publication of the company’s employee training materials did not transcend ordinary business matters despite their concern with anti-racism and racial equity issues.

Here, although the Proposal touches on alleged discrimination on the basis of political or religious status or views, its focus is on the Company’s advertising strategy and practices, which are ordinary business matters. Accordingly, the Proposal may properly be excluded from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(7).

CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal from its 2025 Proxy Statement.

If you have any questions or require additional information, please do not hesitate to contact James J. Killerlane III at (212) 640-2000 or corporatesecretarysoffice@aexp.com. If the Staff is unable to agree with our conclusions without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "James J. Killerlane III".

James J. Killerlane III
Corporate Secretary and Chief Governance Officer

Enclosure

cc: Jerry Bowyer, via email at [REDACTED]
Susan Bowyer, via email at [REDACTED]
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP
Lillian Tsu, Cleary Gottlieb Steen & Hamilton LLP

Exhibit A

The Proposal

See attached.



Bowyer Research

November 6, 2024

Kristina V. Fink, Corporate Secretary and Chief Governance Officer
American Express Company, 200 Vesey Street, New York, New York 10285
[REDACTED]

Re: Respect Civil Liberties in Advertising Services

Dear Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in American Express Company's (the "Company") 2025 proxy statement to be circulated to Company shareholders in conjunction with the Company's 2025 annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations. The resolution at issue relates to the subject described below.

Proponent: Dr. Thomas Rivers
Company: American Express Company
Subject: Respect Civil Liberties in Advertising Services

I submit the Proposal on behalf of, and with the permission of, Dr. Thomas Rivers, who respectfully requests to remain unnamed in the proxy statement in question, and who has continuously owned more than \$2,000 worth of American Express Company securities for more than three years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. A letter from Dr. Rivers authorizing us to submit this proposal on his behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder's ownership of the shares as of the date of this proposal's submission is forthcoming. Copies of correspondence or any request for a "no-action" letter may be sent to Jerry Bowyer, Bowyer Research [REDACTED] or emailed to me at [REDACTED], copying [REDACTED].

Sincerely,

Jerry Bowyer
Bowyer Research

[REDACTED]

11/5/2024

Kristina V. Fink, Corporate Secretary and Chief Governance Officer
American Express Company
200 Vesey Street
New York, New York 10285
[REDACTED]

Re: Respect Civil Liberties in Advertising Services

Dear Ms. Fink,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned ("Proponent") authorizes Bowyer Research, Inc. to file a shareholder proposal on the Proponent's behalf with Amex ("the Company") for inclusion in the Company's 2025 proxy statement. The proposal at issue relates to the subject described below.

Proponent: Dr. Thomas Rivers
Company: American Express Company
Subject: Respect Civil Liberties in Advertising Services

The Proponent gives Bowyer Research, Inc. the authority to address, on the Proponent's behalf, any and all aspects of the shareholder proposal, including drafting and editing the proposal, representing the Proponent in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the Proponent. The Proponent understands that the Proponent's name may appear on the company's proxy statement as the filer of the aforementioned proposal, and that the media may mention the Proponent's name in relation to the proposal. The Proponent supports this proposal and authorizes *Bowyer Research* to write a more detailed statement of support of the proposal on the Proponent's behalf.

Dr. Thomas Rivers (the "Proponent"), who respectfully requests to remain unnamed on the proxy statement in question, has continuously owned more than \$2,000 worth of Amex securities for more than three years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. Pursuant to interpretations of Rule 14a-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following times for a telephone conference to discuss this proposal:

November 21, 2024, 12PM ET
November 28, 2024, 12PM ET

If these times prove inconvenient, please suggest some other times to speak. Feel free to contact me at [REDACTED], copying [REDACTED] and [REDACTED], so that we can determine the mode and method of that discussion.

Sincerely,

Signed by:

E3338A76138443D
Dr. Thomas Rivers
Proponent

Respect Civil Liberties in Advertising Services

Whereas: American Express is a global brand with immense influence and ad-buying power. It should be advertising in ways that support its competitive interests and build its reputation for serving its diverse customers.

But recent reports have shown that it colluded with the world's largest advertising buyers, agencies, industry associations, and social media platforms through the Global Alliance for Responsible Media¹ to demonetize platforms, podcasts, news outlets, and others for expressing disfavored political and religious viewpoints.

A product of the World Federation of Advertisers, GARM was formed in 2019 and quickly amassed tremendous market power. WFA members represent about 90% of global advertising, spending nearly a trillion dollars annually.²

GARM's express mission was to "do more to address harmful and misleading media environments," specifically "hate speech, bullying and disinformation," all under the guise of "brand safety."³ GARM leader Rob Rakowitz explained that the "whole issue bubbling beneath the surface" of the advertising industry and digital platforms is the "extreme global interpretation of the US Constitution."⁴

GARM graded platforms on how much they censored using the above terms as well as terms like "insensitive" or "irresponsible" treatment of "debated sensitive social issues."⁵ The 2024 Viewpoint Diversity Business Index⁶ found that 76% of the largest tech and finance companies have similarly vague and subjective terms. These terms encourage companies—and activists like GARM—to restrict service.

¹ https://1792exchange.com/spotlight-reports/corporate-bias-ratings/?c_id=992

² <https://dw-wp-production.imgix.net/2024/07/2024-07-10-GARMs-Harm-How-the-Worlds-Biggest-Brands-Seek-to-Control-Online-Speech.pdf>

³ <https://wfanet.org/knowledge/item/2019/06/18/Global-Alliance-for-Responsible-Media-launches-to-address-digital-safety>

⁴ <https://dw-wp-production.imgix.net/2024/07/2024-07-10-GARMs-Harm-How-the-Worlds-Biggest-Brands-Seek-to-Control-Online-Speech.pdf>

⁵ <https://wfanet.org/knowledge/item/2023/08/23/New-insights-on-platform-safety-trends-through-GARMs-latest-measurement-report>

⁶ <https://viewpointdiversityscore.org/business-index>

for arbitrary and discriminatory reasons and let them avoid accountability by hiding censorship behind vague and shifting standards.

For its part, GARM promoted hyper-partisan and censorial groups like the Global Disinformation Index and NewsGuard, which smear many mainstream outlets as “disinformation.”⁷ GARM threatened Spotify because Joe Rogan promoted views it disagreed with on COVID-19. And it infamously boycotted X because Elon Musk loosened some of the platform’s censorship restrictions⁸

GARM disbanded shortly after public pressure and a lawsuit from X in 2024,⁹ which ironically evinces how brand-damaging these practices are. But these censorious practices are still prevalent. Many of the “Big Six” advertising agencies that were all a part of GARM, for example, maintain similar policies.¹⁰

These policies and American Express’ actions create legal exposure under antitrust and anti-discrimination laws.

American Express needs to rebuild trust by providing transparency around these policies and practices. This will assure customers, shareholders, and others that it is protecting, not targeting, free speech and religious freedom.

Resolved: Shareholders request the Board of Directors of American Express conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and confidential information, evaluating how it oversees risks related to discrimination against ad buyers and sellers based on their political or religious status or views.

⁷<https://dw-wp-production.imgix.net/2024/07/2024-07-10-GARMs-Harm-How-the-Worlds-Biggest-Brands-Seek-to-Control-Online-Speech.pdf>

⁸<https://foundationforfreedomonline.com/censorship-industry-garm-members-receive-billions-in-federal-contracts/>

⁹ <https://www.nytimes.com/2024/08/08/technology/elon-musk-x-advertisers-boycott.html>

¹⁰<https://foundationforfreedomonline.com/censorship-industry-garm-members-receive-billions-in-federal-contracts/>



January 15, 2025

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

RE: Shareholder Proposal of Dr. Thomas Rivers at American Express Company under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of Dr. Thomas Rivers (“Proponent”) to defend his shareholder proposal (“Proposal”) to American Express Company (“American Express” or the “Company”). The Proposal asks American Express to report on the risks related to discriminating against ad buyers and sellers based on their political or religious status or views.

American Express argues it can exclude the Proposal under Rule 14a-8(i)(7) because it relates to the Company’s ordinary business operations. But a proposal cannot be excluded if it focuses on a significant policy issue, full stop. And the Proposal here does; Commission and Staff have long understood religious and political discrimination to be significant policy issues that transcend ordinary business matters. Further, the Proposal does not relate to advertising, but American Express’ participation in an anti-competitive cartel that coerced digital media platforms into censoring disfavored political and religious viewpoints under the guise of “misinformation” and “hate speech.”

American Express also argues it can exclude the Proposal under (i)(7) because the Proposal micromanages the Company. It says that it probes too deeply into complex advertising practices. But Staff have disagreed when assessing more complex algorithmic discrimination and content moderation issues for Alphabet. And the Proposal simply asks for a risk report, the contours of which are left to management’s discretion, so it is nowhere close to micromanaging American Express and is just like other risk reports that Staff and Commission recognize are an appropriate way for shareholders to provide input on important social policy issues.

The Proposal

The Proposal provides:

Resolved: Shareholders request that the Board of Directors of American Express conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and confidential information, evaluating how it oversees risks related to discrimination against ad buyers and sellers based on their political or religious status or views.

The Supporting Statement explains that American Express was part of a collusive trade association, the Global Alliance for Responsible Media (“GARM”), which gathered the world’s largest buyers, agencies, industry associations, and social media platforms to censor disfavored political and religious content and viewpoints. GARM weaponized its members’ massive market share of ad buying to pressure digital platforms to censor “hate speech, bullying and disinformation,” as well as “insensitive” or “irresponsible” treatment of “debated sensitive social issues,” even though these terms are hopelessly subjective and vague. It included several high-profile examples, including threatening Spotify because Joe Rogan promoted certain views on COVID-19 and boycotting X because Elon Musk loosened the platform’s censorship restrictions.

The Statement also explains how GARM exhibited a censorious intent. Its co-founder and president Rob Rakowitz explained that the “whole issue bubbling beneath the surface” of the advertising industry and digital platforms is the “extreme global interpretation of the US Constitution.” The Statement also notes that GARM relied on “hyper-partisan and censorial groups like the Global Disinformation Index and NewsGuard, which smear many mainstream outlets as ‘disinformation.’”

Finally, the Statement observes that although GARM disbanded, many of these discriminatory practices are still prevalent. Thus, American Express needs to “assure customers, shareholders, and others that it is protecting, not targeting, free speech and religious freedom.”

Discussion

A. The Proposal focuses on civil rights discrimination, which the SEC has long recognized is a significant social policy issue, and does not relate to ordinary business operations.

American Express argues that the Proposal focuses on American Express’ advertising practices, not discrimination, and therefore does not transcend ordinary business operations. This is wrong factually because the proposal focuses on anti-competitive and collusive behavior to make digital media platforms censor disfavored political and religious viewpoints under the guise of brand management. These practices were so unpopular and—ironically—so brand-damaging that GARM

disbanded in August of 2024. And it is wrong legally because a proposal can both relate to ordinary business operations, including advertising, and still focus on significant social policy issues. And the Proposal here does, so it cannot be excluded.

1. Proposals that focus on a significant social policy issue transcend a company'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 a matter relating to the company's ordinary business operations." These include "management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers," which are "tasks 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." Exchange Act Release No. 40018, 63 Fed. Reg. 29106, 29108 (May 21, 1998) (the "1998 Release"). When assessing a proposal, the Commission looks at the underlying "subject matter" of the proposal, not whether it prescribes a particular policy, board action, or disclosures. Exchange Act Release No. 20091, 48 Fed. Reg. 38218-01, 38221 (Aug. 16, 1983).

Despite the above, proposals that "focus[] on sufficiently significant social policy issues" are not excludable under Rule 14a-8(i)(7) even if they relate to ordinary business operations. 1998 Release at 29108. This is because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* When determining whether a proposal focuses on a matter of significant social policy, Staff focus on the "presence of widespread public debate," Division of Corporation Finance, Staff Legal Bulletin No. 14A (July 12, 2002) ("SLB 14A), and "broad societal impact" of the issue raised by the proposal. Division of Corporation Finance, Staff Legal Bulletin, No. 14L (Nov. 3, 2021) ("SLB 14L").

American Express interprets the rule differently: "the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable . . . if the significant social policy issues do not cause the proposal to 'transcend the day-to-day business matters.'" Company No-Action Request ("NAR") at 7 (quoting the 1998 Release). This muddies the waters and treats the significant social policy and ordinary business operations rules as a binary. But Staff and the Commission have expressly rejected this interpretation and consistently explained that "significant social policy" operates as an exception to the "ordinary business" ground for exclusion.

Over 10 years ago, Staff prepared Bulletin 14H to correct the misunderstanding that a proposal must both focus on a "significant social policy" and be "divorced from how a company approaches the nitty-gritty of its core business." Division of Corporate Finance, Staff Legal Bulletin No. 14H (Oct. 22, 2015) ("SLB 14H"). This is also how the Commission explained it in 1998:

[P]roposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, *because* the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.

1998 Release at 29108 (emphasis added). Thus, “a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the ‘nitty-gritty of its core business.’” SLB 14H.

Then, in Bulletin 14L, Staff reiterated that the “significant social policy” rule is not an additional requirement or a foil to “ordinary business,” but an “exception” to it. It added that “[t]his exception is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement.” SLB 14L.

Based on this, Staff have approved a wide variety of proposals that touch on discrete and varying aspects of a company’s operations. *See, e.g., American Express Co.* (Mar. 13, 2024) (report on company’s decision-making regarding use of a merchant category code for standalone gun and ammunition stores); *Johnson & Johnson* (Mar. 3, 2022) (recommending that company “discontinue global sales of its talc-based Baby Powder” in light of public health risks to customers); *Alphabet, Inc. (Mims Trust)* (Apr. 12, 2022) (report on how company is “address[ing] the human rights impacts of its content management policies to address misinformation and disinformation across its platforms”); *Caesars Entertainment, Inc.* (Apr. 19, 2024) (report on “adoption of a smokefree policy for Company properties”).

Were the rule otherwise, shareholders could never address virtually any discrete parts of a company’s operations, from advertising to supply chain issues to workforce management. But that is not the case, which is why Staff have consistently approved of proposals focusing on different parts, policies, or practices of the company, including advertising.

2. The Commission and Staff have long recognized that discrimination against civil rights is a significant social policy issue.

The Commission’s and Staff’s interpretations of the “significant social policy exception” cite discrimination in civil rights matters as prototypical examples of significant social policy issues that transcend ordinary business matters. For example, the Commission’s 1998 Release explained that proposals “focusing on sufficiently significant social policy issues (e.g., *significant discrimination matters*) generally would not be considered to be excludable.” 1998 Release at 29108 (emphasis added). In Staff Legal Bulletin No. 14L, the Staff reiterated this position by citing “[m]atters related to employment discrimination” as an example of an issue that “may

rise to the level of transcending the company’s ordinary business operations.” SLB 14L.

Staff have regularly approved proposals that relate to discrimination in civil rights matters on a wide range of protected characteristics and in many contexts across a company. *See, e.g., JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023) (report on how customer-facing policies “related to discrimination against individuals based on their . . . religion . . . and whether such discrimination may impact individuals’ exercise of their constitutionally protected civil rights”); *PayPal Holdings, Inc.* (Apr. 10, 2023) (same); *CVS Health Corp.* (Mar. 17, 2022) (audit on “Company’s impacts on civil rights and non-discrimination” arising from employment practices); *McDonald’s Corp.* (Apr. 5, 2022) (audit analyzing the “adverse impact” of the company’s “policies and practices on the civil rights of company stakeholders”).

Staff have also approved many proposals dealing specifically with religious discrimination. *See, e.g., JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023), *supra*; *Toys “R” Us* (Apr. 8, 1999) (adopt resolution providing for religious non-discrimination in Northern Ireland); *General Electric Co.* (Feb. 10, 2015) (adopt “Holy Land” principles, including religious non-discrimination).

And Staff have denied relief specifically where proposals focus on the risks of “hate speech” and “misinformation” in companies’ advertising. *Alphabet, Inc. (Trillium)* (Apr. 15, 2022) (report on how algorithmic systems, including “systems to target and deliver ads,” impact “user speech and experiences”); *Alphabet, Inc. (Mims Trust)* (Apr. 12, 2022) (report on how company is “address[ing] the human rights impacts of its content management policies to address misinformation and disinformation across its platforms”); *Meta Platforms* (Mar. 30, 2022) (report “examining the actual and potential human rights impacts of Facebook’s targeted advertising policies and practices,” including impacts on “systemic discrimination” and “political polarization”).

This tracks with many other Staff decisions on proposals that also dealt with advertising. *See, e.g., RE/MAX Holdings, Inc.* (Mar. 14, 2016) (report on “Company’s practice of advertising and leasing properties in the Israeli settlements” to protect “human rights” and U.S. international affairs interests); *Lorillard, Inc.* (Mar. 3, 2014) (adopt educational campaign “informing poor and less formally educated tobacco users of the health consequences of smoking our products”).

American Express whistles past the above decisions, bulletins, and Commission guidance and observes that proposals relating to advertising are sometimes excludable. But none of its citations had proposals focused on significant policy issues.

It relies primarily on *Tesla, Inc. (McCreary)* (Mar. 25, 2024). But the proposal there asked for a “comprehensive advertising strategy for the Company’s [electric] vehicles” in order to “expand[] the addressable market,” i.e. so the company could

make more money. *Id.* at 6-7.¹ A quick review of the supporting statement shows concern over “underinvesting in advertising relative to [Tesla’s] peers and industry norms,” scaling advertising to be commensurate with “Tesla’s production capacity,” and “educational advertising [that] can help the Company increase demand by enlightening potential car buyers.” *Id.* at 6. Although the *Tesla* proposal may have implicated environmental concerns over electric vehicles, the proposal did not mention those concerns, much less focus on them.

Many of American Express’ other citations follow this same pattern. See *Ford Motor Co.* (Feb. 2, 2017) (“indirect political spending” disguised as ad buying); *FedEx Corp.* (July 11, 2014) (“reputational damage from its association with the Washington D.C. NFL franchise team name controversy”).

American Express also cites several decisions on proposals asking about the civil rights impacts of companies spending their advertising dollars: *The Walt Disney Co.* (Jan. 8, 2021), *Home Depot, Inc. (Young)* (Mar. 17, 2021), and *Amazon.com, Inc.* (Mar. 23, 2018). The proposals in these decisions did not squarely raise issues of political or religious discrimination like the Proposal here. Further, the above proposals predated SLB 14L, which removed the requirement that there be a “nexus between a policy issue and a company.”

The above proposals also predated public controversy on and subsequent disbandment of GARM, which have propelled this issue to new heights in terms of “widespread public debate” and “broad societal impact.” This is explained more fully below. But it is notable here that a recent U.S. House report uncovered, for the first time, the collusive behavior of advertisers like American Express in this coalition.² Not only that, the World Economic Forum also stated in a 2024 report that digital “misinformation and disinformation” on political and other social issues is “[e]merging as the most severe global risk anticipated over the next two years.”³ Any efforts to address this alleged “misinformation” and “hate speech” would correlate directly with a risk of increased censorship.

¹ Page numbers of no-action decisions refer to the pdf page number in the no-action packet available on the SEC’s website, <https://www.sec.gov/rules-regulations/shareholder-proposals>.

² U.S. House Judiciary Committee Report, *GARM’s Harm: How the World’s Biggest Brands Seek to Control Online Speech* (July 10, 2024), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-07-10%20GARMs%20Harm%20-%20How%20the%20Worlds%20Biggest%20Brands%20Seek%20to%20Control%20Online%20Speech.pdf>.

³ World Economic Forum, *Global Risks Report 2024*, (Jan. 10, 2024) <https://www.weforum.org/publications/global-risks-report-2024/digest/>.

3. The Proposal evinces a clear focus on discrimination against civil rights.

The above shows that Staff and the Commission consider civil rights discrimination, and particularly religious discrimination, to be significant policy issues. And by any measure, they are issues with “broad societal impact,” SLB 14L, that generate “widespread public debate,” SLB 14A. Political and religious discrimination are prohibited by numerous laws.⁴ They are becoming increasingly relevant in corporate America through issues like de-banking and deplatforming, which have taken center stage at the Supreme Court and the biggest news outlets in the last year alone.⁵

GARM in particular has generated intense public controversy. In July 2024, the Daily Wire reported on a House Judiciary Committee report and hearing exposing GARM’s collusion with many of the world’s biggest ad buyers to boycott X and pressure social media platforms to more aggressively censor “hate” and “offensive” speech.⁶ The report noted that “colluding to suppress voices and views disfavored by the leading marketers at the world’s largest companies and advertising agencies is core to GARM’s founding principles” and that it had specifically targeted conservative news outlets and the social media platform X by weaponizing its ad spending power.⁷ After the House report and a lawsuit from X, GARM quickly disbanded.⁸

Despite GARM’s dissolution, ad buyers and agencies are still participating in censorship schemes. For example, Forbes recently wrote that many marketers are

⁴ See, e.g., U.S. Const. amend. I; 42 U.S.C. §§ 2000a, 2000e-2, 3604; 15 U.S.C. § 1691; Justia, *Public Accommodations Laws: 50-State Survey*. Political discrimination is also an emerging field in nondiscrimination law. See, e.g., D.C. Code § 2-1402.11; N.Y. Lab. Law § 201-d; Wash. Rev. Code Ann. § 42.17A.495(2).

⁵ Justin Jouvenal, Supreme Court rules official likely violated NRA’s free speech rights, *The Washington Post* (May 30, 2024), <https://www.washingtonpost.com/politics/2024/05/30/nra-first-amendment-rights-supreme-court-vullo/>; Abbie VanSickle, David McCabe, and Adam Liptak, *Supreme Court Declines to Rule on Tech Platforms’ Free Speech Rights*, *The New York Times* (July 1, 2024), <https://www.nytimes.com/2024/07/01/us/supreme-court-free-speech-social-media.html>; Thomas Catenacci, *State financial officers put Bank of America on notice for allegedly ‘de-banking’ conservatives*, *Fox News* (Apr. 18, 2024), <https://www.foxnews.com/politics/state-financial-officers-put-bank-of-america-on-notice-for-allegedly-de-banking-conservatives>; see also Jathon Sapsford, *JPMorgan Targeted by Republican States Over Accusations of Religious Bias*, *The Wall Street Journal* (May 13, 2023), <https://www.wsj.com/articles/jpmorgan-targeted-by-republican-states-over-accusations-of-religious-bias-903c8b26>.

⁶ Brent Scher, *GARM Exposed: House Judiciary Report Says Ad Coalition Likely Broke Law To Silence Conservatives*, *Daily Wire* (July 10, 2024), <https://www.dailywire.com/news/garm-exposed-house-judiciary-report-says-ad-coalition-broke-law-to-silence-conservatives>.

⁷ *Id.*

⁸ Kate Conger and Tiffany Hsu, *Advertising Coalition Shuts Down After X, Owned by Elon Musk, Sues*, *The New York Times* (Aug. 8, 2024), <https://www.nytimes.com/2024/08/08/technology/elon-musk-x-advertisers-boycott.html>.

seeking new ways to avoid associating with alleged hate speech on social media even though GARM disbanded.⁹ Another group, Dentsu, is allegedly trying to start a new coalition “to encourage advertisers to invest their media budgets in credible news outlets.”¹⁰ And the Viewpoint Diversity Score’s 2024 Business Index found that an alarming 57% of top digital social media platforms and other digital service providers, from Alphabet to Zoom, restrict ad placements or other services based on political or religious views.¹¹

American Express does not contest that these are significant policy issues. Instead, it argues that the Proposal makes only “passing reference to alleged discrimination based on political or religious views” and instead focuses primarily on “the Company’s advertising policies.” NAR at 4. This is semantics. The proposal focuses on collusive and anti-competitive business behavior where the express aim was to censor speech. The Company characterizes this as “what the Proponent claims to be GARM’s goals.” NAR at 4. But this is GARM’s own expressed goal. As the Supporting Statement observes, GARM’s leader stated that the “extreme global interpretation of the US Constitution,” i.e. free speech, was the “whole issue bubbling beneath the surface” of the advertising industry which GARM sought to solve.¹²

And GARM’s entire operations were built around getting social media platforms to do more to censor “hate speech” and “misinformation” on their platforms. In addition to Rob Rakowitz’s anti-free speech statements explained above, GARM itself stated that it sought to “do more to address harmful and misleading media environments.”¹³ It did this through “measurement report[s] for digital brand safety,” which graded social media platforms based on how well they censored “hate speech” and similar types of speech GARM deemed problematic.¹⁴ It also touted its “Brand

⁹ Brad Adgate, *Marketers Are Seeking New Ways To Ensure Brand Safety On Digital Media* (Oct. 22, 2024), <https://www.forbes.com/sites/bradadgate/2024/10/21/marketers-are-seeking-new-ways-to-ensure-brand-safety-on-digital-media/>.

¹⁰ Joe Mandese, *Dentsu Unveils Post-GARM Ad Coalition, Backs Credible News Media*, Media Post (Sep. 5, 2024), <https://www.mediapost.com/publications/article/399036/dentsu-unveils-post-garm-ad-coalition-backs-credi.html>.

¹¹ Viewpoint Diversity Score, *2024 Business Index* at 18.

¹² U.S. House Judiciary Committee Report, *GARM’s Harm: How the World’s Biggest Brands Seek to Control Online Speech*, *supra* at 7.

¹³ World Federation of Advertisers, *Global Alliance for Responsible Media launches to address digital safety* (June 18, 2019), <https://wfanet.org/knowledge/item/2019/06/18/Global-Alliance-for-Responsible-Media-launches-to-address-digital-safety>.

¹⁴ World Federation of Advertisers, *GARM launches its first-ever measurement report for digital brand safety* (Apr. 20, 2021), via Wayback Machine <https://web.archive.org/web/20240518163944/https://wfanet.org/knowledge/item/2021/04/20/GARM-launches-its-first-ever-measurement-report-for-digital-brand-safety>.

Safety and Accountability Framework,” which were content moderation definitions and policies that it pressured social media platforms to adopt.¹⁵

A quick review of the Proposal’s Supporting Statement also shows that it focuses throughout on civil rights discrimination. The Proposal cites “the US Constitution,” “censorship” based on alleged “hate speech” and similar terms, three examples of GARM pressuring major platforms to censor religious and political speech, anti-discrimination laws, and ultimately asks for a report on “risks related to discrimination” against “political or religious status or views” so that American Express can “assure customers, shareholders, and others that it is protecting, not targeting, free speech and religious freedom.” These freedoms, and the discrimination against them, are the clear “subject matter” and focus of the Proposal. Exchange Act Release No. 20091 (Aug. 16, 1983). American Express cannot filter anti-competitive and censorious behavior through ordinary business under the guise of brand management.

GARM itself said that it wanted its members to “rise above individual commercial interest.”¹⁶ Rob Rakowitz also repeatedly emphasized the need for “uncommon collaboration,” which he defined as “the industry coming together and putting aside competitive concerns.”¹⁷

But even assuming this could be characterized as ordinary business, a proposal can both relate to a company’s “nitty-gritty of its core business” and still focus on a significant policy issue. SLB 14H. Were the rule otherwise, Bulletin 14H would have no effect and the “significant policy issue” would not be an exception from the ordinary business operations ground for exclusion. In other words, a proposal cannot be excluded if it focuses on a significant policy issue, full stop. And the Proposal here does.

American Express appears to argue that shareholder proposals may not ask about any risks, “including risks related to its business activities and advertising,” and cites various no-action decisions to this point. NAR at 5. This is patently not the case. Staff Legal Bulletin 14E assesses which “proposals relating to risk” may be excluded or included under 14a-8(i)(7). Division of Corporate Finance, Staff Legal Bulletin 14E (Oct. 27, 2009). And Staff Legal Bulletin 14L recognizes that there are “risks or other strategic matters appropriate for shareholder input.” SLB 14L. Further, Staff have approved of numerous proposals asking about “risks.” *See, e.g., JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023) (“risks related to discrimination against individuals”); *Meta Platforms, Inc. (HEST)* (Apr. 2, 2022) (“risks created by Company business practices that prioritize internal financial returns over healthy social and

¹⁵ U.S. House Judiciary Committee Report, *GARM’s Harm: How the World’s Biggest Brands Seek to Control Online Speech*, *supra* at 10.

¹⁶ *Id.*

¹⁷ *Id.*

environmental systems”); *Alphabet, Inc. (CtW)* (Apr. 16, 2021) (“risks related to anticompetitive board practices”).

The Proposal here asks for a report on how American Express oversees “risks related to discriminating against ad buyers and sellers based on their political or religious status or views.” This type of report is like the risk report proposals that Staff approved of in *JPMorgan Chase & Co.*, *CVS Health Corp.*, *PayPal Holdings, Inc.*, and *McDonald’s Corp.*, as explicated above, because it demonstrates a clear focus on significant issues of discrimination against civil rights.

B. The Proposal asks for a typical risk report, which is far afield from micromanaging the Company.

American Express contends that the Proposal micromanages the company because its advertising strategy is too complex of an issue for shareholders to weigh in on. But Staff disagreed when evaluating two similar Alphabet proposals dealing with broader content management issues—the counterpart to GARM’s and the Company’s advertising restrictions—and complex algorithmic systems for targeted advertising. And far from micromanaging the company, the Proposal asks merely for a risk report—the contours of which are left to management’s discretion—that is typical of many other risk reports that do not come close to micromanaging a company.

1. Staff regularly agree that transparency reports do not micromanage a company.

The Commission requires that shareholder proposals not “‘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.” 1998 Release at 29108. This can happen “where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* But “specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.” SLB 14L. “[P]roposals may seek a reasonable level of detail without running afoul of these considerations.” 1998 Release at 29108.

Staff clarified in Bulletin 14L that they expect proposals to seek a level of detail that is “consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” SLB 14L. To that end, Staff also considers the “sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic,” including “references to well-established national or international frameworks when assessing proposals related to disclosure . . . as indicative of topics that shareholders are well-equipped to evaluate.” *Id.*

This reading of the rule, the Bulletin notes, appropriately accounts for each company's and proposal's particular circumstances while ameliorating the "dilemma many proponents face": crafting a proposal specific enough that the company has not substantially implemented it while being general enough to avoid micromanaging the company. *Id.*

For this reason, Staff have rejected micromanagement challenges to proposals asking for a transparency report on particular policies and aspects of a company's business. Notably, this includes proposals that address discrimination in targeted advertising, *Alphabet Inc. (Trillium)* (Apr. 15, 2022) and addressing misinformation to maintain the trust of advertisers, *Alphabet Inc. (Mims Trust)* (Apr. 12, 2022).

Indeed, Staff has recognized that shareholders are sophisticated enough to provide input on a wide range of human rights issues in various parts of a company's operations. In addition to the above, Staff also recently rejected challenges to reports asking about the ethical implications of artificial intelligence, *Apple Inc. (AFL-CIO)* (Jan. 3, 2024), the costs and benefits of smoke-free premises, *Boyd Gaming Corp.* (Mar. 18, 2024), *Caesars Entertainment, Inc.* (Apr. 19, 2024), the misuse of computer chips and semi-conductors in war-torn conflict-affected areas, *Texas Instruments Inc.* (Mar. 4, 2024), and underwriting clients who contribute to new fossil fuel supplies, *see, e.g., Citigroup Inc.* (Mar. 7, 2022).

This makes sense. Transparency reports are not prescriptive requests for policy changes, unlike many proposal requests. And even those "do not per se constitute micromanagement." SLB 14L.

2. The Proposal asks for a typical transparency report.

The Proposal here falls in line with Staff's consistent understanding that transparency reports, including ones on discriminatory advertising policies, do not micromanage a company. And by any measure, the Proposal clears the bar. It does not prescribe any policies or practices and seeks only transparency. Further, it defers completely to American Express on the methods, form, and substantive considerations to be included in the report.

American Express contends that its "multi-faceted advertising strategy" is too complex for shareholders to weigh in on. NAR at 6. Alphabet made the same argument when discussing its corresponding content management practices and noted the "complex assessment regarding the intersection of free speech, product quality, and technology." *Alphabet Inc. (Mims Trust)* (Apr. 12, 2022) at 7–8. But Staff rejected this argument, as well as Alphabet's similar argument on a proposal asking about the discriminatory effects of algorithms that deliver targeted advertisements for users. Neither was too complex of an issue for shareholders to weigh in on. The same is true here, if not more so, due to the complexity and magnitude of Alphabet's content management practices and algorithms. This is further underscored by the

growing “availability of data, and the robustness of public discussion and analysis on the topic” of discrimination in advertising, as discussed above. SLB 14L.

American Express also wrongly relies on multiple proposals seeking voluminous disclosures of workforce training materials. It cites *Deere and Co.* (Jan. 3, 2022) at 11 and *American Express Co.* (Mar. 11, 2022) at 16, which asked for the annual publication of all the “written and oral content of any employee-training materials” offered to any employees, even for voluntary training, and *Verizon Communications Inc. (NCPPr)* (Mar. 17, 2022) at 13, which similarly sought all “the written and oral content of diversity, inclusion, equity or related employee-training materials.” But each of these proposals sought voluminous raw data and content to reevaluate a wide range of granular training decisions.

Compare this with the proposal in *The Walt Disney Co. (NCPPr)* (Jan. 19, 2022), where the proposal focused on the same issue—diversity, equity, and inclusion—but asked instead for a “workplace non-discrimination audit analyzing Disney’s impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace.” *Id.* at 13. Staff there agreed that this proposal did not micromanage the company. Like the proposal there, the Proposal seeks management’s distilled business judgments so that shareholders can provide input on high-level strategic matters.

American Express also relies on *The Coca-Cola Co.* (Feb. 16, 2022) and *JPMorgan Chase & Co.* (Mar. 13, 2019). But in *Coca-Cola*, the proponent made its desire to second-guess management explicit: the proposal would have required the company to submit proposed political statements to shareholders for approval. And in *JPMorgan Chase*, the proposal asked the company to avoid “holding or recommending investment in companies that . . . substantially contribute to genocide or crimes against humanity” and to “institute transparent procedures” to that same end.

The Proposal is much more like those approved of in *Meta* and *Alphabet* above. Like those proposals, the Proposal here does not ask the Company to adopt any specific policies or practices. Nor does it seek voluminous disclosures so that shareholders can second-guess management. Instead, it expressly relies on management’s expertise in evaluating business decisions to generate a risk report—the contours of which are left to management’s discretion—on an issue of immense social import. These are exactly the kind of “impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.” SLB 14L.

Conclusion

For these reasons, we request that the Staff reject American Express’s request for relief from Dr. Rivers’ Proposal. A copy of this correspondence has been timely provided to American Express. If we can provide additional materials to address any queries the Commission may have on this letter, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael Ross". The signature is written in a cursive, flowing style.

Michael Ross

Cc: James Killerlane III