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

DIVISION OF
CORPORATION FINANCE

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 Lillian Price 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 excluding religious charities from the Company's employee-gift match program impacts the risks related to religious discrimination against employees.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). In our view, the Proposal is materially false and misleading. 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)(3). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

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: Robert Netzly
Inspire Investing, LLC

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 Inspire Investing, LLC

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 Inspire Investing, LLC (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, Rule 14a-8(i)(3) under the Exchange Act because the Proposal contains materially false or misleading statements and is impermissibly vague and Rule 14a-8(i)(5) under the Exchange Act because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business.

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 conduct an evaluation and issue a report within the next year, at reasonable cost

and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how excluding religious charities from its employee-gift match program impacts the risks related to religious discrimination against employees.

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 for the following reasons:

A. The Proposal may be excluded 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;

B. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) under the Exchange Act, because the Proposal contains materially false or misleading statements and is impermissibly vague; and

C. The Proposal may be excluded pursuant to Rule 14a-8(i)(5) under the Exchange Act, because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business.

ANALYSIS

A. 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.

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) (finding that a proposal requesting 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); *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).

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

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business functions related to general employee compensation and benefits matters as well as decisions regarding charitable contributions.

The Proposal requests that the Company evaluate and issue a report on how excluding religious charities from the Company's employee gift match program impacts the risks related to religious discrimination against employees. The supporting statement claims the Company "appears to exclude religious programs from its gift match program" through a policy of not matching employee charitable contributions to any group that incites hatred or promotes discrimination. As support for its claims, the Proponent refers to what appears to be the Terms of Use of Benevity, Inc. ("Benevity"), a third-party charitable software platform the Company uses to manage its employee donations gift match program for charitable causes.

The Company does not play any role in determining whether a charitable organization conforms to Benevity's Terms of Use or is otherwise eligible for inclusion on the Benevity platform. Pursuant to the Company's gift match program, eligible employees can donate to any charitable organization, including religious or faith-based organizations, that are approved by Benevity and registered on Benevity's platform, and the Company matches contributions to such organization up to certain specified amounts per employee, annually. According to Benevity's Terms of Use, Benevity determines, in its sole discretion, whether an organization is eligible to register to receive contributions through its platform by considering a number of factors. These factors include whether the organization is registered and in good standing with its local government or regulatory authority, is in compliance with all applicable laws and regulations, has not engaged in any conduct that violates any laws relating to terrorism, money laundering, fraud, bribery or other financial crime, does not publish content that condones violence or incites hatred and is not registered or operating in any country that is subject to economic or comprehensive sanctions imposed by relevant international authorities, among other factors. In making this determination, Benevity states that it considers content published both on and off Benevity's platform.

In analyzing shareholder proposals relating to a company's compensation and benefits program, the Staff has distinguished between proposals that relate to general employee compensation and benefits and proposals that address only executive officer and director compensation and benefits. The former implicates a company's ordinary business operations and thus are excludable under Rule 14a-8(i)(7). *See Staff Legal Bulletin No. 14A* (Jul. 12, 2002) ("SLB No. 14A") (indicating that "[s]ince 1992, [the Staff has] applied a bright-line analysis to proposals concerning equity or cash compensation" under which companies "may exclude proposals that relate to general employee compensation matters in reliance on [R]ule 14a-8(i)(7)" but "may [not] exclude proposals that concern only senior executive and director compensation"); *Xerox Corp.* (Mar. 25, 1993).

In accordance with the approach articulated in SLB No. 14A, the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(7) when the proposals relate to employee compensation and benefits matters. *See Dollar Tree, Inc.* (May 2, 2022) (concurring with the exclusion of a proposal that requested a report explaining how the company's business strategy and incentives will enable competitive employment standards, including wages and benefits, finding that the proposal was related to ordinary business matters). A shareholder proposal that focuses on even just one aspect of non-executive employee compensation and benefits, such as stock-based incentives, relates to ordinary business operations and is thus excludable. *See, e.g.*, *Amazon.com, Inc.* (Apr. 8, 2022) (concurring with the exclusion of a proposal that requested an annual report assessing the distribution of stock-based incentives throughout the company's worldwide workforce, finding that the proposal was related to ordinary business operations); *Walmart Inc.* (Mar. 12, 2021) (concurring with the exclusion of a proposal that requested a report on the feasibility of providing two weeks of paid sick leave as an employee benefit); *McDonald's Corp.* (Feb. 19, 2021) (concurring with the exclusion of a proposal that requested a report on the feasibility of extending the paid sick leave policy adopted in response to COVID-19 as a standard employee benefit); and *Exelon Corp.* (Feb. 21, 2007) (concurring with the exclusion of a proposal to eliminate pension plan offsets). The Company's employee gift match program is part of its standard benefits package offered to all U.S. full and part-time colleagues, defined as employees working at least 20 hours per week. Because the Proposal focuses on non-executive employee benefits programs and their administration, the Company may exclude it from the 2025 proxy materials pursuant to Rule 14a-8(i)(7).

In addition, the Staff has consistently concurred that proposals that focus on a company's charitable contributions, including its practices with respect to matching employees' charitable contributions, may be excluded pursuant to Rule 14a-8(i)(7) because such contributions are ordinary business matters. *Netflix, Inc.* (Apr. 9, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested an annual report listing and analyzing charitable contributions made or committed during the prior year). The Staff has found that selecting from a range of communities and social issues to support, choosing beneficiaries and allocating financial and labor resources are ordinary business issues for management. *The Walt Disney Co.* (Nov. 20, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions) (hereinafter "*Disney 2014*"). Accordingly, a proposal focused primarily on relationships with or contributions made to specific organizations or types of organizations is excludable under Rule 14a-8(i)(7) as relating to ordinary business operations, both in instances where that focus is clear from the resolution and in instances where, despite a facially neutral resolution, that focus is clear from the proposal viewed in its entirety. *Johnson & Johnson* (Mar. 2, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report explaining the business rationale for the company's participation in corporate and executive membership organizations); s*ee also AT&T Inc.* (Jan. 15, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions where the supporting statement referred to "highly divisive" charitable commitments); *Facebook, Inc.* (Mar. 26, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions where the supporting statement referred to "highly divisive" charitable commitments, including contributions to specific organizations that supported certain racial justice movements); *JPMorgan Chase & Co.* (Feb. 28, 2018) (permitting exclusion under

Rule 14a-8(i)(7) of a proposal requesting an annual report concerning the company's charitable contributions where the supporting statement referenced contributions to specific organizations as relating to "contributions to specific types of organizations"); *PG&E Corp.* (Feb. 4, 2015) (permitting exclusion of a proposal requesting that the company form a committee to solicit feedback on the effect of anti-traditional family political and charitable contributions); *PepsiCo* (Feb. 24, 2010) (permitting exclusion of a proposal to prohibit support of organizations that reject or support homosexuality); *Target Corp.* (Mar. 31, 2010) (concurring in exclusion of a proposal requesting a report on charitable donations and a feasibility study of policy changes); *Wachovia Corp.* (Jan. 25, 2005) (permitting exclusion of a proposal recommending that the board disallow the payment of corporate funds to Planned Parenthood and any other organizations involved in providing abortion services); and *The Boeing Co.* (Jan. 21, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal directing the company to include the Boy Scouts of America as an eligible organization in the company's employee gift match program).

The Staff has made clear that decisions of this nature should be left to management and the board of directors and giving shareholders the ability to participate in these business decisions would constitute inappropriate shareholder involvement in the Company's ordinary business. When evaluating the administration of the Company's employee gift match program, management considers a range of factors, including the Company's business strategy and goals for its charitable giving program, which are outside the knowledge and expertise of shareholders. This decision-making is clearly part of the day-to-day management of the Company that relates to the Company's ordinary business operations. *See Disney 2014*. Therefore, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(7).

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

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 would affect a company's activities and management's 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). For purposes of the micromanagement analysis, it is irrelevant whether the proposal raises issues with a broad societal impact. *See Staff Legal Bulletin No. 14E* (Oct. 27, 2009) (indicating that "a proposal [raising a significant policy issue] could be excluded under Rule 14a-8(i)(7)…if 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").

As discussed herein, the Company selected Benevity to administer its employee gift match program and continues to match employee donations to religious and faith-based organizations that are registered on the Benevity platform. Eligible employees may participate in the Company's employee gift match program by entering the Company's online Benevity portal

and contributing to charitable causes listed on Benevity's platform. The Company matches eligible employee donations up to certain specified amounts and subject to certain terms and conditions, as discussed above. As described above, according to Benevity's Terms of Use, Benevity determines, in its sole discretion, whether an organization is eligible to receive contributions through its platform by considering a number of factors. These factors include whether the organization is registered and in good standing with its local government or regulatory authority, is in compliance with all applicable laws and regulations, has not engaged in any conduct that violates any laws relating to terrorism, money laundering, fraud, bribery or other financial crime, does not publish content that condones violence or incites hatred and is not registered or operating in any country that is subject to economic or comprehensive sanctions imposed by relevant international authorities, among other factors. The Company does not play any role in determining whether a charitable organization conforms to Benevity's Terms of Use or is otherwise eligible for inclusion on the Benevity platform. The Company's management selected Benevity as the administrator of its employee gift match program based on, among other things, an assessment of the Company's operational needs and the ease of use of the Benevity platform. As the Staff articulated in the 1998 Release, a company's management and board of directors are best situated to make ordinary business decisions, such as those relating to selection of a third-party charitable donation platform to administer an aspect of the non-executive employee benefits. The decision of which vendor the Company uses to manage its employee gift match program is too granular for shareholders, as a group, to make an informed judgment about it. *See Alaska Air Group, Inc.* (Mar. 8, 2010) (noting that "[p]roposals concerning decisions relating to vendor relationships are generally excludable under [R]ule 14a-8(i)(7)"); *see also Continental Airlines, Inc.* (Mar. 25, 2009) (noting that "decisions relating to vendor relationships" relate to ordinary business operations). The Proposal therefore micromanages the Company and is excludable from the 2025 Proxy Statement under Rule 14a-8(i)(7). 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* 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.

As described above, the Proposal and supporting statement cite alleged discrimination against employees based on their religion or religious views. 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* 1998 Release. The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. *See, e.g.*, *JPMorgan Chase & Co.* (Mar. 29, 2024) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish a review of whether and to what extent it requested that its clients deny their products or services to certain customers or categories of customers, or has demanded such restrictions as a condition of the company's continuing to do business with said clients); *PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that addressed the potential significant policy issue of the humane treatment of animals but also covered a broad scope of laws ranging from animal abuse to record keeping violations); and *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that addressed the potential significant policy issue of access to affordable health care but also asked the company to report on expense management).

In this instance, although the Proposal touches on alleged religious discrimination, its focus is on the Company's general employee compensation and benefits matters and its decisions regarding charitable contributions, which are ordinary business matters. The Staff has previously permitted exclusion of proposals that facially pertained to social issues such as discrimination, while primarily focusing on the company's ordinary business matters. *See, e.g.*, *PayPal Holdings, Inc.* (Apr. 10, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested revision of the company's transparency reports to include explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services); *Nike, Inc.* (May 1, 2020) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the risks of company involvement in the debate about state policies on abortion and other "hot-button" social issues); *Amazon.com, Inc.* (Mar. 23, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal concerning the company's placement of promotional or other marketing material on its online sites that produce and disseminate content that expresses hatred or intolerance); and *Disney 2014*.

Despite the reference to "religious discrimination," the Proposal is principally focused on the disclosure of the charitable contributions benefit which is a part of the Company's employee compensation and benefits program and which, as stated, does not exclude charitable gifts or matched contributions to religious or faith-based organizations. Accordingly, the Proposal concerns an ordinary business matter that is not transcended by a significant social policy issue and is excludable under Rule 14a-8(i)(7).

B. Under Rule 14a-8(i)(3), the Proposal may be excluded because the Proposal contains materially false or misleading statements and is impermissibly vague.

1) Rule 14a-8(i)(3) Background

Rule 14a-8(i)(3) permits a company to exclude all or portions of a shareholder proposal "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Specifically, Rule 14a-9(a) provides that "[n]o solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading." The Staff has determined that shareowner proposals may be excluded pursuant to Rule 14a-8(i)(3) where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *Staff Legal Bulletin No. 14B* (Sept. 15, 2004) ("SLB No. 14B"). In SLB No. 14B, the Staff articulated that "reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where…the company demonstrates objectively that a factual statement is materially false or misleading."

In addition, in accordance with SLB No. 14B, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(3) where the proposal contained an essential term or phrase that, in applying the particular proposal to the company, was unclear, such that neither the company nor shareholders would be able to determine with any reasonable certainty what actions or measures the proposal requires. *See, e.g.*, *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); *Pfizer Inc.* (Dec. 22, 2014) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy that "the Chair of the Board of Directors shall be an independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship," where it was unclear whether the proposal intended to restrict or not restrict stock ownership of directors and any action taken by the company to implement the proposal, such as prohibiting directors from owning nontrivial amounts of company stock, could be significantly different from the actions envisioned by shareholders); *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company's policies and procedures relating to "directors' moral, ethical and legal fiduciary duties and opportunities" to ensure the protection of privacy rights, where it was unclear how the essential term "moral, ethical and legal fiduciary" applied to the directors' duties and opportunities); *General Dynamics Corp.* (Jan. 10, 2013) (permitting exclusion under Rule 14a-

8(i)(3) of a proposal requesting a policy that, in the event of a change of control, there would be no acceleration in the vesting of future equity pay to senior executives, "provided that any unvested award may vest on a pro rata basis," where it was unclear how the essential term "pro rata" applied to the company's unvested awards); *The Boeing Co.* (Jan. 28, 2011, recon. granted Mar. 2, 2011) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that senior executives relinquish preexisting "executive pay rights," where it was unclear how to apply the essential term "executive pay rights").

2) *The Proposal may be excluded because it contains materially false or misleading statements.*

In describing the Company's employee gift match program, the supporting statement of the Proposal states that the Company "will not match employee gifts to any group that, *in its determination*, 'incites hatred or promotes discrimination'" (emphasis added). But, as explained above, the Proponent cites to *Benevity's* policy. The Company does not play any role in determining whether a charitable cause conforms to Benevity's Terms of Use and the Company does not determine if a charitable cause is eligible for inclusion on the Benevity platform. The Proposal incorrectly conflates the policies of Benevity with those of the Company and, accordingly, is materially false or misleading and may be excluded from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(3).

3) *The Proposal may be excluded because it is impermissibly vague and indefinite.*

The Proposal requests that the Board evaluate and issue a report on how excluding religious charities from the employee gift match program impacts the risks related to religious discrimination against employees. In the Proponent's view, the employee gift match program's policy allows it to "pick and choose certain viewpoints" and "[screen] out some or all religious charities."

However, as discussed above, neither Benevity nor the Company have policies that exclude religious charities from eligibility under the Company's employee gift match program. Given that the Company does not have a policy "excluding religious charities from its employee-gift match program," it is unclear what the Company is being asked to evaluate and issue a report about in order to implement the Proposal, and shareholders could mistakenly believe that the Company has such a policy. It likewise remains unclear which risks or activities the Proposal is seeking to be addressed in the requested report, as the Proposal asks the Company to prepare a report on the risks of doing something that the Company does not currently do. The Proponent would need to make major substantive revisions in order to allow shareholders and the Company to determine with any reasonable certainty exactly what actions or measures the Proposal requires.

Accordingly, the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is inherently vague and indefinite in violation of Rule 14a-9.

C. Under Rule 14a-8(i)(5), the Proposal may be excluded because the Proposal relates to operations that are not economically significant or otherwise significantly related to the Company's business.

1) Rule 14a-8(i)(5) Background

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded "[i]f the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB No. 14I"), the Staff noted that it "will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales." The Staff further noted in SLB No. 14I that "[w]here a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is 'otherwise significantly related to the company's business."

Following SLB No. 14I, the Staff has consistently concurred with the exclusion of proposals consistent with the underlying purpose of Rule 14a-8(i)(5), even where such proposals raise an issue of social or ethical significance. *See, e.g.*, *Reliance Steel & Aluminum Co.* (Apr. 2, 2019) (concurring with the exclusion of a proposal requesting a report on political contributions and expenditures that contains information specified in the proposal) and *Dunkin' Brands Group, Inc.* (Feb. 22, 2018) (concurring with the exclusion of proposal seeking a report assessing the environmental impacts of continuing to use K-Cup Pods brand packaging). Proposals that merely touch on issues of social or ethical significance may be excluded under Rule 14a-8(i)(5), notwithstanding their importance in the abstract, unless those issues significantly relate to the Company's business.

2) The Proposal may be excluded because it relates to operations that account for less than 5% of the Company's total assets, net earnings and gross sales.

The Proposal relates to an employee compensation and benefits program benefit that accounts for less than 5 percent of the Company's total assets, net earnings and gross sales. In particular, the Proposal addresses risks related to the Company's employee gift match program. The Company's aggregate charitable contributions resulting from the employee gift match program represents less than 1% of the Company's total assets in its most recently completed fiscal year, 2023. The Company also expects its expenses related to the employee gift match program to represent a similarly insignificant percentage based on the Company's total assets, net earnings and gross sales for fiscal years 2024 and 2025. Accordingly, it is clear that the Proposal does not relate to operations that are economically significant to the Company and is therefore excludable under Rule 14a-8(i)(5).

3) The Proposal may be excluded because it is not otherwise significantly related to the Company's business.

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's employee gift match program is part of its standard benefit package offered to all U.S. full and part-time colleagues, defined as employees working at least 20 hours a week. The program is just one of the employee benefits within the Company's employee compensation and benefits program, meaning it bears no significant relationship to the Company's actual business of issuing cards and processing payments. The Proposal's significance to the Company's business is not apparent on its face, and the Proponent has provided no factual or other support in the Proposal to satisfy its burden of demonstrating that the Proposal is otherwise significantly related to the Company's business. Therefore, the Proposal is excludable under Rule 14a-8(i)(5).

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,

James J. Killerlane III
Corporate Secretary and Chief Governance Officer

Enclosure

cc: Lilian Price, via email at [redacted]
Inspire Investing, LLC, 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.

Via Email

November 15, 2024

Corporate Secretary & Chief Governance Officer
American Express Company
200 Vesey Street
New York, NY 10285

Re: Proposal regarding Report on Employee Charitable Giving Match

Dear Corporate Secretary & Chief Governance Officer,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the American Express Company (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-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: Lilian Price
Company: American Express Company
Subject: Report on Employee Charitable Giving Match

Inspire Investing, LLC submits the Proposal on behalf of, and with the permission of, Lilian Price ("Shareholder"), who has continuously held Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and who intends to hold these shares through the date of the Company's 2025 annual meeting of shareholders. A letter from Lilian Price authorizing Inspire Investing, LLC to submit this proposal on his behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder's ownership as of the date of this proposal's submission is forthcoming. Copies of correspondence or a request for a "no-action" letter should be sent to me and Tim Schwarzenberger at Inspire Investing [redacted] and emailed to [redacted]

Sincerely,

Robert Netzly

Robert Netzly
Chief Executive Officer

Tim Schwarzenberger

Tim Schwarzenberger, CFA
Director of Shareholder Engagement

Enclosure: Shareholder Proposal

Via Email

November 15, 2024

Corporate Secretary & Chief Governance Officer
American Express Company
200 Vesey Street
New York, NY 10285

Re: Authorization to File Shareholder Proposal

Dear Corporate Secretary & Chief Governance Officer,

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

Proponent: Lilian Price
Company: American Express Company
Subject: Report on Employee Charitable Giving Match

The Proponent gives Inspire Investing, LLC 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 Inspire Investing, LLC to write a more detailed statement of support of the proposal on the Proponent's behalf.

Lilian Price (the "Proponent") has continuously owned Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and intends to hold these 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 25, 2024 @ 11:00 pm Eastern Time
December 3, 2024 @ 11:00 pm Eastern Time

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

Sincerely,

DocuSigned by:
402A45683D19401...

Lilian Price 11/13/2024 | 15:58:36 PST

Report on Employee Charitable Giving Match

Supporting Statement:

American Express Company is one of the largest companies in the United States and employs over 74,000 people. As a major employer, American Express should support the religious freedom of its employees. American Express is already required to comply with many laws prohibiting discrimination against employees based on their religious status and views.

Respecting diverse religious views allows American Express to attract the most qualified talent, promote a diverse and vibrant business culture, and is a key component to make sure it fully engages each of its employees. One of the best ways companies can do that is by supporting employee philanthropy.

Employee-matching gift programs are an important way to foster volunteerism and community engagement within company workforces. But the 2024 edition of the Viewpoint Diversity Score Business Index[1] found that 61% of scored companies exclude or threaten to exclude religious organizations from their employee-match programs for the organizations' religious status or advocacy. This includes American Express, which appears to exclude religious programs from its gift match program and states that it will not match employee gifts to any group that, in its determination, "incites hatred or promotes discrimination." [2]

American Express should support philanthropic freedom for employees of every religious and political stripe, not pick and choose certain viewpoints and certainly not screening out some or all religious charities. This tells employees that their faith is not welcome at work.

According to the 2023 Freedom at Work survey, 60% of employees were concerned that their company would punish them for expressing their religious or political views at work, and 54% said they feared the same for sharing these views even on their private social media accounts.[3] American Express can partially address this shortcoming by allowing employees to direct matching gifts to religious charities.

Recent Supreme Court decisions in *Groff v. DeJoy* and *Muldrow v. City of St. Louis* have also clarified that religious protections for employees extend to all terms, conditions, and privileges of employment, not just monetary compensation. American Express may be legally exposed if it does not support employee philanthropy for religious employees on equal terms with non-religious employees.

Resolved: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how excluding religious charities from its employee-gift match program impacts the risks related to religious discrimination against employees.

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[1] https://www.viewpointdiversityscore.org/.

[2] https://www.viewpointdiversityscore.org/company/american-express

[3] https://www.viewpointdiversityscore.org/polling.

ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE.

January 27, 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 Lilian Price at American Express Company under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing for Lilian Price ("Proponent") to defend her shareholder proposal ("Proposal") to American Express Company ("American Express" or the "Company").

James J. Killerlane III, Corporate Secretary and Chief Governance Officer for American Express, wrote to you on December 20, 2024, to ask you to concur with American Express's view that it can exclude Ms. Price's shareholder proposal from its 2025 Annual Meeting of Shareholders under 17 CFR § 240.14a-8 ("Rule 14a-8"). American Express has the burden of demonstrating it is entitled to exclude the Proposal under Rule 14a-8(g). But it cannot bear this burden.

The Proposal asks American Express to report to shareholders how excluding religious charities from its employee-gift match program impacts the risks related to religious discrimination against employees. American Express raises four separate grounds for exclusion under Rule 14a-8: significant social policy and ordinary business (i)(7), micromanagement and ordinary business (i)(7), material falsity and vagueness (i)(3), and economic significance (i)(5).

The Company's arguments fail on each count. American Express contends that the Proposal relates to its ordinary business operations and micromanages the company because it involves the Company's charitable giving and employee benefits, not religious discrimination. But because the Proposal only asks for a risk report, rather than the imposition of any specific policy, the Proposal does not micromanage the company. And the Proposal evinces a clear focus on religious discrimination. A Proposal can both relate to the nitty gritty of a company's business and still focus on a significant social policy issue. And the Proposal here does the latter because it focuses on a particular way that American Express may discriminate against

religious employees. So it cannot be excluded for relating to ordinary business operations, full stop.

For a similar reason, American Express's argument that the Proposal may be excluded because the Company's charitable gift match program accounts for less than five percent of its assets also fails. Because the Proposal's focus is on religious discrimination, which is a significant social policy issue, the Proposal is otherwise significantly related to the Company's business.

Finally, American Express cannot show that the Proposal contains a material falsity or is impermissibly vague. The Company argues that, because the gift match policy at issue is administered by Benevity, a third-party vendor, and not American Express, the Proposal's attribution of the policy to American Express is materially false and creates a vague directive. But the Proposal has nothing to say about who administers the gift match program because that is wholly immaterial. Regardless of the entity administering it, the Proposal asks American Express to evaluate the risks of the policy related to religious discrimination, a request that is clear and accurate.

American Express is welcome to voice its disagreement in an opposition statement on the proxy ballot. But that disagreement does not give it a right to silence an opposing viewpoint from a bona fide shareholder concerned about the Company's charitable contributions, as Staff have repeatedly recognized. *See, e.g.*, *Target Corp. (NCPPR)* (Apr. 19, 2024); *Kohl's Corp.* (Mar. 14, 2024); *Levi Strauss & Co.* (Mar. 8, 2024); *Dell Tech., Inc.* (Apr. 24, 2024). If anything, this shows only that American Express may have a blind spot on censorship that needs correcting to bring it in line with its diverse shareholders and other stakeholders.

The Proposal

The Proposal provides:

> **Resolved:** Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how excluding religious charities from its employee-gift match program impacts the risks related to religious discrimination against employees.

The Supporting Statement explains that "American Express should support the religious freedom of its employees," as "[r]especting diverse religious views allows American Express to attract the most qualified talent, promote a diverse and vibrant business culture, and is a key component to make sure it fully engages each of its employees." But it explains that because American Express "appears to exclude religious programs from its gift match program," the Company "tells employees that their faith is not welcome at work."

The Statement cites a recent survey finding that 60% of employees were concerned their employer would punish them for expressing their religious views. And it cites two recent Supreme Court cases reaffirming the religious protections afforded to employees. The Statement explains that by addressing religious discrimination through its gift match program, American Express can create a more welcoming environment for religious employees while also protecting itself from legal risk.

Discussion

A. The Proposal unambiguously focuses on a significant social policy issue that transcends the Company's ordinary business operations.

To meet its burden of showing that it can exclude Ms. Price's Proposal for failing to focus on a significant social policy, American Express must show that the Proposal both does not focus on a significant social policy issue and that it relates to the "nitty-gritty" of the company's ordinary business operations. American Express contends otherwise but it misreads Commission and Staff guidance directly addressing this. The Company also cannot bear its burden under either requirement.

The Proposal shows a consistent focus on discrimination on the basis of religion, which the Commission and Staff guidance have proven is a perennially significant social policy issue. Further, the Proposal focuses on American Express's charitable giving broadly, filtered through the lens of discrimination, and it only touches on employee benefits, so it does not relate to American Express's ordinary business operations.

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." This includes "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"). And 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 for transparency to address that subject matter. Exchange Act Release No. 20091 (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) ("SLB14A), 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 argues that even if a proposal relates "to both ordinary business matters and significant social policy issues," it may nevertheless be excluded if it is not "principally focused" on the significant social policy issue. No-Action Request ("NAR") at 8. This muddies the waters and treats the significant social policy and ordinary business operations rules either as a binary or part of a continuum. A proposal that focuses on a significant social policy issue simply cannot be excluded for relating to ordinary business operations, period. This is independent of whether a proposal relates to a company's ordinary business operations, as the Commission and Staff have consistently explained:

> [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). Staff then made this a major focus of Bulletin 14H nearly 10 years ago 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"). As the Bulletin states, "whether a proposal focuses on an issue of social policy that is sufficiently significant is not separate and distinct from whether the proposal transcends a company's ordinary business." *Id.* (quoting *Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 353 (3d Cir. 2015) (Schwartz, J., concurring)). Then, in Bulletin 14L, Staff clarified that the "significant social policy" rule is not an additional requirement for proposals, but an "exception" to the "ordinary business" rule. 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.

American Express must actually show that the Proposal both does not focus on a significant social policy issue and that it does relate to American Express's ordinary business operations. But it can do neither.

American Express's citations deal with proposals that did not demonstrate a sufficient focus on a significant policy issue. NAR at 8. Instead, unlike the Proposal here, they involved client account management, *JPMorgan Chase & Co.* (Mar. 29, 2024); *PayPal Holdings, Inc.* (Apr. 10, 2023), expense management, *CIGNA Corp.* (Feb. 23, 2011), public relations decisions, *Nike, Inc.* (May 1, 2020), product

advertisements, *Amazon.com, Inc.* (Mar. 23, 2018), or contributions to a particular organization with no focus on any policy issue, *The Walt Disney Co.* (Nov. 20, 2014). Nor does the Proposal focus on mundane "administrative matters such as record keeping." *PetSmart, Inc.* (Mar. 24, 2011). The above did not focus on any significant policy issues but instead raised issues that may have implicated, but did not directly address, significant policy issues.

2. Staff regularly agree that discrimination in civil rights is a significant social policy issue.

The Commission's and Staff's interpretations of the "significant social policy exception" repeatedly cite discrimination in civil rights matters as the 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.

As an initial matter, American Express cannot disclaim its own charitable gift matching program. It asserts that "[t]he Company does not play any role in determining whether a charitable organization conforms to Benevity's Terms of Use or is otherwise eligible for inclusion on the Benevity platform [for gift matching]." NAR at 4. But American Express signed the contract with Benevity and is ultimately responsible for the benefits it gives to employees. After all, it is American Express that is matching gifts for its employees, not Benevity. Surely American Express would not say that it cannot do anything about health benefits just because it works through a third-party to administer those benefits. American Express also admits that it does screen based on whether a company "incites hatred," which is well beyond minimal legal compliance and invites enforcement against organizations with mainstream religious views on topics like gender and sexuality.

Staff have consistently 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").

This also includes 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* (Feb. 10, 2015) (adopt "Holy Land" principles, including religious non-discrimination).

Staff has also consistently recognized that workforce discrimination, in a wide variety of contexts, is a significant social policy issue that transcends ordinary business operations. *See, e.g.*, *The Walt Disney Co.* (Jan. 19, 2022) (report on both median and adjusted pay gaps across race and gender); *J.B. Hunt Transport Services, Inc.* (Feb. 2, 2024) (adopt and disclose a policy of equitable healthcare coverage for all employees, regardless of sexual orientation or gender identity); *Amazon.com, Inc.* (Apr. 6, 2022) (audit and report on workplace health and safety of warehouse workers); *General Electric Co.* (Feb. 10, 2015) (adopt "Holy Land" principles of religious non-discrimination for workforce). These proposals, and many others, touch upon discrete workforce issues and what may otherwise be ordinary business operations. But because they focus on significant discrimination matters, Staff have told companies that they are not excludable.

3. The Proposal shows a clear focus on discrimination in civil rights, which is a quintessential significant social policy issue.

American Express fails to cite to or distinguish the Proposal from any of the Staff's many denials of relief for religious discrimination or other civil rights discrimination proposals. Instead, it argues that the Proposal's "focus is on the Company's general employee compensation and benefits matters and its decisions regarding charitable contributions, which are ordinary business matters." NAR at 8. But the Proposal deals with religious discrimination, so it does not relate to ordinary business matters. And even if it did, a proposal can both relate to ordinary business matters and still focus on a significant social policy issue, which religious discrimination is under any measure.

Civil rights issues are fundamental questions of social policy that have "broad societal impact" and "widespread public debate." American Express admits as much when it argues that the Proposal lacks a clear focus on "alleged discrimination against their employees based on their religion or religious views." *Id.* at 7. Nor, as explained above, could it contest that discrimination is a significant social policy issue. Religious discrimination in particular is prohibited by law in numerous contexts.[1]

Religious discrimination is becoming increasingly relevant to corporate America—particularly with companies' charitable giving. Robby Starbuck, for example, has

[1] *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*, https://www.justia.com/civil-rights/public-accommodations-laws-50-state-survey.

made national news for his social media campaigns that have resulted in many major companies dropping their commitments to diversity, equity, and inclusion policies. Other recent events show this in other corporate contexts. Last spring, a group of 15 state financial officers and 15 state attorneys general sent separate letters to Bank of America putting it on notice for de-banking multiple Christian and conservative organizations.[2] And over the summer, members of the U.S. House revealed that the Global Alliance for Responsible Media was colluding 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. After the House report and a lawsuit from X, GARM quickly disbanded.[3]

The Proposal takes no position on the proper balance of these risks against others. But it is undeniable that they are significant—and are growing in their significance—in our society today.

And the Proposal reflects a clear and consistent focus on these issues from top to bottom. The Supporting Statement cites as the motivation for the Proposal the risks associated with its decision to "pick and choose certain viewpoints" by "screening out some or all religious charities" from its charitable gift matching program. It explains how this type of discrimination is of increasing concern, as a recent survey revealed that "60% of employees were concerned that their company would punish them for expressing their religious or political views at work." And it warns that religious discrimination inhibits American Express's ability "to attract the most qualified talent" and "promote a diverse and vibrant business culture."

JPMorgan Chase & Co. (Bahnsen) (Mar. 21, 2023) is instructive. There, the proposal requested that the company issue a report evaluating how it oversees risk related to discrimination based on several characteristics. Despite the direct references to discrimination on speech and religion, among other grounds, the company argued that because the proposal still related to products and services, relationships with customers, and management of the workforce, it related to its ordinary business matters and should be excluded. The shareholders responded, however, that "the question of discrimination on grounds including race, color, sex, and religion is the central issue and clear focus" of the proposal, and since that question was a matter of significant social policy, it transcended any ordinary business matters. *Id.* at 8. The Staff concurred with the shareholders, finding that

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[2] 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; Gabrielle Saulsbery, *15 AGs put BofA on notice for 'de-banking' conservatives*, Banking Dive (Apr. 18, 2024), https://www.bankingdive.com/news/15-attorneys-general-put-bofa-notice-debanking-conservatives-christians/713618/.

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

"the Proposal transcend[ed] ordinary business matters." So too here. The Proposal's primary focus is on reducing discrimination, not just American Express's "general employee compensation and benefits matters and its decisions regarding charitable contributions," as American Express alleges.

And as explained above, Staff have also consistently recognized that religious discrimination in the workforce is a significant social policy issue. In *General Electric Company* (Feb. 10, 2015), for example, the proposal asked the company to adopt expansive "Holy Land" principles that covered hiring, recruiting, training, maintaining a respectful work environment, and publicly reporting on all these efforts.

American Express cites no decision nor makes any argument contesting that religious discrimination is a significant social policy issue. Instead, it merely asserts that the Proposal is related to charitable contributions and employee benefits, so it must focus on ordinary business matters. But as addressed in Sections 4.a–c below, charitable contributions are not themselves part of American Express's ordinary business operations, and while touching on employee benefits matters, the Proposal's focus is on discrimination.

4. The Proposal does not relate to American Express's ordinary business operations.

American Express argues that the Proposal relates to its ordinary business operations because it targets American Express's "general employee compensation and benefits matters as well as decisions regarding charitable contributions." NAR at 4. This is ultimately irrelevant because the Proposal focuses on a significant social policy issue. Again, Staff clarified in Bulletin 14H that "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.'"

a. Proposals focusing on charitable giving are generally not excludable.

Staff have long understood that charitable contributions generally are not part of a company's ordinary business operations. *Wells Fargo & Co.* (Feb. 19, 2010) ("we note that the proposal relates to charitable contributions, which the Division has generally found to involve a matter of corporate policy which is extraordinary in nature and beyond a company's ordinary business operations."). Under this rubric, Staff have consistently approved proposals like the one here that requests reports on the risks associated with discrimination in charitable giving. *See, e.g.*, *Wells Fargo & Co.* (Feb. 19, 2010); *Target Corp. (NCPPR)* (April 19, 2024); *Dell Tech. Inc.* (April 24, 2024); *JPMorgan Chase & Co.* (Mar. 21, 2023); *Levi Strauss & Co.* (March 8, 2024); *Kohl's Corp.* (March 14, 2024).

On the other hand, Staff have stated that proposals focusing on "specific types of organizations" may render a proposal excludable. This has been narrowly construed, especially in recent decisions, to exclude only proposals that lack a clear focus on a significant policy issue. *See, e.g.*, *JPMorgan Chase & Co.* (Feb. 28, 2018) (expressing concern about "public image" created by charitable donations); *The Walt Disney Co.* (Nov. 20, 2014) (targeting only Boy Scouts of America and listing variety of social and business issues).

Were the rule otherwise, it would create the perverse result of allowing a proposal that generally focuses on charitable giving, but then disqualifying one that focuses on a particular social policy impact but is otherwise identical. A broad reading of the "types of organizations" exception would also conflict with other decisions allowing shareholders to assess particular aspects of the company's operations for its impacts on significant social policy issues. *See, e.g.*, *JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023) (denials-of-service effects on discrimination and constitutional rights); *Meta Platforms (Cortese)* (Apr. 2, 2022) (report on "potential psychological and civil and human rights harms to users" from "the use and abuse" of virtual reality project); *Alphabet, Inc. (Trillium)* (Apr. 15, 2022) (discriminatory impacts of Google's "algorithmic systems" for targeted advertising); *CBRE Group, Inc.* (Mar. 6, 2019) (report on the impact of the company's mandatory arbitration policy on sexual harassment claims).

b. The Proposal does not relate to American Express's ordinary business operations because it focuses on discrimination in charitable giving.

American Express argues that the Proposal falls within this narrowly construed basis for exclusion because it involves the "social issues to support" and "contributions made to specific organizations or types of organizations." NAR at 5. Not so. The Proposal makes no mention of any organization American Express should or should not support, and it is only concerned with contributions to religious organizations to the extent that its lack of support amounts to discrimination in civil rights.

American Express's argument also withers in light of recent decisions. In 2024, Staff repeatedly denied relief to companies seeking to exclude proposals that relate to a company's charitable contributions, even though the proposals singled out specific organizations or groups of organizations. *See Target Corp. (NCPPR)* (April 19, 2024) (HRC and its participation in the Corporate Equality Index); *Dell Tech. Inc.* (April 24, 2024) at 4 (HRC and other groups pushing "child gender transition agenda"); *Church & Dwight Co., Inc.* (March 15, 2024) (Super PACs and other pass-through organizations for political spending); *Kohl's Corp.* (March 14, 2024) (HRC and other groups taking "public and politically divisive positions over issues of significant social policy concern"); *Levi Strauss & Co.* (March 8, 2024) at 4 (HRC and other groups "tak[ing] public and politically divisive positions over issues of significant social policy concern" including gun control, racism, and COVID-19). And

the Proposal here is a far cry from even these decisions, as it makes no mention of any specific organizations.

None of the decisions that American Express cites are relevant. Those outdated decisions either did not involve charitable contributions, *see Johnson & Johnson* (Mar. 2, 2023) (corporate and executive membership organizations); *AT&T Inc.* (Jan. 15, 2021) (political contributions), involved proposals that singled out specific organizations, *The Walt Disney Co.* (Nov. 20, 2014) (Boy Scouts of America); *JPMorgan Chase & Co.* (Feb. 28, 2018) (Southern Poverty Law Center and Planned Parenthood); *PG&E Corp.* (Feb. 4, 2015) (HRC); *Wachovia Corp.* (Jan. 25, 2005) (Planned Parenthood); *The Boeing Co.* (Jan. 21, 2005) (Boy Scouts of America), and/or did not address the significant social policy exception as raised by the shareholders, *Netflix, Inc.* (Apr. 9, 2021); *Facebook, Inc.* (Mar. 26, 2021); *PepsiCo* (Feb. 24, 2010); *Target Corp.* (Mar. 31, 2010). None of the decisions addressed religious discrimination in charitable giving.

The proposal here does not focus on profitability, nebulous or not-quite-significant policies, or specific organizations; rather, it targets the Company's charitable giving broadly and filters it through a significant policy issue. That religious organizations are implicated by the Proposal is unremarkable and, as Staff has stated through recent decisions, legally irrelevant. And here, the Proposal's focus is on discrimination in civil rights, which is a quintessential and perennial significant social policy issue.

c. The Proposal does not focus on the administration of non-executive employee benefits programs.

Finally, American Express argues that the Proposal relates to its ordinary business operations because it relates to "employee compensation and benefits matters." NAR at 5. Proponent does not dispute that American Express's gift match program is a part of its employee benefits package, as the Company describes. But as explained, the Proposal's focus is on religious discrimination, which is a significant social policy issue, and secondarily involves corporate contributions, which is not an ordinary business matter. Thus, that the Proposal additionally touches upon employee benefits is irrelevant, since it "focus[es] on sufficiently significant social policy issues." 1998 Release at 29108.

The decisions to which American Express cites are not to the contrary. Those decisions either did not involve the significant social policy exception, *see Exelon Corp.* (Feb. 21, 2007), focused on sick leave, which has not been determined to be a significant social policy issue, *see McDonald's Corp.* (Feb. 19, 2021); *Walmart Inc.* (Mar. 12, 2021), or lacked a sufficient focus on a significant social policy issue, *Dollar Tree, Inc.* (May 2, 2022) (supporting statement contained only "passing reference to safety concerns"); *Amazon.com, Inc.* (Apr. 8, 2022)(supporting statement contained only "passing references to wealth inequality").

In contrast, the Staff have consistently denied relief when, like here, the proposal related to employee compensation and benefits matters but was focused on a significant social policy issue. *See*, *e.g. CVS Health Corp*. (Mar. 17, 2022) (requiring audit on company's impacts on civil rights and non-discrimination); *Tractor Supply Co.* (Mar. 9, 2022) (requiring report on whether compensation practices prioritized profit over costs of inequality and racial and gender disparities); *The Walt Disney Corp*. (Feb. 1, 2024) (requiring report on health benefits related to gender dysphoria and de-transitioning care); *Walmart Inc.* (April 18, 2024) (requiring institution of wage policies that provide a living wage); *Amazon.com, Inc.* (Apr. 3, 2023) (requiring report on how company protects benefits of retirement plan from climate risks). Like those decisions, while the Proposal involves American Express's employee gift match program, which happens to be an employee benefit, its focus is on that program's risks related to religious discrimination against employees—a significant social policy.

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 "[t]he decision of which vendor the Company uses to manage its employee gift match program is too granular for shareholders, as a group, to make an informed judgment about it." NAR at 7. Again, American Express mischaracterizes the Proposal. And again, American Express misunderstands the legal standard. The Proposal does not ask American Express to choose or reject any particular vendor nor to implement any methods or policies. It does not seek exhaustive detail. The Proposal, like many others of which Staff approve, simply asks for transparency from the company on how a particular part of the company is impacting a particular social issue.

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 regularly reject micromanagement challenges to proposals asking for a transparency report on particular policies and aspects of a company's business. This includes charitable giving, *Target Corp. (NCPPR)* (Apr. 10, 2024), asking about smoke-free premises, *Boyd Gaming Corp.* (Mar. 18, 2024), *Caesars Entertainment, Inc.* (Apr. 19, 2024), reducing misinformation in targeted advertising, *Meta Platforms, Inc.* (Mar. 30, 2022), *Alphabet Inc.* (Apr. 12, 2022), the misuse of products 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, which Staff regularly agree do not micromanage companies.

The Proposal here seeks a reasonable level of detail for investors to evaluate American Express's "impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input" regarding charitable giving and religious discrimination against its employees. *Id.* American Express does not contest that shareholders are capable of providing input on the Company's charitable giving policies or that this is a topic fit for shareholder review. Nor could it, given the "robust[] public discussion and analysis on the topic" as explained above. *Id.*

Given the above, the Proposal does not "seek[] intricate detail" or "to impose specific time-frames or methods." 1998 Release at 29108. Indeed, it does not ask American Express to implement, or not implement, any policies at all, much less specific methods or time-frames for said implementation.

American Express explains that Benevity, a third-party vendor, administers its gift match program. It then asserts that the Proposal would micromanage the company because "which vendor the Company uses to manage its employee gift match program is too granular for shareholders, as a group, to make an informed judgment

about it." NAR at 7. Staff disagree when it comes to charitable giving. *See, e.g.*, *Target Corp. (NCPPR)* (Apr. 19, 2024). Proponent, like the one in *Target*, also asks only for a transparency report. The Proposal takes no stance on what vendor American Express should or should not use to administer its gift match program nor does it suggest that it should change any policy related to that program.

American Express's argument also assumes that the "micromanagement" part of Rule 14a-8(i)(7) would treat a proposal prescribing a particular charitable giving vendor the same as one asking for transparency on charitable giving policies. It would not because asking for "methods for implementing complex policies" is necessarily different than seeking a risk report. 1998 Release at 29108. American Express's citations for its position are inapposite because those proposals required the company to adopt a specific policy. *See Alaska Air Group, Inc.* (Mar. 8, 2010) (requesting that the company "adopt a policy requiring all domestic and foreign contract repair facilities that perform aircraft maintenance for the Company to meet the same operational and oversight standards as Company-owned repair facilities"); *Continental Airlines, Inc.* (Mar. 25, 2009) (same). As explained above, when a proposal simply requests a risk report, Staff consistently concur that such a report would not micromanage the company.

This is because "micromanagement" focuses primarily on the "specific methods, timelines, or detail" actually requested by the Proposal, not its underlying subject matter. SLB 14L. Here, the Proposal does not ask for American Express even to consider specific policies. It simply asks the Company to report, providing information of its choosing in a format of its choosing, on how its charitable giving is impacting risks related to discrimination against religion.

C. The Proposal is not materially false or misleading nor impermissibly vague under Rule 14a-8(i)(3) because shareholders and the Company readily understand that it asks for a risk report on charitable giving.

1. A proposal is not materially false or impermissibly vague unless it contains material, objective falsities, or lacks a basic level of clarity.

Under Rule 14a-8(i)(3), a proposal and its supporting statement may not make a "materially false or misleading statement." This is a high bar, and Staff have reproved companies that nitpick a "proposal's supporting statement as a means to justify exclusion of the proposal in its entirety." Division of Corporate Finance, Staff Legal Bulletin No. 14B (Sep. 15, 2004) ("SLB 14B"). For that reason, Staff have stated that companies should not rely on 14a-8(i)(3) simply because "the company objects to statements because they represent the opinion of the shareholder proponent" or "factual assertions that, while not materially false or misleading, may be disputed or countered." *Id.* Rule 14a-8(l)(2) makes clear that the company is not responsible for

the "contents of [a shareholder's] proposal or supporting statement." And a company is free to dispute the proposal in its own proxy statement.

Based on this, Staff have decided that issues that are factually debatable or put the corporation in a bad light are not excludable. *The Bank of New York Mellon Corp.* (Jan. 24, 2022) ("41%- support may have exceeded 51%-support from the share that have access to independent proxy voting advice and are not forced to rely on the biased opinion of management"); *Wells Fargo & Co.*(Feb. 28, 2022) (including 501(c)(4) organizations as "charitable organizations"); *Church & Dwight Co.* (Feb. 28, 2022) (stating the company "currently has one of the highest stock ownership thresholds to call a special meeting – 25% of shares"); *Laboratory Corp. of America Holdings* (Mar. 3, 2022) ("a theoretical 10% stock ownership requirement can in practice be a 20% stock ownership requirement"); *Arlington Asset Investment Corp.* (Mar. 31, 2022) ("management has nonetheless been richly compensated at the expense of shareholders").

A proposal may also violate Rule 14a-8(i)(3)'s prohibition on "materially false or misleading statement[s]" if it is impermissibly vague. As Staff have explained, a proposal may be excluded if it and the supporting statement are "so vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." SLB 14B. Staff rely on commonsense meanings that are readily understood by investors and the context provided by the supporting statement. Indeed, (i)(3) is the only ground for exclusion that explicitly includes the supporting statement in its text.

Further, Staff have long accepted that minor misstatements or errors can easily fixed and have allowed shareholders to "make revisions that are minor in nature and do not alter the substance of the proposal." SLB 14B. This prevents proposals from being kicked off of the ballot for simple and minor inaccuracies.

2. The Proposal asks for a typical risk report on how American Express may discriminate against religious employees, so the Company cannot come close to showing it is materially false or impermissibly vague.

American Express complains that the Proposal contains materially false and misleading statements and impermissibly vague statements. But the bar to exclude on these grounds is high: the company must "demonstrate[] objectively that a factual statement is materially false or misleading," or the Proposal must lack even basic guidance so that there is no "reasonable certainty exactly what actions or measures the proposal requires." SLB 14B. Vagueness determinations are typically reserved for proposals that request vague actions like "reforming" or "improving" an issue, not transparency like the Proposal here and not terms that characterize the social topic at issue.

American Express bases its arguments on the contention that Benevity, a third-party software company, administers its gift match program. That fact, however, is immaterial, for whether Benevity or American Express technically administers the gift match program, the effects of the program on religious charities—the whole point of the Proposal—remains the same. And reference to this policy cannot be impermissibly vague when American Express itself is able to readily identify the policy as issue.

a. Citing a policy administered by Benevity, which American Express employs, is not materially false or misleading.

American Express makes much of the fact that the potentially discriminatory gift matching policy at issue comes from the Terms of Use of Benevity, a third-party software company that American Express employs to administer its gift match program. It fixates on a single phrase in the Supporting Statement suggesting American Express excludes charities that "in its determination" are unqualified under that policy. But the Company states that Benevity, rather than American Express, determines what charities are eligible under that policy. Thus, it argues that the Proposal "incorrectly conflates the policies of Benevity with those of the Company." NAR at 10.

This argument is irrelevant, for whether the gift match policy comes from Benevity or American Express, the effect on employee contributions to religious organizations is the same—if a religious charity does not qualify under the policy, then American Express will not provide matching contributions to it, period. American Express has final control over how to administer its employees' benefits, including whether to negotiate with Benevity on its exclusions list and whether to even use Benevity. American Express also points to no legal requirements that would require it or Benevity to exclude religious organizations based on their religious status or whether others would consider their views "hateful" because there are none. And when, as here, a proposal asks that a company evaluate the effects of a policy, there is no need to identify whether a vendor administers that policy or the identity of that vendor. Whether the vendor is identified or not, the relevant facts about the policy and its effects remain the same.

Regardless of which entity technically administers the policy, Proponent merely conveys that the policy exists and may result in American Express discriminating against religious employees. Indeed, the Supporting Statement merely asserts that American Express "appears to exclude religious programs from its gift match program" because it will not match contributions to a group that "incites hatred or promotes discrimination." And the Proposal asserts that American Express may "exclud[e] religious charities from its employee-gift match program." That is the relevant fact Proponent communicates, and whether American Express's exclusion of religious charities is a result of a Benevity policy or its own is wholly immaterial.

Proponent's fleeting attribution of the phrase "in its determination" to American Express, rather than Benevity, is thus neither materially false nor misleading.

b. Stating that American Express's gift match program may screen out religious charities is not impermissibly vague and indefinite.

Without explanation, American Express asserts that neither it nor Benevity has a policy that would exclude religious charities from the Company's gift match program. American Express then proceeds to identify the policy at issue and which the Supporting Statement expressly quoted as problematic. Thus, it cannot claim that the Proposal's directive to evaluate the risks of such a policy is vague and indefinite.

American Express sows confusion where there is none. Nowhere does the Proposal or Supporting Statement assert that American Express has a *per se* policy of excluding religious charities, as the Company insinuates. Rather, the Supporting Statement merely asserts that American Express "appears to exclude religious programs through its gift match program," not through a per se bar, but through the policy to exclude charities that "incite[] hatred or promote[] discrimination." Nor does the Proposal or Supporting Statement claim that all religious charities are excluded. Instead, it only suggests that American Express may be excluding "some or all religious charities." The Proposal's directive is thus plain—American Express must evaluate how the policy to exclude charities that "incite[] hatred or promote[] discrimination," which may eliminate "some or all" religious charities, impacts the risks related to religious discrimination. Proponent's concern is also a reasonable one. Groups like the Southern Poverty Law Center have for over a decade worked with government actors and powerful corporations to target funding to religious groups and persons that are on its "hate list." This includes Family Research Council, Dr. Ben Carson, Franklin Graham, and even council for the Proponent.[4] And as explained above, policies prohibiting so-called "hate" and "misinformation" have been used against religious and conservative viewpoints in corporate America through organizations like the Global Alliance for Responsible Media and powerful financial institutions like PayPal and JPMorgan Chase.[5] Proponent was not required to go into any further detail in the 500 words she was allowed to describe her proposal.

American Express's claim that "it is unclear what the Company is being asked to evaluate" thus rings hollow. American Express admits that it knows exactly which policy the Proposal is speaking about—it's the policy the Company emphatically asserts is Benevity's. And the Proposal makes plain that is what the Company is

[4] Southern Poverty Law Center, *Hate Map*, https://www.splcenter.org/hate-map/.

[5] Aaron Terr, *PayPal is no pal to free expression*, Foundation for Individual Rights and Expression (Sept. 30, 2022), https://www.thefire.org/news/paypal-no-pal-free-expression; Jerry Bowyer, *A challenge to corporate cancel culture at JPMorgan Chase*, World (May 22, 2023), https://wng.org/opinions/a-challenge-to-corporate-cancel-culture-at-jp-morgan-chase-1684621926.

asked to evaluate. American Express seems to boldly assert without explanation that no religious charities are excluded under this policy. But that is irrelevant, since the clarity of the Proposal is not clouded by the number or percentage of religious charities that are excluded. As the Supporting Statement makes clear, because American Express "*appears to* exclude" religious charities from its gift match program, it should be evaluated. (Emphasis added). This presumption is also buttressed by the Supporting Statement's citation to the Viewpoint Diversity Score, which it says "found that 61% of scored companies exclude or threaten to exclude religious organizations from their employee-match gift programs." Thus, American Express cannot claim that the Proposal's directive is impermissibly vague and indefinite when it admittedly knows exactly what policy to evaluate.

American Express's citations lay bare the weakness of its argument. In those decisions, certain language in the proposal was so vague that no reasonable shareholder or company could understand its directive. For example, in *Cisco Systems, Inc.* (Oct. 7, 2016), the proposal prohibited the company from taking any action whose "primary purpose" was to "prevent the effectiveness of [a] shareholder vote," a directive so vague as to potentially prohibit "any number of actions—large and small—including many actions that ordinarily take place in connection with meetings of shareholders and the proxy and voting process." In *AT&T Inc.* (Feb. 21, 2014), the proposal asked the company to review its directors' "moral, ethical and legal fiduciary duties and opportunities," a vague, undefined phrase without precedent and unused in the company's policies. Similarly, in *The Boeing Co.* (Jan. 28, 2011, recon. granted Mar. 2, 2011), the proposal asked the company to encourage senior executives to relinquish "executive pay rights," where that term was undefined, subject to broad interpretation, and previously recognized as vague by Staff.

Unlike in *Cisco*, the course of action directed by the Proposal is plain. American Express is to develop a risk report based on the identified charitable contribution policy, not unlike similar charitable giving proposals that Staff recently found were not vague. *See, e.g.*, *Kohl's Corp*. (Mar. 14, 2024); *Levi Strauss & Co.* (Mar. 8, 2024); *Dell Tech., Inc.* (Apr. 24, 2024) (disclose "material donations from the Company" with a focus on donations to "radical gender theory activists.").

And unlike in *AT&T* and *Boeing*, the proposal does not contain unclear terms that need defining. Rather, Proponent clearly identified the policy American Express is asked to evaluate, and the Company expressly identified the policy in its response. Accordingly, the Proposal contains a clear directive that is not impermissibly vague or indefinite.

D. The Proposal is not irrelevant under Rule 14a-8(i)(5) because significant policy issues like charitable giving are "otherwise significantly related to the company's business."

American Express argues that the Proposal is not relevant to the company under Rule 14a-8(i)(5) because it does not meet the 5% threshold. But a proposal can independently satisfy the Rule by being "otherwise significantly related to the company's business." The Commission and Staff have consistently effectuated this part of the Rule by approving of proposals that deal with issues of broad social concern, like and including charitable giving, discrimination, and upholding civil rights. The Proposal here falls well within these contours and easily satisfies (i)(5).

Under Rule 14a-8(i)(5), a company may exclude a proposal for lack of relevance "[i]f the proposal relates to operations which account for less than 5 percent" of the company's sales, assets, and earnings, and the proposal "is not otherwise significantly related to the company's business."

The Commission stated in 1976 that it did "not believe that subparagraph (c)(5) should be hinged solely on the economic relativity of a proposal." Securities Exchange Act Release No. 12,999, 41 Fed. Reg. 52,994, 52,997 (1976). For example, "[p]roposals requesting the cessation of further development, planning and construction of nuclear power plants and proposals requesting shareholders be informed as to all aspects of the company's business in European communist countries have been included in this way." *Lovenheim v. Iroquois Brands*, 618 F. Supp 554, 560 n.11 (1985) (citation omitted); *see also the Travelers Companies, Inc.* (Apr. 1, 2022) (report to ensure insurance offerings do "not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights"). Thus, Staff recently reiterated that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)." SLB 14L.

The Proposal here easily satisfies that test. As an initial matter, American Express's charitable giving relates closely to its public relations and reputation, which would very likely satisfy the 5% economic threshold. More importantly and as explained in Section A above, discrimination and charitable giving are consistently recognized as "issues of broad social or ethical concern."

American Express merely argues that its gift match program, as part of its employee benefits package, is unrelated to its business of offering financial products to a wide customer base. NAR at 11. But that argument ignores that it is the social significance of the Proposal, not the fact that it relates to an employee benefit, that makes it "otherwise significantly related to the company's business."

The decisions the Company cites are similarly misplaced. For example, in *Reliance Steel & Aluminum Co.* (Apr. 2, 2019), the Staff concurred with the company that the proposal requiring a report on political contributions was irrelevant because the company made no political contributions in the past 5 years. Here, however, there is no question as to the existence of American Express's gift match program that the Proposal seeks to evaluate. And in *Dunkin' Brands Group, Inc.* (Feb. 22, 2018), the

Staff concurred that a proposal on the environmental impacts of certain brand packaging did not otherwise significantly relate to the company's business, but the proponent made no argument to demonstrate the social significance of the proposal. In contrast, as discussed more fully in Section A above, the Proposal is focused on the significant social issue of religious discrimination in charitable giving. And when, as here, a proposal focuses on a significant social issue like discrimination, the Staff have consistently found that the proposal is "otherwise significantly related to the company's business." *See*, *e.g.*, *Amazon.com Inc.* (Apr. 1, 2020) (proposal to complete Human Rights Impact Assessment); *General Electric Co.* (Jan. 28, 2005) (proposal to create board to evaluate company's operations in Iran). As these decisions demonstrate, because the Proposal focuses on religious discrimination—an "issue[] of broad social or ethical concern"—it is otherwise significantly related to the company's business and not excludable as irrelevant to the Company.

Conclusion

For these reasons, we request that the Staff reject American Express's request for relief from Ms. Price's 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 at mross@adflegal.org or 571-707-4655.

Sincerely,

Michael Ross

CC: James J. Killerlane III