



DIVISION OF
CORPORATION FINANCE

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

April 2, 2025

Chad Wiener
Tenet Healthcare Corporation

Re: Tenet Healthcare Corporation (the "Company")
Incoming letter dated January 17, 2025

Dear Chad Wiener:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the New York State Common Retirement Fund for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors issue a public report detailing strategies and programs for improving maternal health outcomes, including data collected from patients at Company facilities and information about the programs and services deployed to reduce the incidence of maternal mortality and severe maternal morbidities.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends the Company's ordinary business operations.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfm/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Cornish F. Hitchcock
Hitchcock Law Firm PLLC

January 17, 2025

VIA INTERNET SUBMISSION

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

Re: *Tenet Healthcare Corporation*
Shareholder Proposal of the New York State Common Retirement Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Tenet Healthcare Corporation (the “Company”) intends to omit from its proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders (collectively, the “2025 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) submitted by the New York State Common Retirement Fund (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders of Tenet Healthcare Corporation, (Tenet) request that the Board of Directors issue a public report detailing strategies and programs for improving maternal health outcomes. The report should include data collected from patients at Tenet facilities and information about the programs and services deployed to reduce the incidence of maternal mortality and severe maternal

morbidities (SMM). The report should be publicly disclosed to shareholders, be prepared at reasonable cost, and omit confidential or proprietary information.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, are attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.

A. Background.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "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." 1998 Release.

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. See 1983 Release; *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."); see also *Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

In the 1998 Release, the Commission stated 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. As relevant here, one of these considerations was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release.

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered 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 they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

We note that, although the Staff issued guidance in 2021 specifically relating to its approach to evaluating certain aspects of the ordinary business exclusion, such guidance does not impact the arguments made herein. *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”). Although SLB 14L, among other things, reverses prior Staff guidance regarding the company-specific approach to evaluating the significance of a policy issue that is the subject of a shareholder proposal for purposes of the ordinary business exclusion, this no-action request does not rely on a company-specific approach to evaluating significance and relies on precedent preceding, or not involving, the reversed prior Staff guidance. Therefore, SLB 14L is not applicable to this Proposal.

B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers.

The Proposal requests that the Company “issue a public report detailing strategies and programs for improving maternal health outcomes.” The Company operates hundreds of healthcare facilities, including both hospital and outpatient facilities, across nine U.S. states. The Company’s core service offering is healthcare services. In providing as critical and regulated a service as healthcare, the Company is constantly evaluating and revising the various policies and procedures relating to the services it provides. Developing these policies and procedures involves the careful analysis of many factors, including: the needs of patients; the evolving standards and best practices of contemporary medicine; the availability of qualified specialist providers; the adequacy of available medical infrastructure, technology and equipment; the accessibility of certain services through coordination with private insurance and government counterparties; and the need to ensure compliance with various local, state and federal laws and regulations. By seeking to interfere with the “strategies and programs” employed by the Company in providing healthcare to a particular subset of patients (pregnant, birthing, and postpartum women), the Proposal focuses on the Company’s policies and procedures related to the services the Company provides and impermissibly seeks to override the Company’s ordinary business decisions in this respect.

The Staff has consistently determined that proposals relating to the products and services that a company offers, as well as associated policies and procedures, can be excluded pursuant to Rule 14a-8(i)(7) as relating to the company’s ordinary business operations. For example, in 2019, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting that the

boards of financial services companies complete a report evaluating each company's overdraft policies and practices and the impacts those policies and practices have on customers. In each case, the proposal raised concerns that overdraft fees allegedly impacted certain customers more than others and that the provision of such services exposed the companies to increased litigation and reputational risks. The Staff nonetheless concurred that the proposals related to "ordinary business operations," and specifically, "the products and services offered for sale" by those companies. *See Bank of America Corp. (Worcester County Food Bank)* (avail. Feb. 21, 2019); *JPMorgan Chase & Co.* (avail. Feb. 21, 2019). Similarly, in *Lowe's Companies, Inc.* (avail. Mar. 8, 2017), a proposal sought a report on the "risks and opportunities that the issue of human lead exposures from unsafe practices pose to the company, its employees, contractors, and customers." The company noted that the proposal "requests that the [c]ompany assess the services it provides and revisit policies regarding products it sells." The company had "carefully assessed and implemented a lead-safety compliance program" with respect to such products and services and that "decisions regarding changing or expanding [its] policies [regarding lead-safe practices] will require a careful analysis of many factors" and such analysis "is a proper function for management and far exceeds the scope of shareholder expertise." The Staff concurred with the proposal's exclusion, noting it related to the company's "ordinary business operations." *See also FMC Corp.* (avail. Feb. 25, 2011, recon. denied Mar. 16, 2011) (concurring with the exclusion of a proposal recommending that the company establish a "product stewardship program" for certain of its pesticides, noting that the proposal related to "products offered for sale by the company"); *The Walt Disney Co.* (avail. Dec. 22, 2010) (concurring with the exclusion of a proposal that would require the company to implement a policy preventing children from entering designated smoking areas at the company's theme parks, noting that the proposal related to "the policies and procedures regarding the products and services that the company offers").

As discussed above, and consistent with the foregoing precedent, the Proposal likewise involves the Company's policies and procedures relating to the products and services the Company offers and may therefore be excluded pursuant to Rule 14a-8(i)(7). Like the policy assessments and reviews requested in *Lowe's Companies*, the Proposal directly addresses policies relating to the services the Company offers. In particular, the Proposal asks that the Company commission a report "detailing strategies and programs for improving maternal health outcomes." The Supporting Statement underscores the Proposal's focus on the Company's policies and procedures involved in providing healthcare services to patients, noting that:

- "On November 1, 2024 the Centers for Medicare and Medicaid Services (CMS) announced new standards for hospitals that offer obstetric care . . . [that] seek to prioritize protection of the health and safety of pregnant, birthing, and postpartum patients";
- "the 2024 Maternal and Infant Health Disparities Data Brief found that the '[p]revalence of severe maternal morbidity has steadily increased in recent years, and impacted individuals incur higher medical costs and experience longer hospitalizations'";
- "Tenet has not shared sufficient information for investors to determine the effect of the rapidly changing circumstances of maternal care on its business"; and

- “A report like the one requested would assist shareholders in assessing whether the Company is achieving improved maternal health outcomes, which may lead to significant business advantages for the Company.”

Here, as in the precedents discussed above, the Proposal relates to the products and services offered by the Company. That is, the provision of healthcare services and – more specifically – the provision of healthcare services to pregnant, birthing, and postpartum female patients. As in *Lowe’s Companies*, the Proposal’s focus on the Company’s policies regarding the services it provides clearly relates to an ordinary business matter, properly excludable pursuant to Rule 14a-8(i)(7).

C. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company’s Ordinary Business Operations.

The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

The Proposal requests that the Company “issue a public report detailing strategies and programs for improving maternal health outcomes.” While the Company agrees that improving maternal health outcomes is an important issue, the Staff has not previously determined that it constitutes a significant social policy issue for purposes of Rule 14a-8(i)(7). Rather than presenting a broad societal issue that is appropriate for shareholder consideration and feedback (such as, for example, significant discrimination matters), the Company believes that the issue of improving health outcomes for a particular subset of its patients implicates scientific and medical considerations. In this regard, the Company questions whether the issue of improving its patients’ health outcomes with respect to a specific subset of health services is an appropriate topic for shareholder franchise at all. However, the Staff does not need to determine in this instance whether maternal health outcomes constitute a significant social policy issue, because, though the Proposal does arise in that context, it principally focuses on the Company’s ordinary business operations.

The Staff has consistently concurred in the exclusion of proposals that reference or arise in the context of a significant policy matter but that principally focus on ordinary business matters. For example, the proposal in *PetSmart, Inc.* (avail. Mar. 24, 2011) requested that the board require its suppliers to certify that they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalents” that related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) because the proposal addressed but did not focus on a significant

policy issue, stating “[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” Likewise, in *First Energy Corp.* (avail. Mar. 8, 2013), the company received a proposal which requested a report regarding diversification of the Company’s energy resources. Despite the fact that the proponents argued that the proposal “ar[ose] from a significant policy issue – alternative energy strategies geared toward reducing power generation’s impacts on the climate,” the Staff concurred with the exclusion of the proposal, stating that, “[p]roposals that concern a company’s choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7).”

Most recently, the Staff concurred last year with the exclusion of at least two additional proposals that referenced or arose in the context of a significant policy matter but that principally focused on ordinary business matters. In *Fox Corp.* (avail. Sept. 19, 2024), the company received a proposal requesting a report on the social impact and risks to the company from inadequately distinguishing between news content and opinion content and the viability and benefits of such public differentiation. The company argued that “citing potential social policy implications in a proposal does not qualify as ‘focusing’ on such issues, even if the social policies happen to be the subject of substantial public focus.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7). Similarly, in *The Coca-Cola Co.* (avail. Mar. 6, 2024), the company received a proposal requesting that it “adopt an enterprise-wide policy to move toward more healthy products.” Though undoubtedly arising in the context of public health and health-related issues, the company argued that this context “d[id] not alter the fundamentally ordinary business focus of the [p]roposal,” which the company described as “seek[ing] to address policy about the Company’s product strategy.” The Staff concurred with the proposal’s exclusion, noting it related to the company’s “ordinary business matters.”

Like each of the precedents above, the Proposal here may arise in the context of a policy issue, but it focuses instead on the choices made to address the issue as part of the Company’s ordinary business operations and indeed, it focuses on maternal care as part of the Company’s business. What is the stated purpose of the requested report? The concluding paragraph of the Supporting Statement asserts: “A report like the one requested would assist shareholders in assessing whether the Company is achieving improved maternal health outcomes, which may lead to significant business advantages for the Company” (emphasis added). As discussed above, providing healthcare services to patients is the single most basic function of the Company’s business. The Proposal seeks to interfere with the “strategies and programs” that the Company employs in providing such services to certain female patients. The Proposal raises concerns about particular health issues affecting this subset of the Company’s patients. However, just like health issues affecting men’s health, geriatric or pediatric patients, a report on these health issues falls squarely within the ordinary business of the Company in providing healthcare services to the community at large. Accordingly, the Proposal does not “transcend the day-to-day business matters” of the Company but instead inserts itself directly in the middle of a core service offering of the Company.

Because of its focus on strategies and programs related specifically to the Company's provision of healthcare services to patients in the Company's care, the Proposal is also readily distinguishable from proposals that have focused solely on negative impacts to the broader public health related to a company's ordinary business operations. *See, e.g., Arch Coal, Inc.* (avail. Feb. 10, 2012) (unable to concur with the exclusion of a proposal requesting a report on the company's "efforts to reduce environmental and health hazards associated with" the company's mining operations); *Newmont Mining Corp.* (avail. Feb. 5, 2007) (unable to concur with the exclusion of a proposal requesting a report "on the potential environmental and public health damage resulting from the company's mining and waste disposal operations").

As discussed above, the Proposal relates to ordinary business matters (specifically, the services offered by the Company and its policies and procedures around such services). Accordingly, because the Proposal's request is directly related to what would constitute the Company's ordinary business operations and does not transcend those ordinary business operations, similar to the proposals in the precedents discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2025 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Chad.Wiener@tenethealth.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (469) 893-6209, or Thomas J. Kim of Gibson, Dunn & Crutcher LLP at (202) 887-3550.

Sincerely,



Chad Wiener
Vice President, Assistant General Counsel &
Assistant Corporate Secretary

Enclosures

cc: Thomas J. Kim, Gibson, Dunn & Crutcher LLP
John White, New York State Common Retirement Fund

EXHIBIT A

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 26, 2024

Thomas W. Arnst
Executive Vice President, Chief Administrative Officer, General Counsel and Corporate
Secretary
Tenet Healthcare Corporation
14201 Dallas Parkway
Dallas, TX 75254

Dear Thomas W. Arnst:

The Comptroller of the State of New York, Thomas P. DiNapoli, is the Trustee of the New York State Common Retirement Fund (the "Fund") and the Administrative Head of the New York State and Local Retirement System. The Comptroller has authorized me in my capacity as Corporate Governance Officer for the New York State Common Retirement Fund to inform you of his intention to offer the enclosed shareholder proposal for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank, verifying the Fund's ownership of Tenet Healthcare Corporation shares with a market value of at least \$25,000, continually for over one year, is enclosed. The Fund intends to continue to hold at least \$25,000 worth of these securities through the date of the annual meeting.


We would be happy to discuss this initiative with you. Should Tenet Healthcare Corporation decide to endorse its provisions as company policy, the Comptroller will ask that the proposal be withdrawn from consideration at the annual meeting. A staff member from our office is available

to meet with the company via teleconference no less than 10 days, nor more than 30 days after the date of this letter. Specifically, we are available during business hours on December 6, or December 26.

Additionally, please direct any mail correspondence related to this proposal to "New York State Common Retirement Fund" at [REDACTED].

Please feel free to contact me at [REDACTED] should you have any further questions on this matter.

Sincerely,

A large black rectangular redaction box covering the signature of the sender.

Corporate Governance Officer

Enclosures

RESOLVED: Shareholders of Tenet Healthcare Corporation, (Tenet) request that the Board of Directors issue a public report detailing strategies and programs for improving maternal health outcomes. The report should include data collected from patients at Tenet facilities and information about the programs and services deployed to reduce the incidence of maternal mortality and severe maternal morbidities (SMM). The report should be publicly disclosed to shareholders, be prepared at reasonable cost, and omit confidential or proprietary information.

Supporting Statement:

The United States continues to have the highest maternal death rate of any high-income nation in the world.¹ The Centers for Disease Control and Prevention reports 80% of pregnancy-related deaths are preventable, while rates of severe maternal morbidity are high and getting worse.² The United States received a D+ grade for preterm birth for the third consecutive year in the 2024 March of Dimes Report Card. While the 2024 Maternal and Infant Health Disparities Data Brief found that the “[p]revalence of severe maternal morbidity has steadily increased in recent years, and impacted individuals incur higher medical costs and experience longer hospitalizations.”

On November 1, 2024, the Centers for Medicare and Medicaid Services (CMS) announced new standards for hospitals that offer obstetric care. These new requirements, known as conditions of participation (CoPs), seek to prioritize protection of the health and safety of pregnant, birthing, and postpartum patients.³ Because they are CoPs, hospitals are required to meet these standards to continue participating in the Medicare and Medicaid programs. The new CoPs represent a risk to non-compliant hospitals.⁴

Tenet has not shared sufficient information for investors to determine the effect of the rapidly changing circumstances of maternal care on its business. A report like the one requested would assist shareholders in assessing whether the Company is achieving improved maternal health outcomes, which may lead to significant business advantages for the Company.

¹ <https://www.commonwealthfund.org/publications/issue-briefs/2024/jun/insights-us-maternal-mortality-crisis-international-comparison>

² <https://www.hsph.harvard.edu/news/features/addressing-the-u-s-maternal-mortality-crisis/>

³ <https://www.cms.gov/newsroom/press-releases/cms-announces-new-policies-reduce-maternal-mortality-increase-access-care-and-advance-health-equity>

⁴ <https://www.cms.gov/medicare/health-safety-standards/conditions-coverage-participation>

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CORNISH F. HITCHCOCK
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14 February 2025

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

By online portal submission

Re: Shareholder proposal to Tenet HealthCare Corp.
from New York State Common Retirement Fund

Dear Counsel:

I write on behalf of New York State Common Retirement Fund to respond to the letter from counsel for Tenet HealthCare Corporation (“Tenet” or the “Company”) dated 17 January 2025 in which Tenet advises of its intent to omit a shareholder proposal from the Fund (the “Proposal”) from the Company’s 2025 proxy materials. For the reasons below, we respectfully ask the Division to advise Tenet that the Division does not concur with the Company’s arguments.

The Proposal states:

Resolved: Shareholders of Tenet HealthCare Corporation, (Tenet) request that the Board of Directors issue a public report detailing strategies and programs for improving maternal health outcomes. The report should include data collected from patients at Tenet facilities and information about the programs and services deployed to reduce the instances of maternal mortality and severe maternal morbidities (SMM). The report should be publicly disclosed to shareholders, be prepared at reasonable cost and omit confidential or proprietary information.

The Supporting Statement explains that, according to the Centers for Disease Control and Prevention (“CDC”), the United States continues to have the highest maternal death rate for any high-income nation in the world. The CDC

reports that 80% of pregnancy-related deaths are preventable, while rates of severe maternal morbidity are high. Moreover, and for the third year in a row, the 2024 March of Dimes Report Card gave the United States a grade of D+ for preterm birth. The 2024 Maternal and Infant Health Disparities Data Brief found that the “[p]revalence of severe maternal morbidity has steadily increased in recent years, and impacted individuals incur higher medical costs and experience longer hospitalizations.” Further, on November 1, 2024, the Centers for Medicare and Medicaid Services adopted new standards for hospitals offering obstetric care, called “Conditions of Participation,” which hospitals providing Medicare and Medicaid Services are obliged to follow.

The Supporting Statement says that Tenet has not shared sufficient information for investors to determine the rapidly changing circumstances regarding maternal care on its business. The requested report is sought to assist investors in assessing whether Tenet is achieving improved maternal health care outcomes, which, if it is the case, may lead to significant business advantages.

Tenet responds that the Proposal may be omitted from Tenet’s proxy materials because the Proposal involves Tenet’s “ordinary business” within the meaning of Rule 14a-8(i)(7). For the reasons stated below, we submit that Tenet has not carried its burden of proving that the Proposal may be excluded.

DISCUSSION

In *Amendments To Rules On Shareholder Proposals*, Exchange Act Release No. 40018, 63 FED. REG. 29106 (28 May 1998), the Commission emphasized that the “ordinary business” exception rests on two considerations: (1) the fact that tasks are so fundamental to management’s ability to run a company that they don’t lend themselves to shareholder oversight, and (2) some proposals may be viewed as an effort to micromanage the company by probing too deeply into matter that shareholders, as a group, are not in a position to make an informed judgment. *Id.* at 29108 (footnote omitted). Even so, the Commission has long held the view that some topics may transcend ordinary business concerns if they have “significant policy, economic or other implications inherent in them.” *Adoption of Amendments Relating to Proposals by Security Holders*, Exchange Act Release No. 12999, 41 FED. REG. 52994, 52998 (3 December 1976). As the Division explained in STAFF LEGAL BULLETIN 14H (22 October 2015), “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.’”

The Proposal presents an issue that is anything but
“ordinary,” but is rather a “significant” policy issue.”

Too many American women are dying or winding up with serious medical problems while trying to bring children into the world.

That, in a nutshell, is the policy issue raised by this Proposal, which Tenet characterizes as involving merely the “ordinary business” of the Company, *i.e.*, the “products and services” that Tenet offers its patients. Tenet denies that the Proposal raises a topic on which shareholders should have any say, while denying that the Proposal raises a “significant” policy issue that transcends the Company’s “ordinary” business operations. Although Tenet discusses these items separately, we believe that they are inter-related and discuss them accordingly. We focus on the various ways in which the policy significance of this issue is made clear.

The numbers. Public attention on this issue increased following a 2023 report by the National Center for Health Statistics (“NCHS”), a unit of the CDC, that the “maternal mortality rate” for 2021 was 32.9 deaths per 100,000 live births, compared with a rate of 23.8 in 2020 and 20.1 in 2019. *Maternal Mortality Rate in the United States* (March 2023), available at <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.htm>.¹ To put those numbers in perspective *The Wall Street Journal* summarized the findings as follows:

The number of women who died during pregnancy or shortly after rose 40% to 1,205 in 2021, compared with 861 in 2020 and 754 in 2019, the National Center for Health Statistics said Thursday. The increase pushed the maternal-mortality rate to 33 deaths per 100,000 live births . . . compared with 24 in 2020 and 20 in 2019.

Covid-19 and disruptions during the pandemic added to pressure from factors including cardiovascular problems and healthcare disparities that have worsened maternal health in recent years, doctors and health officials said.

Toy, *U.S. Maternal Mortality Hits Highest Level Since 1965*, THE WALL STREET JOURNAL (16 March 2023), available at <https://www.wsj.com/articles/u-s-maternal-mortality-hits-highest-level-since-1965-f9829776>. The report noted that the 2021 mortality rate for black women was 2.6 times higher than the rate for white women, while the rate for Hispanic women

¹ A “maternal death” is defined as “the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and the site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.” *Id.*

“Severe maternal morbidity,” the other topic addressed by this Proposal, refers to unexpected outcomes of labor and delivery that can result in significant short- or long-term health consequences. CDC, *Severe Maternal Morbidity* (15 May 2024), available at [https://www.cdc.gov/maternal-infant-health/php/severe-maternal-morbidity/index.html#:~:text=Severe%20maternal%20morbidity%20\(SMM\)%20includes,steadily%20increasing%20in%20recent%20years.](https://www.cdc.gov/maternal-infant-health/php/severe-maternal-morbidity/index.html#:~:text=Severe%20maternal%20morbidity%20(SMM)%20includes,steadily%20increasing%20in%20recent%20years.)

exceeded that of white women for the first time that year. *Id.* See also Goldstein, *Why New York Has Faltered in Making Childbirth Safer for Black Mothers*, The New York Times (7 January 2024), available at <https://www.nytimes.com/2024/01/07/nyregion/childbirth-maternal-mortality-black-women.html>.

If there is any good news since those reports came out, it is only relative. The most recent statistics are for 2023, and they show that the rate in the United States that year dropped to 18.6 deaths per 100,000 live births. NCHS, *Maternal Mortality Rates in the United States, 2022* (May 2024), available at [https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2022/maternal-mortality-rates-2022.pdf#:~:text=In%202022%2C%20817%20women%20died%20of%20maternal,32.9%20in%202021%20\(Figure%201%20and%20Table\)](https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2022/maternal-mortality-rates-2022.pdf#:~:text=In%202022%2C%20817%20women%20died%20of%20maternal,32.9%20in%202021%20(Figure%201%20and%20Table)).

The research. Independent studies have raised the policy significance of this topic, both as a public health topic and a matter of concern for hospital companies.

- “Research tells us that nearly one-half of maternal mortality and severe events are preventable and hospital quality is a significant lever to improve outcomes, while minority women have been found in numerous studies to be more vulnerable to receiving poor quality care.” Howell and Zeitlin, *Improving hospital quality to reduce disparities in severe maternal morbidity and mortality* (August 2017), available at <https://www.sciencedirect.com/science/article/abs/pii/S0146000517300435>.

- “Organizational factors, policies, and practices at multiple levels distinguish high from low-performing hospitals for severe maternal morbidity. Findings illustrate the potential for targeted quality initiatives to improve maternal health and reduce obstetric disparities arising from delivery in low-performing hospitals.” Howell *et al.*, *Distinguishing High-Performing from Low-Performing Hospitals for Severe Maternal Morbidity: A Focus on Quality and Equity* (May 2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9710203/>.

- “For every maternal death, 100 women suffer a severe obstetric morbidity, a life threatening diagnosis or undergo a lifesaving procedure during their delivery hospitalization. Severe maternal morbidity affects greater than 60,000 women annually in the United States and has been on the rise over the last few decades. Severe morbidity poses an enormous risk to women’s health and well-being and similar to pregnancy-related mortality, racial and ethnic minority women have higher rates of severe maternal morbidity events.” Howell, *Reducing Disparities in Severe Maternal Morbidity and Mortality* (June 2018) (footnotes omitted), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC5915910/>.

- “Maternal mortality has been described as the ‘tip of the iceberg’ and maternal morbidity as a larger problem, ‘the base.’ For every individual who dies as

a result of their pregnancy, it is estimated that 20 or 30 more experience significant lifelong complications that affect their health and well-being.” Fink *et al.*, *Trends in Maternal Mortality and Severe Maternal Morbidity During Delivery-Related Hospitalizations in the United States, 2008 to 2021*, JAMA NETWORK (22 June 2023), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2806478#zoi230531r4>.

Public health organizations. The issue has garnered significant attention from a number of public health groups, further attesting to the policy “significance” of this issue. Consider this statement from the American Public Health Association indicating that the recent surge in deaths during the pandemic brought focused attention on underlying problems:

Maternal mortality in the United States remains unacceptably high, irrespective of how maternal mortality estimates are calculated. Moreover, racial/ethnic inequities in maternal mortality persist. Driven by multifactorial causes that range from individual- to structural-level factors, maternal mortality inequities are grounded in structurally racist and discriminatory access to appropriate and timely obstetric, gynecological, and primary health care. More recently, inadequate Medicaid expansion across US states, inconsistent extension of Medicaid coverage for postpartum care, and growing antiabortion legislation have further undermined efforts to reduce the inequity gaps in maternal mortality. The COVID-19 pandemic pulled back the curtain on the growing inadequacies in health care access for marginalized communities, inadequate prevention programming, and growing disparities in other causes of death from accidents and injuries.

American Public Health Association, *Safeguarding the Health of Mothers: A Public Health of Consequence*, July 2024, available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2024.307716>. See also American Public Health Association, *Maternal Morbidity and Mortality, Clinicians, and Public Health: An AJPH Supplement* (May 2024), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2024.307693>.

To the same effect is this statement from the American Heart Association:

[T]he American Heart Association has a unique role in advocating for efforts to improve maternal health and to enhance access to and delivery of care before, during, and after pregnancy. Several initiatives have shaped the time course of major milestones in advancing maternal and reproductive health equity in the United States. There have been significant strides in improving the timeliness of data reporting in maternal mortality surveillance and epidemiological programs in maternal

and child health, yet more policy reforms are necessary. To make a sustainable and systemic impact on maternal health, further efforts are necessary at the societal, institutional, stakeholder, and regulatory levels to address the racial and ethnic disparities in maternal health, to effectively reduce inequities in care, and to mitigate maternal morbidity and mortality.

American Heart Association, *Call to Action: Maternal Health and Saving Mothers: A Policy Statement From the American Heart Association* (November 2021), available at <https://www.ahajournals.org/doi/10.1161/CIR.0000000000001000>.

The American Hospital Association, discussing its initiative to improve maternal health, states:

With nearly 4 million babies born each year in U.S., hospitals and health care systems play a key role in improving maternal and infant outcomes.

Each year, more than 50,000 pregnant women are affected by severe maternal morbidity, 800 women die due to pregnancy-related complications and over 20,000 infants die.

Most of these adverse outcomes are preventable, according to the CDC.

American Hospital Association, *Better Health for Mothers and Babies Initiative* (2025), available at <https://www.aha.org/better-health-for-mothers-and-babies>.

In 2024 *The Lancet*, a peer-reviewed medical journal, published a report on maternal mortality rates, concluding that there is “the need for broader, multipronged actions to improve maternal health and wellbeing and accelerate sustainable reductions in maternal mortality.” Souza *et al.*, *A global analysis of the determinants of maternal health and transitions in maternal mortality*, THE LANCET (February 2024), available at <https://www.thelancet.com/action/showPdf?pii=S2214-109X%2823%2900468-0>.

Legislative action. Apart from this awareness in the medical and scientific community, maternal health has been a significant issue in the legislative arena, both nationally and at the state level.

President Trump in early 2019 signed into law the Preventing Maternal Deaths Act of 2018, Pub. L. 115-344, 132 Stat. 5047, with the stated purpose of supporting efforts “to save and sustain the health of mothers during pregnancy, childbirth, and in the postpartum period, to eliminate disparities in maternal health outcomes for pregnancy-related and pregnancy-associated deaths, to identify solutions to improve health care quality and health outcomes for mothers.”

Considerable action on maternal health issues has occurred at the state level, with 288 bills enacted in 43 states since 2017. National Conference of State Legislatures, *Maternal and Child Health Legislative Database*, available at <https://www.ncsl.org/health/maternal-and-child-health-legislative-database>. Thus, in 2023 New York State undertook several initiatives to improve maternal care, including enhanced Medicaid coverage and improved access to health insurance. Department of Health, *New York State Prioritizes Maternal Health with Expansion of Medicaid Prenatal and Postnatal Benefits* (24 August 2023), available at https://www.health.ny.gov/press/releases/2023/2023-08-24_benefits_expansion.htm; Office of the Governor, *Governor Signs Legislation to Expand Health Care Access and Support Maternal Health* (24 October 2024), available at <https://www.governor.ny.gov/news/governor-signs-legislation-expand-health-care-access-and-support-maternal-health>.

Regulatory developments. In addition to this legislative activity there has been significant regulatory action as well. As noted in the Supporting Statement, the Centers for Medicare and Medicaid Services (“CMS”) in November 2024 issued new “conditions of participation” for hospitals that treat Medicare and Medicaid patients. CMS, *Medicare and Medicaid Programs*, Part XXI, 89 FED. REG. 93912, 94467-94694 (27 November 2024). Conditions of participation, as the name indicates, are significant because hospitals must adhere to them in order to continue participating in Medicare and Medicaid programs. CMS, *Conditions for Coverage (CfCs) & Conditions of Participation (CoPs)*, available at <https://www.cms.gov/medicare/health-safety-standards/conditions-coverage-participation>.

According to CMS, the new conditions were adopted to set “baseline standards for hospitals and critical access hospitals that provide obstetrical services, which set baseline standards for the organization, staffing, and delivery of care within obstetrical units, update the quality assessment and performance improvement (QAPI) program, and require staff training on evidence-based maternal health practices.” 89 FED. REG. at 93917. CMS explained that it was implementing these new standards “in response to the ongoing maternal health crisis, which has led to a U.S. maternal mortality rate that . . . disproportionately affects racial and ethnic minorities as well as those living in rural areas and those with disabilities.” *Id.* at 94471.²

² A maternal health care crisis exists in rural America, and although it may not have received much media attention, it is significant nonetheless. The March of Dimes calculated in a 2024 report that 35% of all U.S. counties are “maternal care deserts”; differently put, in 1,104 US counties, there is not a single birthing facility or obstetric clinician. The March of Dimes, *Nowhere to Go: Maternity Care Deserts Across the US*, available at <https://www.marchofdimes.org/peristats/assets/s3/reports/2024-Maternity-Care-Report.pdf>.

In short, the health care industry in general and Tenet in particular face significant challenges responding to the maternal health care crisis. The report requested by this Proposal will help investors get an understanding of how Tenet is addressing this fast-changing environment in order to produce long-term shareholder value.

Despite the obvious policy significance, Tenet argues that the Proposal presents nothing more than an effort to dictate or affect the “products and services” that it offers, and such proposals are treated as “ordinary business” with no overriding policy significance. The argument is flawed for several reasons.

First of all, the Proposal involves a significant public health issue. Indeed, it is fair to say that the issue is one of life or death in many instances. In STAFF LEGAL BULLETIN 14E, Part B (25 October 2009), the Division stated:

To the extent that a proposal and supporting statement have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public's health, we have not permitted companies to exclude these proposals under Rule 14a-8(i)(7).

Notably, the Proposal does not ask Tenet to “minimize” or “eliminate” any of its “operations,” but instead to provide data to let investors assess the Company’s performance and potential vulnerabilities on a significant public health issue.

As we discuss below, the “products and services” rulings on which Tenet relies generally involved efforts to dictate or regulate what products a company puts on the shelf or what services it offers its customers. Those letters, which we discuss in more detail below, are far removed from the current Proposal and other proposals as to which no-action relief was denied.

Consider *CVS Health Corp.* (15 March 2022), where the proposal sought a report on “(1) the link between the public-health costs created by the Company's food, beverage, and candy business and its prioritization of financial returns over its healthcare purpose and (2) whether such prioritization threatens the returns of diversified shareholders who rely on a productive economy to support their investment portfolios.” To be sure, the proposal at some level related to the “nitty gritty” of CVS’s business decisions about what products to sell. However, the Division rejected that argument, agreeing with the proponent that the focus was the external public health costs associated with the Company’s retail food business.

By contrast the letters cited by Tenet fall into two categories: first, an effort to dictate what products or services should – or should not – be offered to customers,³ and second, where a proposal may “touch upon” a significant policy

³ *JPMorgan Chase* (21 February 2019) (same); *Lowe’s Cos. Inc.* (“unsafe practices” selling lead products); *FMC Corp.* (25 February 2011), (implement “product stewardship” program with “immediate moratoriums” on sale of certain products); *The Walt Disney Co.* (22 December 2010) (access to certain facilities by children).

issue, but the focus of the proposal is an ordinary business matter.⁴ Here, by contrast, the Proposal deals with far more than a decision of what to put on the shelf for one's customers; moreover, the Proposal does not touch upon, but instead it centers upon an extraordinarily significant public health issue for the hospital or health care sector.⁵

At the end of the day, the requested report is not intended to steer Tenet's decisions about what services to offer but instead seeks to give investors some insight into Tenet's management of an ongoing national "crisis" that is occurring in part in its hospitals and that has layers of implications for companies and investors. Presently, as far as we can tell, Tenet publishes nothing about their maternal health practices that could help investors understand how the Company is dealing with this important policy issue.

CONCLUSION

For these reasons New York State Common Retirement Fund respectfully asks the Division to advise Tenet that the Division does not concur with Tenet's argument that the Proposal may be excluded from Tenet's proxy materials.

Thank you for your consideration of these points. Please do not hesitate to contact us if you require any further information.

Very truly yours,



Cornish F. Hitchcock

cc: Chad Wiener

⁴ *PetSmart, Inc.* (24 March 2011) (animal cruelty a significant policy issue, but proposal seeks minutiae far removed from the topic); *Fox Corp.* (19 September 2024) (the social implications of news on society and politics can be significant, but proposal tries to regulate distinctions between news and opinion); *The Coca-Cola Co.* (6 March 2024) (asking company to move towards more healthy products).

⁵ Tenet also cites *FirstEnergy Corp.* (8 March 2013), which granted relief as to a proposal to "diversify the Company's energy resources to include increased energy efficiency and renewable energy resources." The Division apparently agreed with the company's argument that, despite the significance of climate-related issues, the proposal sought to "influence the Company's choice of technologies." However, neither the proponent nor the Division explained how this result is consistent with the view expressed by the Commission that a proposal asking a utility *not* to build a nuclear power plant transcended the utility's ordinary business of selecting fuel sources. *Adoption of Amendments Relating to Proposals by Security Holders*, 41 FED. REG. 52994, 52998 (3 December 1976).