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

DIVISION OF
CORPORATION FINANCE

March 3, 2025

Margaret M. Madden
Pfizer Inc.

Re: Pfizer Inc. (the "Company")
Incoming letter dated December 18, 2024

Dear Margaret M. Madden:

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

The Proposal requests that the board of directors conduct an evaluation and issue a report evaluating the risks related to religious discrimination against employees.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, based on the information you have presented, the Company has not demonstrated that the Proposal relates to its 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/corpfin/2024-2025-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Jerry Bowyer
Bowyer Research, Inc.

Margaret M. Madden
Senior Vice President and Corporate Secretary
Chief Governance Counsel

Pfizer Inc. – Legal Division
66 Hudson Boulevard East, New York, NY 10001
margaret.m.madden@pfizer.com

VIA STAFF ONLINE FORM

December 18, 2024

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

RE: Pfizer Inc. – 2025 Annual Meeting
Omission of Shareholder Proposal of
Kelly Aimone

Ladies and Gentlemen:

We are writing pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with our view that, for the reasons stated below, Pfizer Inc., a Delaware corporation ("Pfizer"), may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by Bowyer Research, Inc. ("Bowyer"), on behalf of Kelly Aimone (the "Proponent"), from the proxy materials to be distributed by Pfizer in connection with its 2025 annual meeting of shareholders (the "2025 proxy materials").

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to Bowyer, on behalf of the Proponent, as notice of Pfizer's intent to omit the Proposal from the 2025 proxy materials.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent, or Bowyer on the Proponent's behalf, submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to Pfizer.

I. The Proposal

The text of the Proposal (footnotes omitted) is set forth below:

> **Report on Faith-Based Employee Resource Groups**
>
> **Whereas**: Pfizer is one of the largest companies in the United States and employs over 80,000 people. As a major employer, Pfizer should support the religious freedom of its employees. Pfizer is already required to comply with many laws prohibiting discrimination against employees based on their religious status and views.
>
> Respecting diverse religious views allows Pfizer to attract the most qualified talent, promote a diverse and vibrant business culture, and is a key component to making sure it fully engages each of its employees. One of the best ways to promote religious diversity is through faith-based employee resource groups. ERGs allow like-minded employees to connect with one another, seek professional development, and promote understanding and dialogue with the broader workforce.
>
> Despite this, the 2024 edition of the Viewpoint Diversity Score Business Index found that over 64% of the largest tech and finance companies, as well as healthcare companies like Pfizer, do not have faith-based employee resource groups and that only 5% have faith-specific ERGs. Pfizer does not do this even though the vast majority of Americans identify as religious, and even though the Company recognizes ERGs formed around race, gender identity, military status, and a variety of other criteria.
>
> 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. Pfizer needs to take proactive steps to address this shortcoming by promoting faith-based ERGs and providing them the same support and access that other ERGs enjoy.
>
> 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. So, failure to allow faith-based ERGs may be illegal.
>
> **Resolved:** Shareholders request the Board of Directors of Pfizer Inc. 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 the risks related to religious discrimination against employees.

II. Bases for Exclusion

We hereby respectfully request that the Staff concur with Pfizer's view that the Proposal may be excluded from the 2025 proxy materials pursuant to:

- Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to Pfizer's ordinary business operations.

III. Background

Pfizer received the Proposal via FedEx on November 7, 2024, accompanied by a cover letter from Bowyer, stating that "[a] Proof of Ownership letter attesting to the [Proponent]'s ownership of the [Pfizer common stock] as of the date of this proposal's submission is forthcoming." On November 11, 2024, after confirming that the Proponent was not a registered holder of Pfizer common stock, in accordance with Rule 14a-8(f)(1), Pfizer sent a letter to Bowyer, via email, requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent beneficially owned the requisite number of shares of Pfizer common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal, which Bowyer satisfactorily responded to on November 18, 2024. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.[1]

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(3) Because the Proposal Is Materially False and Misleading in Violation of Rule 14a-9.

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if 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 a company's proxy materials. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B").

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[1] Exhibit A omits correspondence between Pfizer and Bowyer that is irrelevant to this request, such as the aforementioned deficiency letter and subsequent response. *See* the Staff's "Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials" (Dec. 17, 2021), available at https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217.

Rule 14a-9(a) prohibits any statement that 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." The Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if "the company demonstrates objectively that a factual statement is materially false or misleading." SLB 14B. In accordance with SLB 14B, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(3) where such proposals were false or misleading under Rule 14a-9. *See, e.g., Netgear Inc.* (Apr. 9, 2021, *recon. denied* Apr. 23, 2021)* (permitting exclusion under Rule 14a-8(i)(3) of a proposal that contained a materially false factual statement about the company's existing special meeting rights); *Ferro Corp.* (Mar. 17, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that mischaracterized certain facets of Ohio and Delaware corporate law, noting that the company had "demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading"); *AT&T Inc.* (Feb. 2, 2009) (permitting exclusion of a proposal requesting that the board adopt a bylaw to provide for an independent director where the proposal mischaracterized the independence definition set by the Council of Institutional Investors); *Jefferies Group, Inc.* (Feb. 11, 2008, *recon. denied* Feb. 25, 2008) (permitting exclusion of a proposal requesting a shareholder advisory vote at the annual meeting where the proposal claimed the advisory vote was to be "supported by company management"); *Entergy Corp.* (Feb. 14, 2007) (permitting exclusion of a proposal requesting that the board adopt a policy giving shareholders the opportunity to vote on an advisory management resolution to approve the compensation committee report where the supporting statement made objectively false statements regarding executive compensation at the company, director committee membership and director stock ownership).

In this case, the Proposal is materially false and misleading in a manner that would materially impact shareholders' views of the Proposal. Specifically, the entire theme and premise of the Proposal is that Pfizer is engaging in religious discrimination against certain of its employees because it is not offering faith-based employee resource groups ("ERGs"). The supporting statement asserts that Pfizer "needs to take proactive steps" to address alleged concerns that certain employees have about expressing their religious or political views at work by "promoting faith-based ERGs and providing them the same support and access that other ERGs enjoy." The supporting statement further claims that, in light of recent Supreme Court decisions, "failure to allow faith-based ERGs may be illegal." The Proposal's resolved clause then requests that the board of directors of Pfizer issue a report "evaluating the risks related to religious discrimination against employees." Taken together, the Proposal's resolution and supporting statement conveys the impression that, by not offering faith-based ERGs, Pfizer is engaging in illegal religious discrimination against certain of its employees. This erroneous impression is a central element of the Proposal and is materially false and misleading in violation of Rule 14a-9.

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* Citations marked with an asterisk indicate Staff decisions issued without a letter.

Moreover, these assertions are materially false and misleading because they mischaracterize the law. The Supreme Court's decisions in *Groff* and *Muldrow* do not require Pfizer to sponsor or offer any ERGs, whether faith-based or not, nor do they support the contention that Pfizer is violating the law by not supporting faith-based ERGs. *Groff* clarified the "undue hardship" standard in the context of reasonable accommodations for employees whose sincerely held religious beliefs conflict with work requirements. *Muldrow* lowered the standard for the degree of harm an employee must show to assert a discrimination claim under Title VII of the Civil Rights Act. Neither case establishes that ERGs are among the "religious protections" employees are entitled to by law.

Rather, employers are required to treat ERGs based on the same protected category equally, however employers are not required to sponsor ERGs of every protected category. *See Moranski v. General Motors Corporation*, 433 F.3d 537, 541 (7th Cir. 2005) (employer's decision to deny employee's request to form Christian affinity group did not violate Title VII because employer had a policy against allowing any affinity groups based on religious affiliation even though it supported affinity groups based on other protected characteristics). In this regard, approximately 13,000 Pfizer employees currently participate in Pfizer's Colleague Resource Groups ("CRGs"), which offer members and allies various professional development and support opportunities, such as mentorship, networking and educational programs.[2] All Pfizer employees are welcome to join any CRG, regardless of their demographic background. However, sponsoring ERGs based on protected characteristics other than religion does not obligate an employer to sponsor faith-based ERGs.

Taken together, the Proposal's resolution and supporting statement is premised on, and conveys to shareholders, an objectively false and misleading statement that would materially impact shareholders' views of the Proposal.

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

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

[2] *See Report to Pfizer Inc.: On Its Efforts To Promote Racial Equity, Diversity, and Inclusion* (March 2024), at 17.

a position to make an informed judgment. As demonstrated below, the Proposal implicates the first consideration.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."). In addition, in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the "subject matter to which the risk pertains or that gives rise to the risk" in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. *See, e.g.*, *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report "describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians, and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making," noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to management of a company's workforce, including its workforce policies. *See* 1998 Release (excludable matters "include the management of the workforce, such as the hiring, promotion, and termination of employees"); *see also, e.g.*, *Apple, Inc.* (Jan. 3, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report to assess the effects of the company's return-to-office policy on employee retention and the company's competitiveness); *BlackRock, Inc.* (Apr. 4, 2022, *recon. denied* May 2, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report detailing the potential risks associated with omitting "viewpoint" and "ideology" from the company's written equal employment opportunity (EEO) policy, noting that the proposal "relates to, and does not transcend, ordinary business matters"); *Walmart, Inc.* (Apr. 8, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board prepare a report evaluating discrimination risk from the company's policies and practices for hourly workers taking medical leave, noting that the proposal "relates generally to the [c]ompany's management of its workforce"); *Yum! Brands, Inc.* (Mar. 6, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought to prohibit the company from engaging in certain employment practices, noting that "the [p]roposal relates generally to the [c]ompany's policies concerning its employees"); *Donaldson Co., Inc.* (Sept. 13, 2006) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the

company's board direct and audit management to assure adherence to appropriate ethical standards related to employee relations, noting that the proposal "relate[s] to [the company's] ordinary business operations (i.e., management of the workforce)").

In this instance, the Proposal focuses on Pfizer's hiring and retention practices and its workforce management, all of which are ordinary business matters. While the Proposal's resolved clause makes a general reference to risks related to "religious discrimination against employees," the Proposal is entitled "Report on Faith-Based Employee Resource Groups" and much of the supporting statement relates to Pfizer's hiring and retention practices and ERGs in particular. In this regard, the supporting statement notes that "[r]especting diverse religious views allows Pfizer to attract the most qualified talent, promote a diverse and vibrant business culture, and is a key component to making sure it fully engages each of its employees." The supporting statement further notes that "[o]ne of the best ways to promote religious diversity is through faith-based employee resource groups" and that "ERGs allow like-minded employees to connect with one another, seek professional development, and promote understanding and dialogue with the broader workforce." The rest of the supporting statement asserts that Pfizer needs to "promot[e] faith-based ERGs and provid[e] them the same support and access that other ERGs enjoy." Thus, taken together, the Proposal's resolved clause and supporting statement focus on the ordinary business matters of how Pfizer manages its workforce, including its hiring and retention practices, workplace culture and employee professional development. These decisions play a critical role in how Pfizer operates its business and are so fundamental to management's ability to run its day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight. Therefore, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to Pfizer's ordinary business operations.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; SLB 14E. 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. For example, in *American Airlines Group Inc.* (Apr. 1, 2024), the excluded proposal requested that the company ensure that all in-flight special meals are free of common allergens and meet the needs of people seeking gluten-free, vegan, lactose-free and other diet options. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to ordinary business matters," even though the proposal's supporting statement suggested that streamlining the company's meal service would support the company's goals of reducing greenhouse gas emissions, which the Staff has recognized as a significant social policy issue. *See also, e.g.*, *PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of the humane treatment of animals, the proposal covered a broad scope of laws ranging "from serious violations such as animal abuse to violations of

administrative matters such as record keeping"); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, even if the Proposal may touch upon a significant policy issue, the Proposal's overwhelming concern with Pfizer's hiring and retention practices and its workforce management, particularly with respect to Pfizer's ERGs, demonstrates that the Proposal's focus is on ordinary business matters.

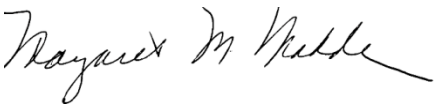
Accordingly, the Proposal should be excluded from Pfizer's 2025 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

VI. Conclusion

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

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Pfizer's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at margaret.m.madden@pfizer.com or Marc S. Gerber of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,



Margaret M. Madden

Enclosures

cc: Jerry Bowyer
Bowyer Research, Inc.

EXHIBIT A

(see attached)

Bowyer Research

November 5, 2024

66 Hudson Boulevard East
New York, NY, 10001-2192
Attention: Corporate Secretary

Re: Report on Faith-Based Employee Resource Groups

Dear Secretary,

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

Proponent: Kelly Aimone
Company: Pfizer, Inc.
Subject: Report on Faith-Based Employee Resource Groups

I submit the Proposal on behalf of, and with the permission of, Kelly Aimone, who respectfully requests to remain unnamed in the Company proxy statement in question. She has continuously owned more than $3,000 worth of Pfizer securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. A letter from Kelly Aimone authorizing us to submit this proposal on her behalf is enclosed.

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

Sincerely,

Jerry Bowyer
Bowyer Research

[redacted]

11/4/2024

Pfizer, Inc.
66 Hudson Boulevard East
New York, NY, 10001-2192
Attention: Corporate Secretary

Re: Report on Faith-Based Employee Resource Groups

Dear Secretary,

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

Proponent: Kelly Aimone
Company: Pfizer, Inc.
Subject: Report on Faith-Based Employee Resource Groups

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

Kelly Aimone (the "Proponent") has continuously owned more than $3,000 worth of Pfizer securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders.

Pursuant to interpretations of Rule 14a-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following times for a telephone conference to discuss this proposal:

November 18, 1PM ET
November 25, 1PM ET

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

Sincerely,

Signed by:
Kelly Aimone
B354F5A4A1884EF...

Kelly Aimone
Proponent

Report on Faith-Based Employee Resource Groups

Whereas: Pfizer is one of the largest companies in the United States and employs over 80,000 people. As a major employer, Pfizer should support the religious freedom of its employees. Pfizer is already required to comply with many laws prohibiting discrimination against employees based on their religious status and views.

Respecting diverse religious views allows Pfizer to attract the most qualified talent, promote a diverse and vibrant business culture, and is a key component to making sure it fully engages each of its employees. One of the best ways to promote religious diversity is through faith-based employee resource groups. ERGs allow like-minded employees to connect with one another, seek professional development, and promote understanding and dialogue with the broader workforce.

Despite this, the 2024 edition of the Viewpoint Diversity Score Business Index[1] found that over 64% of the largest tech and finance companies, as well as healthcare companies like Pfizer, do not have faith-based employee resource groups and that only 5% have faith-specific ERGs. Pfizer[2] does not do this even though the vast majority of Americans identify as religious, and even though the Company recognizes ERGs formed around race, gender identity, military status, and a variety of other criteria.[3]

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.[4] Pfizer needs to take proactive steps to address this shortcoming by promoting faith-based ERGs and providing them the same support and access that other ERGs enjoy.

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. So, failure to allow faith-based ERGs may be illegal.

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[1] https://www.viewpointdiversityscore.org/.
[2] https://1792exchange.com/pdf/?c_id=1137
[3] https://www.pfizer.com/about/responsibility/diversity-and-inclusion
[4] https://www.viewpointdiversityscore.org/polling

Resolved: Shareholders request the Board of Directors of Pfizer Inc. 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 the risks related to religious discrimination against employees.

ALLIANCE DEFENDING FREEDOM

FOR FAITH. FOR JUSTICE.

January 16, 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 Kelly Aimone at Pfizer Inc. under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of Ms. Kelly Aimone (the "Proponent") to defend her shareholder proposal to Pfizer Inc. ("Pfizer" or the "Company"). Margaret M. Madden wrote to you on behalf of Pfizer on December 18th, 2024 to ask you to concur with Pfizer's view that it can exclude Ms. Aimone's shareholder proposal from its 2025 Annual Meeting of Shareholders under 17 CFR § 240.14a-8 ("Rule 14a-8"). Pfizer has the burden of demonstrating it can exclude the Proposal under Rule 14a-8(g). But it cannot bear this burden.

Pfizer first argues it can exclude the Proposal under Rule 14a-8(i)(3) for making a materially false and misleading statement. Its central argument is that saying something "*may* be illegal" is the same as saying it is clearly illegal. To support this, Pfizer conflates general commentary on a complex legal issue with misstating simple legal definitions or statutory requirements about shareholder voting and director independence. It then commits the very error it accuses Ms. Aimone of making by stating that banning all religious ERGs is clearly legal because of a single Seventh Circuit decision. Finally, Pfizer says the statement is material because, if you read between the lines, legal risk around ERGs is actually the main focus of the Proposal. The SEC should reject this strained argument. Rule 14a-8(i)(3) is not a vehicle for companies to nitpick a Proposal or, as here, willfully misinterpret it.

Pfizer also says that it can exclude the Proposal under 14a-8(i)(7) because the Proposal concerns Pfizer's workforce management, not religious discrimination. But the Proposal evinces a clear focus on religious discrimination. And a Proposal can both relate to the nitty gritty of a company's business and still focus on a significant social policy issue. The Proposal here does this because it focuses on a particular way that many companies, including Pfizer, discriminate against religious employees. So it cannot be excluded for relating to ordinary business operations, full stop.

The Proposal

The Proposal provides:

> **Resolved:** Shareholders request the Board of Directors of Pfizer Inc. 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 the risks related to religious discrimination against employees.

The Supporting Statement explains that many companies have allowed ERGs to form around race, gender identity, military status, and a variety of other criteria—something the Supporting Statement notes. And they have done so rightly to increase the engagement of employees. So it only makes sense to extend this same benefit to employees whose faith is important to them and want to find ways to engage through it at work. By promoting all types of diversity, including religious diversity, Pfizer will better "attract the most qualified talent, promote a diverse and vibrant business culture . . . and fully engage[] each of its employees."

The Statement adds that "[r]ecent 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. So, failure to allow faith-based ERGs may be illegal."

Unfortunately, Pfizer and many other major companies do not have faith-based ERGs or provide them the same support and access that other ERGs enjoy. Because of this, the Statement asks Pfizer "to take proactive steps to address this shortcoming by promoting faith-based ERGs and providing them the same support and access that other ERGs enjoy."

Discussion

A. The Proposal is not materially false under Rule 14a-8(i)(3) because it is accurate commentary on a complex legal issue.

Pfizer contends that the Proposal is materially false and misleading under Rule 14a-8(i)(3) because it states that not offering faith-based ERGs is illegal and then asks for a report on the risks of Pfizer's allegedly illegal conduct. But the Proposal states that "failure to allow faith-based ERGs *may* be illegal" in certain circumstances based on recent Supreme Court cases that have changed the legal landscape for Title VII and indicated increased support for religious employees. Pfizer likens this general commentary on a complex legal issue to misstating basic legal definitions or statutory requirements about shareholder voting and director independence. There is no misstatement, only a willful misinterpretation.

Nor is the statement material. The Proposal focuses not only on illegal discrimination, but on discriminatory treatment that, while perhaps regretfully lawful or in a grey area legally, nevertheless presents significant operational and reputational risk to the business.

1. A proposal is not materially false just because it makes statements that are debatable or criticize the company.

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." 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 Corporation* (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 Corporation 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").

Staff even allowed one proposal that stated that "[p]rojections have found that limiting global warming to 1.5 degrees versus 2 degrees *will save* $20 trillion globally by 2100" when the source the proposal cited said only that "exceeding 2 degrees could lead to climate damages in the hundreds of trillions" and noted considerable "uncertainty as to damages." *Chubb Limited* (Mar. 26, 2022) at 11.

Staff have also allowed statements about "risk," including legal risk, from proponents. *The Travelers Companies, Inc.* (Mar. 30, 2022) at 38, 47 (company "may be at risk for contributing to systemic racism" because it provides law enforcement liability insurance" and "any company without a third-party audit and plan for improvement of internal and external racial impacts could be at risk").

This approach makes sense. Shareholders have only 500 words to describe their proposals. It is their prerogative to characterize issues and statements with their preferred framing, and sometimes with strong wording, so long as there is nothing objectively and materially false and misleading.

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.

By contrast, simple statements of fact that are provably false are more susceptible to challenges under (i)(3). Pfizer relies primarily on these citations. For example, in *Netgear Inc.* (Apr. 9, 2021, *recon. denied* Apr. 23, 2021) the proposal sought to amend the bylaws to let any shareholders with an aggregate of 15% to call a special shareholder meeting. The Supporting Statement opened by stating that only certain board members or officers can call a special meeting. *Id.* at 2. But that statement directly contradicted the company's bylaws, which already allowed shareholders with at least 25% aggregate holdings to call a special meeting. *Id.* at 6. *See also Ferro Corp.* (Mar. 17, 2015) at 7–8 (stating that shareholders could not amend company bylaws when Ohio Revised Code specifically allowed for shareholders to do so and making other statements contradicting Ohio and Delaware statutes); *AT&T Inc.* (Feb. 2, 2009) (misstating multiple parts of The Council of Investors' definition of an independent director).

2. The Proposal identifies legitimate legal risk, so Pfizer cannot come close to showing it is materially false and misleading.

Pfizer's arguments fall flat because the Proposal identifies legitimate legal risk and because said legal risk is a supporting point to the Proposal, not a material one. Both are independent and sufficient grounds to deny Pfizer's request under i-3.

a. Stating that "failure to allow faith-based ERGs may be illegal" is not false or misleading.

The Supporting Statement observes that "[r]ecent 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. So, failure to allow faith-based ERGs may be illegal." This assertion means that employers may risk violating Title VII or other anti-discrimination laws protecting religion if they fail to allow a faith-based ERG to form.

Pfizer says that it is materially false because "*Groff* and *Muldrow* do not require Pfizer to sponsor or offer any ERGs, whether faith-based or not, nor do they support the contention that Pfizer is violating the law." Pfizer No-Action Request ("NAR") at 5. This is a strawman. The Statement does not say that recent Supreme Court

decisions *established* that failure to allow faith-based ERGs in any circumstance is illegal. It says that failure to do so *may* be illegal for the reasons explained above.

For example, a plaintiff could successfully establish that religious ERGs should be treated on equal footing with other ERGs and that a flat ban on all religious ERGs is not permissible; this would be a matter of first impression for many federal circuit courts of appeals. There are also plenty of sets of facts that could give rise to other successful discrimination claims, like where an employer allows some but not other types of religious ERGs or where it refuses a religious ERG based on discriminatory, anti-religious animus.

Nor does the citation to *Groff v. DeJoy*, 600 U.S. 447 (2023) limit its applicability to religious accommodation claims, although those could arise in a faith-based ERG denial.[1] The Proposal cites to *Groff* as an example of the broader assertion that the Supreme Court looks favorably on religious discrimination claims and it is likely to embolden religious plaintiffs. SHRM and other attorneys agree. In a recent article, SHRM observed that "legal experts say the current environment" after *Groff*, 600 U.S. 447, and *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) "will embolden more employees and advocacy groups to file lawsuits against their employers, especially regarding accommodations that enable them to practice their faith in the workplace."[2]

Pfizer's argument to the contrary even commits the error it accuses the Proponent of making. *Moranski v. General Motors Corp.*, 433 F.3d 537, 541 (7th Cir. 2005) does not support the bold proposition that "employers are not required to sponsor ERGs of every protected category." NAR at 5. It establishes that for the Seventh Circuit, not other circuits and not under state law. And even then the Seventh Circuit could revisit the case en banc or the Supreme Court could grant certiorari.

Pfizer also takes issue with *Muldrow*, which is confusing because that case directly increased the litigation risk of discriminating based on any "terms, conditions, or privileges of employment," not just hiring, firing, and compensation. *Muldrow v. City of St. Louis*, 601 U.S. at 354. This outcome is something current EEOC Commissioner Andrea Lucas previewed in 2023, right after *Students for Fair*

[1] A recent lawsuit was filed against Sandia LLC for failing to recognize a Christian group, and one of the claims was failing to provide a religious accommodation that the required leaders of the ERG to attest to a statement of beliefs. *Christians in the Workplace Networking Group v. National Technology and Engineering Solutions of Sandia, LLC*, No. 1:2022-cv-00267, Doc. 202 at 2 (D.N.M. 2024). Although ultimately unsuccessful, the lawsuit shows that there is direct litigation risk for companies that do not treat the issue carefully

[2] Theresa Agovino, *Navigating Religious Inclusion at Work*, SHRM (Feb. 3, 2024), https://www.shrm.org/topics-tools/news/all-things-work/navigating-religious-inclusion-at-work.

Admission, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023).[3] This expansion of actionable "harm" under Title VII includes ERGs.

For this reason, the Proposal falls much more in line with decisions where Staff have allowed the proponent to characterize complex facts and issues, including legal issues, in the proponent's preferred framing. Pfizer's citations to proposals misstating basic facts about statutes, bylaws, and model policies are inapposite. The legal issue here is complex, evolving, and will no doubt be the subject of much good (and bad) lawyering, just as Title VII and similar antidiscrimination laws always have been.

b. Stating that "failure to allow faith-based ERGs may be illegal" is not material.

Pfizer also mischaracterizers the nature of the Proposal as one that "conveys the impression that, by not offering faith-based ERGs, Pfizer is engaging in illegal religious discrimination against certain of its employees." The Proposal focuses on religious inclusion broadly, not just illegal religious discrimination under Title VII or other applicable law.

The majority of the proposal does not discuss litigation risk at all. The Proposal's Supporting Statement observes that "[r]especting diverse religious views allows Pfizer to attract the most qualified talent, promote a diverse and vibrant business culture, is a key component to making sure it fully engages each of its employees," and that "[o]ne of the best ways" to do this "is through faith-based employee resource groups." Many companies, consulting firms, nonprofits, news organizations, and even the SEC understand this, both for religious discrimination and for diversity broadly, as explained more fully in Section B below. The Supporting Statement explains that companies should extend the benefits of ERGs to faith-based groups of employees just as they have allowed ERGs to form around a variety of other criteria. But many companies, including Pfizer, do not.

ERGs are also helpful as a prophylactic against discrimination. One DEI consulting firm observed: "Those groups are able to provide tremendous feedback to companies, so they can really be mindful again of some of the maybe unintentional things that the organization may be doing that is not inclusive to people of different religious backgrounds."[4]

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[3] Andrea R. Lucas, *With Supreme Court affirmative action ruling, it's time for companies to take a hard look at their corporate diversity programs*, Reuters (June 29, 2023), https://www.reuters.com/legal/legalindustry/with-supreme-court-affirmative-action-ruling-its-time-companies-take-hard-look-2023-06-29/.

[4] Emilie Shumway, *7 ways to support Muslim employees during Ramadan*, HR Dive (Apr. 28, 2021), https://www.hrdive.com/news/7-ways-to-support-muslim-employees-during-ramadan/599163/.

Pfizer's conflation of potentially "illegal" conduct in the Supporting Statement with "discrimination" does not transform the statement about legal risk into a material one and artificially limits its scope to legal vs. illegal conduct.

Pfizer's citations are therefore inapposite. In *Netgear* (Apr. 9, 2021), *Ferro Corp.* (Mar. 17, 2015), and *AT&T* (Feb. 2, 2009), for example, the proponents misstated governing statutes, bylaws, or model standards that completely negated the entire point of the proposal at issue. By contrast, the statement here deals only with one aspect of the impacts of discriminating against religious ERGs.

3. If any deficiency exists, it is curable.

Staff have a longstanding practice of allowing "shareholders to make revisions that are minor in nature and do not alter the substance of the proposal." SLB 14B. Absent that, Staff have also allowed companies to "exclude portions of the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded." *Id.*

There are no defects that need curing. But even if there were, they would be amenable to minor revisions. Proponent offers the following revisions, should the Staff deem it necessary, as one way to revise the Proposal without excluding it:

- instead of stating that "failure to allow faith-based ERGs may be illegal," the Supporting Statement will state that "failure to allow faith-based ERGs may raise significant legal risk depending on the relevant facts specific to the company or the denial."

- instead of asking for a report "evaluating the risks related to religious discrimination against employees," the Proposal will state "evaluating the risks related to its treatment of religious employees."[5]

B. 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. Aimone's Proposal for failing to focus on a significant social policy, Pfizer 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. Pfizer argues otherwise but it misreads Commission and Staff guidance directly addressing this.

Pfizer also cannot bear its burden under either requirement. ERGs are not ordinary business matters. But even if they are, the Proposal shows a consistent focus on discrimination on the basis of religion, which the Commission and Staff guidance

[5] These statements are collectively 14 words more than the prior statements but will not put the Proposal over 500 words. The Proposal's word count is currently only at 375 words.

have proven is a perennially significant social policy issue. ERGs are one context in which religious discrimination occurs and are themselves an important focal point for religious discrimination. So the Proposal cannot be excluded even if it does relate to 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").

Pfizer reads the rule differently: "the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations" and even argues that Staff have "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." NAR at 7. 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.

Pfizer's cites to the contrary dealt with proposals that did not demonstrate a sufficient focus on a significant policy issue. This proposal does not deal with allergy-free meals, *American Airlines Grp. Inc.* (Apr. 1, 2024), decreasing insurance premiums, *CIGNA Corp.* (Feb. 23, 2011), or outsourcing, *Capital One Financial Corp.* (Feb. 3, 2005), but with the quintessential policy issue of workforce discrimination. 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.

By contrast, the Proposal here fits comfortably within the Commission's and Staff's consistent recognition 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 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.

Staff have also protected religious discrimination in varying contexts. *See General Electric Co.*, *supra*; *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"); *Toys "R" Us* (Apr. 8, 1999) (adopt resolution providing for religious non-discrimination in Northern Ireland).

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

Pfizer 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 again that the Proposal shows an "overwhelming concern with Pfizer's hiring and retention practices and its workforce management, particularly with respect to Pfizer's ERGs." 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 and ERGs are under any measure.

Civil rights issues are fundamental questions of social policy that have "broad societal impact" and "widespread public debate." Religious discrimination is prohibited by law in numerous contexts, and perhaps most importantly for this discussion, under Title VII of the Civil Rights Act.[6] For this reason, the Commission in 1998 identified "significant discrimination matters" and "employment-related proposals raising certain social policy issues" as prototypical examples of ones that transcend ordinary business operations. 1998 Release at 29108.

These issues continue to have the same vitality then as they do today. The prominence of diversity, equity, and inclusion initiatives in corporate America speak to this just as much as the current bodies of nondiscrimination law. So too do recent Supreme Court decisions dealing with discrimination in the workplace, as explained in Section A above.

The Commission has also taken a more fulsome view of discrimination as a significant social policy issue than minimal legal compliance. It has, for example, approved of proposals asking for "risks related to recruiting and retaining diverse talent," including "median and adjusted pay gaps across race and gender." *The Walt Disney Co.* (Jan. 19, 2022). It has also approved of "racial equity audits," *e.g.*, *Amazon.com Inc. (N.Y. State Common Ret. Fund)* (Apr. 7, 2021) and proposals asking about broad "adverse impacts of the Company's policies and practices on the civil rights of Company stakeholders," *McDonald's Corp.* (Apr. 5, 2022). Notably, the SEC determined in 2019 that a proposal asking about the "potential risks associated with

[6] *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.

omitting 'sexual orientation' and 'gender identity' from its written equal employment opportunity policy." *CorVel Corp.*, (June 5, 2019).

ERGs are also an important component of this focus on discrimination and are themselves a significant policy issue. For example, national news outlets and prominent consulting companies have explained that faith-based ERGs are an essential way to include religious groups in corporate DEI or other diversity efforts.[7] As one American Express executive told the Wall Street Journal, "[t]he purpose of all these networks is to foster inclusive environments for Amex colleagues and to be part of our culture of inclusivity and allowing people to show up at work as their authentic selves."[8] A recent study from the Religious Freedom & Business Foundation also noted that, although companies have aggressively promoted diversity for race, sex, sexual orientation, and gender identity, "[r]eligious diversity is [] at the bottom when it comes to one of the most potent programs corporations utilize for encouraging workplace inclusion – Employee Resource Groups (ERGs)."[9] It therefore raises potential issues of operational and reputational risk to Pfizer to continue to deny faith-based ERGs the ability to be on equal footing as its other resource groups. On top of this, there are legal risks associated with unequal treatment of faith-based ERGs, as explained above.

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. Pfizer acknowledges the focus on faith-based ERGs and the discussion on religious discrimination in the workforce but tries to divorce the two. NAR at 7. ERGs are just one of the contexts in which religious discrimination can occur, so this distinction does not hold water. As Title VII states, religious discrimination is prohibited in all "terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2(a). Indeed, Staff recognize that discrimination and other significant social policy issues apply in all kinds of discrete workforce contexts, including healthcare coverage, *J.B. Hunt Transport Services*, health and safety issues, *Amazon.com, Inc.* (Apr. 6, 2022), and various training, hiring, and recruiting practices, *General Electric Co.*

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[7] Khorri Atkinson, *Companies Embrace Religion as New Facet of Diversity Efforts*, Bloomberg Law (Feb. 1, 2024) (discussing faith-based ERGs at GE), https://baptistnews.com/article/heres-another-angle-to-corporate-dei-work-increased-support-for-faith-friendly-workplaces/; Megan Johnson et al., *Where Religious Identity Fits into Your DEI Strategy*, Harvard Business Review (June 21, 2023) (highlighting "interfaith ERGs and other employee-led efforts to engage religious diversity"), https://hbr.org/2023/06/where-religious-identity-fits-into-your-dei-strategy.

[8] Francis X. Rocca, *Corporate Diversity Programs Get Religion*, The Wall Street Journal (May 20, 2023), https://www.wsj.com/articles/corporate-diversity-programs-get-religion-c969ec0e.

[9] Warner Santiago, *Religious Diversity, Equity, and Inclusion in the Workplace*, MassBio News (Oct. 13, 2022), https://www.massbio.org/news/recent-news/religious-diversity-equity-and-inclusion-in-the-workplace/.

(Feb. 10, 2015) (adopt "Holy Land" principles of religious non-discrimination for workforce).

Pfizer also wrongly argues that the Proposal does not focus on a significant policy issue because it has an "overwhelming concern with Pfizer's hiring and retention practices and its workforce management, particularly with respect to Pfizer's ERGs." NAR at 8. But again, this is wrong on the facts and the law.

It is wrong factually because the proposal is concerned about discrimination and employee resource groups, not mundane business operations like "hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." 1998 Release at 29108. And it is wrong legally because it misconstrues the "significant social policy" exception. A proposal can both relate to the nitty gritty of workforce management practices and still focus on a significant policy issue. And the Proposal here focuses on religious discrimination in ERGs and elsewhere in the workforce, which is a significant policy issue. It therefore cannot be excluded for relating to ordinary business operations.

Conclusion

For the foregoing reasons, we respectfully request that the Staff reject Pfizer's request for relief from Ms. Aimone's Proposal. A copy of this correspondence has been timely provided to Pfizer. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,

Michael Ross

Cc: Margaret M. Madden
Marc S. Gerber

Margaret M. Madden
Senior Vice President and Corporate Secretary
Chief Governance Counsel

Pfizer Inc. – Legal Division
66 Hudson Boulevard East, New York, NY 10001
margaret.m.madden@pfizer.com

VIA STAFF ONLINE FORM

January 24, 2025

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

RE: Pfizer Inc. – 2025 Annual Meeting
Supplement to Letter dated December 18, 2024
Relating to Shareholder Proposal of
Kelly Aimone

Ladies and Gentlemen:

We refer to our letter dated December 18, 2024 (the "No-Action Request"), pursuant to which we requested that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with our view that the shareholder proposal and supporting statement (the "Proposal") submitted by Bowyer Research, Inc. ("Bowyer"), on behalf of Kelly Aimone (the "Proponent"), may be excluded from the proxy materials to be distributed by Pfizer Inc. ("Pfizer") in connection with its 2025 annual meeting of shareholders (the "2025 proxy materials").

This letter is in response to the letter to the Staff, dated January 16, 2025, submitted by the Alliance Defending Freedom, on behalf of the Proponent (the "Proponent's Letter"), and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The Proponent's Letter asserts, among other things, that "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." As support for this assertion, the Proponent's Letter cites to *JPMorgan Chase & Co.* (Mar. 21, 2023). Conveniently however, when describing the proposal in that decision, the Proponent omits the fact that, in addition to religion, the report requested by the proposal also related to discrimination on the basis of race, color, sex, national origin or political views. Accordingly, *JPMorgan Chase* is more likely evidence of the Staff's consistent view that race and sex based discrimination are significant social policy issues, rather than standing for

the sweeping characterization in the Proponent's Letter that a proposal purporting to relate to religious discrimination also transcends ordinary business.

The Proponent's Letter further attempts to extrapolate from the Staff's prior decisions in *General Electric Co.* (Feb. 10, 2015) and *Toys "R" Us* (Apr. 8, 1999). In doing so, the Proponent cites to proposals that may have touched on religion, but where the Staff's decision to permit exclusion did not address whether the proposal transcended ordinary business. Simply referencing letters where the Staff denied exclusion under Rule 14a-8(i)(7) of proposals touching upon religion does not otherwise establish that any proposal touching on religion transcends the company's ordinary business. Therefore, neither of these decisions support the Proponent's proposition that religious discrimination is a significant social policy issue.

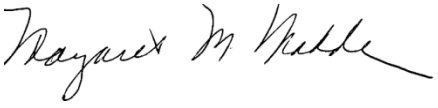
In this instance, the Proposal does not appear to touch on any significant policy issue. Notably, in *Duke Energy Corp.* (Feb. 23, 2017), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks and costs to the company caused by discrimination against "religious individuals and those with deeply held beliefs." *See also, e.g., Best Buy Co., Inc.* (Feb. 23, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report detailing the risks and costs to the company caused by pressure campaigns to oppose "religious freedom laws (or efforts), freedom of conscience laws (or efforts) and campaigns against candidates from Title IX exempt institutions"); *Lowe's Companies, Inc.* (Feb. 27, 2017) (same); *PG&E Corporation* (Feb. 27, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the company include in all employment and related policies "the right of employees to freely express their personal religious and political thoughts," noting that "the proposal relates to [the company's] policies concerning its employees"). Rather, the Proposal's overwhelming concern with Pfizer's hiring and retention practices and its workforce management, particularly with respect to Pfizer's ERGs, demonstrates that the Proposal's focus is on ordinary business matters. Accordingly, the Proposal may be excluded from Pfizer's 2025 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Pfizer's ordinary business operations.

Furthermore, the Proponent's Letter's argument that the Proposal is fundamentally about religious discrimination divorces the resolution from the entire supporting statement. Other than the introductory paragraph establishing that Pfizer is a major employer and is required to comply with the law, every paragraph of the supporting statement discusses ERGs. Certainly, many shareholders are likely to read the supporting statement and believe they are voting on a question relating to ERGs. If Proponent's position is that the Proposal is not actually about ERGs, it is likely that investors will be unclear as to what they are being asked to vote on, establishing an additional reason as to why the Proposal is materially false and misleading in violation of Rule 14a-9 and, this excludable under Rule 14a-8(i)(3).

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that it will take no action if Pfizer excludes the Proposal from its 2025 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Pfizer's position, we would

appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at margaret.m.madden@pfizer.com or Marc S. Gerber of Skadden Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,



Margaret M. Madden

cc: Jerry Bowyer
Bowyer Research, Inc.