

December 19, 2023

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

Re: Baxter International Inc. (BAX)  
Shareholder Proposal of Kenneth Steiner  
Securities and Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

Baxter International Inc., a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), submits this letter to inform the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) of the Company’s intention to omit from its proxy statement and form of proxy (collectively, the “2023 Proxy Materials”) the stockholder proposal (the “Proposal”) and the statement in support thereof submitted by Mr. Kenneth Steiner (the “Proponent”), with the assistance of Mr. John Chevedden, in a letter submitted to the Company on November 14, 2023. The Company spoke with the Proponent on December 5, 2023, and he declined to withdraw the Proposal or make amendments. A copy of the Proposal and all related written correspondence with the Proponent are attached to this letter as Exhibit A.<sup>1</sup> The Company respectfully requests that the Staff concur with the Company’s view that the Proposal may properly be excluded from the Company’s 2023 Proxy Materials pursuant to Rule 14a-8(i)(12)(iii).

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Pursuant to the Staff’s Announcement re New Intake System for Rule 14a-8 Submissions and Related Correspondence (November 7, 2023), the Company is submitting this request for no-action relief under Rule 14a-8 through the Commission’s online stockholder proposal form. Rule 14a-8(k) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we are taking this

---

<sup>1</sup> In reliance on the announcement by the Staff, we have omitted all correspondence that are not directly relevant to this no-action request. See Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, available at <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217> (last updated Dec. 17, 2021).

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 such 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:

#### **Proposal 4 - Independent Board Chairman**

The shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board. The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an accelerated basis.

The Chairman shall not be a former CEO of the company.

This proposal topic won 54%-support at our 2020 annual meeting. The Baxter Board of Directors should have adopted a topic that earned majority shareholder support.

However in response to 54% shareholder approval Baxter Board of Directors pulled a fast one. The Board claimed it adopted the 2020 proposal with a fig leaf policy that Baxter have a sometimes independent board chairman. However if one reads the fine print, that was suspiciously left out of the 144-page 2021 proxy, one would learn that the Baxter Board could always override the so-called new policy and always have one person serve as both CEO and Chairman at the same time.

With Mr. Jose Almeida as both Chairman and CEO Baxter stock fell from \$55 to \$34 from late 2022 to late 2023. Plus Mr. Almeida received the second highest against votes of any Baxter director. And executive pay was rejected by 22% of shares when a 5% rejection is often the norm at well performing companies.

Please vote yes:

**Independent Board Chairman - Proposal 4**

## **BASIS FOR EXCLUSION**

The Company believes that the Proposal may be properly excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(12)(iii) under the Exchange Act because the Proposal involves substantially the same subject matter as four previously submitted stockholder proposals submitted by the Proponent that were included in the Company's 2021, 2020, 2019, and 2018 proxy materials (for voting on at the Company's Annual Meeting of Stockholders in 2022, 2021, 2020 and 2019, respectively), and the most recently submitted of those proposals did not receive the 25% support necessary for resubmission.

### **ANALYSIS**

**The Proposal May Be Properly Excluded Under Rule 14a-8(i)(12)(iii) Because It Addresses Substantially The Same Subject Matter As Four Previously Submitted Proposals, And The Most Recently Submitted Of Those Proposals Did Not Receive The Support Necessary For Resubmission.**

#### *A. Overview Of Rule 14a-8(i)(12)*

Under Rule 14a-8(i)(12)(iii), a stockholder proposal that “addresses substantially the same subject matter as a proposal, or proposals, previously included in the company’s proxy materials within the preceding five calendar years” may be excluded from the company’s proxy materials “if the most recent vote occurred within the preceding three calendar years and the most recent vote was... [l]ess than 25 percent of the votes cast if previously voted on three or more times.”

The Commission has indicated that Rule 14a-8(i)(12)’s “substantially the same subject matter” standard does not require that prior proposals be identical to the later-submitted proposal in order for a company to exclude the later-submitted proposal. While the earlier version of Rule 14a-8(i)(12) required a proposal to be “substantially the same proposal” as prior proposals, the Commission amended this rule in 1983 to permit exclusion of a proposal that “deals with substantially the same subject matter.” The Commission explained that this revision was intended to curb the misuse of the stockholder proposal process:

[A]n appropriate response to counter the abuse of the security holder proposal process by certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue.

Exchange Act Release No. 20091 (Aug. 16, 1983) (the “1983 Release”).

The Commission has stated that judgments under Rule 14a-8(i)(12) are to be “based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns.” The 1983 Release. Although, as part of its 2020 amendments to Rule 14a-8(i)(12) to increase the resubmission percentage thresholds, the Commission also altered the Rule’s lead-in language to state that a company may exclude from its proxy materials a shareholder proposal that “*addresses* substantially the same subject matter” (emphasis added), rather than one that “*deals with* substantially the same subject matter”

(emphasis added), in its adopting release for such amendments, the Commission explicitly stated that it “did not propose changes to the ‘substantially the same subject matter’ test.” See Exchange Act Release No. 89964 (Sept. 23, 2020).

Accordingly, consistent with the Commission’s statements, the Staff has repeatedly concurred with the exclusion of stockholder proposals under Rule 14a-8(i)(12) when the proposal addresses “substantive concerns” that are similar to those underlying the prior proposal, even if the proposal recommends a somewhat different action than was recommended by the prior proposal. *See, e.g., Apple Inc.* (avail. Nov. 20, 2018) (concurring with the exclusion of a proposal requesting that the company review its policies related to human rights to assess whether it needed to adopt and implement additional policies because it dealt with substantially the same subject matter as one prior proposal requesting that the company establish a board committee on human rights and a second prior proposal requesting that the board amend the company’s bylaws to require a board committee on human rights); *Apple Inc. (Eli Plenk)* (avail. Dec. 15, 2017) (concurring with the exclusion of a proposal requesting that the company prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into performance measures of the CEO because it dealt with substantially the same subject matter as two earlier proposals requesting that the company adopt an accelerated recruitment policy requiring the company to increase the diversity of senior management and its board of directors); *The Coca Cola Co.* (avail. Jan. 18, 2017) (concurring with the exclusion of a proposal requesting a report identifying the number of Israel/Palestine employees who were Arab and non-Arab because it dealt with substantially the same subject matter as a prior proposal requesting that the company implement a set of “Holy Land” equal employment principles); *Exxon Mobil Corp.* (avail. Mar. 7, 2013) (concurring with the exclusion of a proposal requesting that the company review its facilities’ exposure to climate risk and issue a report to shareholders because it dealt with substantially the same subject matter as three prior proposals requesting that the company establish a committee or a task force to address issues relating to global climate change).

*B. The Proposal Addresses Substantially The Same Subject Matter As Four Proposals That Were Previously Included In The Company’s Proxy Materials Within the Preceding Five Calendar Years*

The Company has, within the past five years, included in its proxy materials four stockholder proposals submitted by the Proponent seeking the adoption of an independent chair policy for the Company’s Board of Directors (the “Board”).<sup>2</sup> The Company included such proposals in its 2021 proxy materials, filed with the Commission on March 21, 2022 (the “2022 Proposal,” attached as Exhibit B), its 2020 proxy materials, filed with the Commission on March 22, 2021 (the “2021 Proposal,” attached as Exhibit C), its 2019 proxy materials, filed with the Commission on March 17, 2020 (the “2020 Proposal,” attached as Exhibit D), and its 2018 proxy materials, filed with the Commission on March 26, 2019 (the “2019 Proposal,” attached as Exhibit E) (collectively, the “Previous Proposals”).

The Proposal addresses substantially the same subject matter as each of the Previous Proposals, all four of which were also entitled “Independent Board Chair(man)” and also requested that the Company adopt a policy that would require the Chair of the Board to be an independent director “whenever possible” and to amend the Company’s governing documents (including the Company’s bylaws) as necessary to implement such policy. Substantively, the only significant

---

<sup>2</sup> In addition, the Company included the Proponent’s Independent Chairman proposal in its 2017 proxy materials, filed with the Commission on March 23, 2018. This proposal addresses substantially the same subject matter as the Proposal and each of the Previous Proposals and only received approximately 25.6% support at the Company’s 2018 Annual Meeting.

difference between the Proposal and the four Previous Proposals is that this Proposal and the 2022 Proposal, in addition to requesting a policy that the Chair be independent “whenever possible” (like each of the other Previous Proposals), also include language requesting that two separate people hold the offices of Chief Executive Officer (“CEO”) and Board Chair. In fact, the stockholder request language in this Proposal and the 2022 Proposal is substantively nearly identical, differing by only four words.<sup>3</sup> While the resolved clauses of the 2021 Proposal, 2020 Proposal and 2019 Proposal do not directly reference the separation of the offices of CEO and Board Chair, each of their supporting statements included language stating that “The roles of Chairman and CEO are fundamentally different and [should be held by 2 directors][should not be held by the same person]”, demonstrating that all such proposals share the same substantive concerns as the Proposal and the 2022 Proposal, namely ensuring the independence of the Board Chair, which cannot be achieved if the CEO serves in such a capacity.

In addition, this Proposal, the 2022 Proposal and the 2021 Proposal each state in their supporting statements that “[t]his proposal topic won 54%-support at [our 2020 annual meeting][Baxter International in 2020]” (emphasis added). This language indicates that the Proponent himself views such proposals as being substantively equivalent to the previously submitted Previous Proposals, namely the 2019 Proposal and the 2020 Proposal.

Consistent with the foregoing, in *CVS Health Corporation* (avail. Jan. 3, 2023), the Staff concurred with the exclusion of an independent chair proposal that was submitted by the Proponent under nearly identical circumstances. In that case, as is the case here, the resolved clauses of the Proponent’s 2023 and 2022 proposals requested the adoption of a policy and a governing document amendment to require “that 2 separate people hold the office of the Chairman and the office of the CEO” while the 2021 and 2020 proposals requested the adoption of a policy and governing document amendment to require “that the Chairman of the Board be an independent member of the Board whenever possible.” Despite these differences, in granting the company’s no-action request, the Staff noted that “the [2023] Proposal addresses substantially the same subject matters as proposals previously included in the Company’s 2022, 2021 and 2020 proxy materials.” Thus, similar to *CVS*, the Company believes that the Proposal “addresses substantially the same subject matter” as each of four Previous Proposals because they all share the same substantive concerns and seek the same substantive result – the adoption of a policy and a related governing document amendment to ensure the independence of the Company’s Board Chair. As such, the Proposal may be excluded under Rule 14a-8(i)(12)(iii) because it addresses substantially the same subject matter as the Previous Proposals, and, as documented below, the 2022 Proposal did not receive the necessary stockholder support to permit resubmission.

*C. The Stockholder Proposal Included In The Company’s 2022 Proxy Materials Did Not Receive The Stockholder Support Necessary To Permit Resubmission.*

As noted above, under Rule 14a-8(i)(12), a company may exclude a proposal that address substantially the same subject matter as a prior proposal if such proposal has been voted on three

---

<sup>3</sup> The shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board. The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an accelerated basis.

The Chairman shall not be a former CEO of the company.

or more times within the last five years and received support of less than 25% of the votes cast the last time it went to a vote. The Company included the substantially similar Previous Proposals in the Company's 2021, 2020, 2019 and 2018 proxy materials. As evidenced in the Company's Form 8-K filed on May 6, 2022, which discloses the voting results for the Company's 2022 annual meeting of stockholders and is attached as Exhibit F, the 2022 Proposal (*i.e.*, the most recent proposal) received approximately 22.8% of the votes cast.<sup>4</sup> Thus, the 2022 Proposal failed to receive the necessary 25% support required by Rule 14a-8(i)(12)(iii) for resubmission.

For the foregoing reasons, the Company may exclude the Proposal from its 2023 Proxy Materials under Rule 14a-8(i)(12)(iii).

### **CONCLUSION**

Based on the analysis above, the Company respectfully requests the Staff's concurrence with its decision to omit the Proposal from the 2023 Proxy Materials and further requests the confirmation that the Staff will not recommend any enforcement action in connection with such omission. In the event the Staff disagrees with any conclusion expressed herein, or should any information in support or explanation of the Company's position be required, we would appreciate an opportunity to confer with the Staff before issuance of its response. If the Staff has any questions regarding this request or requires additional information, please contact the undersigned at (224) 948-2000 or [ellen\\_bradford@baxter.com](mailto:ellen_bradford@baxter.com).

We appreciate your attention to this request.

Best regards,

Handwritten signature of Ellen K. Bradford in blue ink.

cc: David S. Rosenbloom, Baxter International, Inc.  
Matthew Rice, Baxter International, Inc.  
Kimberly Olson, Baxter International, Inc.  
Kenneth Steiner  
John Chevedden

---

<sup>4</sup> The 2022 Proposal received 94,067,610 "for" votes and 318,684,398 "against" votes. Abstentions and broker non-votes were not included for purposes of this calculation. The total stockholder votes cast is calculated using a fraction for which the numerator is "for" votes and the denominator is "for+ against" votes. See Staff Legal Bulletin No. 14, part F.4 (July 13, 2001).

# Exhibit A

**From:** Kenneth Steiner [REDACTED]  
**Sent:** Tuesday, November 14, 2023 3:07 PM  
**To:** Bradford, Ellen Kathleen [REDACTED]; Rosenbloom, David  
[REDACTED]; Rice, Matthew Michael [REDACTED]  
**Cc:** John Chevedden [REDACTED]  
**Subject:** [ EXTERNAL ] Rule 14a-8 shareholder proposal for Baxter (BAX) 2024 annual meeting from Kenneth Steiner

[ EXTERNAL ]

Rule 14a-8 Proposal (BAX)

Dear Ms. Bradford,

Please see the attached rule 14a-8 proposal.

Please confirm that this is the correct email address for rule 14a-8 proposals.

Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." I so request.

---

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting if needed.

Sincerely



Kenneth Steiner

[REDACTED]

Ms. Ellen K. Bradford  
Corporate Secretary  
Baxter International Inc. (BAX)  
One Baxter Pkwy  
Deerfield, IL 60015  
[REDACTED]

Dear Ms. Bradford,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. The attached rule 14a-8 proposal is for the next annual shareholder meeting. I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

Please copy  
John Chevedden  
[REDACTED]

on all communication regarding this proposal.

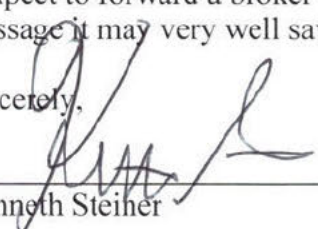
Mr. Chevedden is assisting me on my representing my proposal.

**Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.** If there is objection to the title please negotiate or seek no action relief as a last resort.

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals. Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

I expect to forward a broker letter soon so if you acknowledge this proposal promptly in an email message it may very well save you from requesting a broker letter from me.

Sincerely,

  
\_\_\_\_\_  
Kenneth Steiner

  
\_\_\_\_\_  
Date

cc: "Rosenbloom, David" [REDACTED]  
Matthew Rice [REDACTED]

[BAX – Rule 14a-8 Proposal, November 14, 2023]  
[This line and any line above it – *Not* for publication.]

**Proposal 4 – Independent Board Chairman**

The shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an accelerated basis.

The Chairman shall not be a former CEO of the company.

This proposal topic won 54%-support at our 2020 annual meeting. The Baxter Board of Directors should have adopted a topic that earned majority shareholder support.

However in response to 54% shareholder approval Baxter Board of Directors pulled a fast one. The Board claimed it adopted the 2020 proposal with a fig leaf policy that Baxter have a sometimes independent board chairman. However if one reads the fine print, that was suspiciously left out of the 144-page 2021 proxy, one would learn that the Baxter Board could always override the so-called new policy and always have one person serve as both CEO and Chairman at the same time.

With Mr. José Almeida as both Chairman and CEO Baxter stock fell from \$55 to \$34 from late 2022 to late 2023. Plus Mr. Almeida received the second highest against votes of any Baxter director. And executive pay was rejected by 22% of shares when a 5% rejection is often the norm at well performing companies.

Please vote yes:

**Independent Board Chairman – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

**Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.** If there is objection to the title please negotiate or seek no action relief as a last resort.

“Proposal 4” stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company’s next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [REDACTED]

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).  
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.

If there is objection to the title please negotiate or seek no action relief as a last resort.  
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.



FOR

**Shareholder  
Rights**

**From:** Bradford, Ellen Kathleen <[REDACTED]>

**Sent:** Friday, November 17, 2023 9:56 AM

**To:** Kenneth Steiner <[REDACTED]>

**Cc:** Rosenbloom, David <[REDACTED]>; Rice, Matthew Michael <[REDACTED]>; John Chevedden <[REDACTED]>

**Subject:** Rule 14a-8 shareholder proposal for Baxter (BAX) 2024 annual meeting from Kenneth Steiner

Mr. Steiner,

Thanks for your follow up and I confirm receipt of your letter.

Please see the attached letter requesting evidence of your BII stock holdings and scheduling time to discuss your proposal.

Best regards,  
Ellen Bradford

---

**From:** Kenneth Steiner <[REDACTED]>

**Sent:** Thursday, November 16, 2023 11:05 PM

**To:** Bradford, Ellen Kathleen <[REDACTED]>; Rosenbloom, David

<[REDACTED]>; Rice, Matthew Michael <[REDACTED]>; John Chevedden <[REDACTED]>

**Subject:** [ EXTERNAL ] Fwd: Rule 14a-8 shareholder proposal for Baxter (BAX) 2024 annual meeting from Kenneth Steiner


[ EXTERNAL ]

I am resending this which I had previously sent you on November 14 since I have not received any reply from you.

Sincerely  
Kenneth Steiner

November 17, 2023

**VIA EMAIL**

Kenneth Steiner  


**Re: Baxter International Inc. Rule 14a-8 Stockholder Proposal  
Independent Board Chairman**

Dear Mr. Steiner,

On November 14, 2023, we received a letter via email from you requesting that Baxter International Inc. ("Baxter or the "Company") include a stockholder proposal in its proxy materials for the Company's 2024 annual meeting of stockholders (the "Proposal"). This letter is being sent to notify you, in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, of the procedural and eligibility deficiencies in the Proposal, as well as your deadline to respond to this letter.

Under Rule 14a-8(b), to be eligible to submit a proposal, a stockholder must submit sufficient proof of continuous ownership of such number of the Company's securities entitled to vote on the Proposal equaling at least (a) \$2,000 in market value for at least three years prior to the date the Proposal was submitted (the "Submission Date"); (b) \$15,000 in market value for at least two years prior to the Submission Date; or (c) \$25,000 in market value for at least one year prior to the Submission Date.

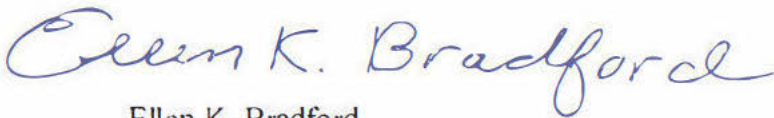
You must also include a written statement providing that you are able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after the Submission Date and provide the specific business days and times within the Company's ordinary business hours of 9:00 am CST and 5:00 pm CST that you are available to discuss the Proposal with the Company.

You did not include the required proof of ownership or the statement providing your availability to discuss the Proposal when you submitted the Proposal as required by Rule 14a-8(b). Because your name does not appear in the Company's records as a registered stockholder, you must prove your eligibility to submit a proposal by submitting to the Company a written statement by the "record" holder of your securities verifying that, as of the Submission Date, you continuously held the requisite number of securities for the required time period. For securities held through The Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders. If you hold your shares through a bank, broker or other securities intermediary that is not a DTC participant, you will need to obtain and provide to the Company

proof of ownership from both your bank, broker or other securities intermediary and the DTC participant (or its affiliate) through which your bank, broker or other securities intermediary holds the shares.

Under Rule 14a-8(f), we are required to inform you that if you would like to remedy the deficiencies described above, your proof of ownership and statement of availability must be postmarked, or transmitted electronically, no later than 14 calendar days from the date of receipt of this letter. If you do not adequately correct these deficiencies in the required time frame, we will exclude your Proposal from the Company's proxy statement for its upcoming 2024 annual meeting of stockholders.

Best regards,



Ellen K. Bradford

cc: David S. Rosenbloom

cc: Matthew Rice

cc: Kimberly Olson

cc: John Chevedden 

From: Kenneth Steiner <[REDACTED]@[REDACTED].[REDACTED]>

Sent: Tuesday, November 28, 2023 5:26 PM

To: Bradford, Ellen Kathleen <[REDACTED]@[REDACTED].[REDACTED]> Rosenbloom, David

<[REDACTED]@[REDACTED].[REDACTED]> Rice, Matthew Michael <[REDACTED]@[REDACTED].[REDACTED]>

Cc: John Chevedden <[REDACTED]@[REDACTED].[REDACTED]>

Subject: [ EXTERNAL ] BAX broker letter from Kenneth Steiner for shareholder proposal at Baxter

[ EXTERNAL ]

Please see attached broker letter

Sincerely

Kenneth Steiner

---

11/28/2023

Kenneth Steiner



Re: Your TD Ameritrade Account Ending in [REDACTED]

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter is to confirm that as of the start of business on November 28, 2023, there were at least 100 shares held in your TD Ameritrade account ending in [REDACTED] continuously since at least November 1, 2020, of :

- Baxter International Inc (BAX)

TD Ameritrade Clearing's DTC broker number is [REDACTED]

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,



Colton Holmes  
Resource Specialist  
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

Market volatility, volume, and system availability may delay account access and trade executions.

TD Ameritrade, Inc., member FINRA/SIPC, a subsidiary of The Charles Schwab Corporation. TD Ameritrade is a trademark jointly owned by TD Ameritrade IP Company, Inc. and The Toronto-Dominion Bank. © 2021 Charles Schwab & Co. Inc. All rights reserved.

TDA [REDACTED]



**From:** Kenneth Steiner [REDACTED]

**Sent:** Wednesday, December 6, 2023 5:17 PM

**To:** Bradford, Ellen Kathleen [REDACTED]

**Cc:** John Chevedden [REDACTED]

[REDACTED] /Steiner Independent Chair Proposal - Follow Up

[ EXTERNAL ]

Thank you for that information. I would like the proposal to be voted on to gauge shareholder opinion. I prefer the company have the policy contained in my proposal and although I appreciate the improvements made by the company think my criteria would be superior.

Sincerely

Kenneth Steiner

On Tue, Dec 5, 2023, 3:29 PM Bradford, Ellen Kathleen [REDACTED] wrote:

Mr. Steiner,

Thank you for taking the time to speak with me today.

As we discussed, the commitment we made in our amended Corporate Governance Guidelines coming off the 2020 Annual Shareholders Meeting is meaningful. Absent a determination by the Board that it's in the best interest of Baxter and Baxter shareholders to keep the roles combined (consistent with the Board's fiduciary duties), the roles of CEO and Chairman will be separated in connection with the appointment of Mr. Joe Almeida's successor.

Additionally, I would point to the recent appointment of Brent Shafer as the Board's lead independent director, as evidence of continuing Board refreshment at Baxter and strong independent oversight.

I appreciate your willingness to consider these points and the potential withdrawal of your proposal.

Let me know if you would like to discuss further.

Best regards,

Ellen

# Exhibit B

PROPOSAL  
7

### Independent Board Chairman

Baxter has been advised that Kenneth Steiner will present the following resolution at the Annual Meeting. Baxter has also been advised that Mr. Steiner is owner of at least 200 shares of Baxter common stock. Baxter will furnish the address of Mr. Steiner promptly upon oral or written request. After thoughtful consideration, the Board of Directors recommends that you vote **AGAINST** this proposal for the reasons set forth in the Board of Directors' statement that follows the proposal.

In accordance with the rules of the SEC, the proposal and supporting statement are being reprinted as they were submitted to Baxter's Corporate Secretary by the proponent. Baxter takes no responsibility for them.

**The Board recommends a vote AGAINST this stockholder proposal. Proxies solicited by the Board will be voted AGAINST this proposal unless otherwise instructed.**

## Stockholder Proposal

### Proposal 7—Independent Board Chairman

The shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board. The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

The Chairman shall not be a former CEO of the company.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing then adopted this proposal topic in June 2020. The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

This proposal topic won 54%-support at our 2020 annual meeting. Baxter management should have supported a topic that earned majority shareholder support.

However in response to 54% shareholder support Baxter management pulled a fast one. Management claimed it adopted the 2020 proposal with a policy that Baxter have a possible sometimes independent board chairman. However if one reads the fine print, that was suspiciously left out of the 144-page 2021 proxy, one would learn that the Baxter Board could always override the so-called new policy and always have one person serve as both CEO and Chairman at the same time.

This Baxter fig leaf policy may have been the brainchild of Mr. James Gavin as he was preparing to leave the Baxter board. Mr. Galvin chaired the Baxter governance committee. Or perhaps Mr. Gavin can point the finger at an outside law firm.

Cardinal Health tried a similar hocus pocus policy. However Cardinal Health was unable to convince the Securities and Exchange Commission in that its hocus pocus policy, similar to Baxter, implemented a shareholder proposal for a genuine independent board chairman policy.

The 2021 Cardinal Health no action request was a failure and the Cardinal Health request for reconsideration was also a failure in September 2021. Please see *Cardinal Health* at Securities and Exchange Commission 2020-2021 No-Action Responses: <https://www.sec.gov/corpfin/202p-2021-shareholder-proposals-no-action>

Please vote yes:  
**Independent Board Chairman—Proposal 7**

## Board of Directors' Statement Opposing the Stockholder Proposal

The Board has carefully considered the proposal and recommends that stockholders vote AGAINST the proposal for the following reasons:

### **The Board adopted a policy implementing the proposal in 2020 and the company's stockholders rejected a substantially identical proposal in 2021.**

In 2020, recognizing stockholder sentiment as expressed in a vote on a substantially identical proposal at the company's 2020 Annual Meeting and after extensive engagement with the company's top stockholders, the Board adopted an independent chair policy, which requires the Chairman of the Board to be an independent director unless the appointment of an independent Chair would be inconsistent with the directors' fiduciary duties. The policy is prospective and will be applied upon the next CEO transition. Applying the policy at this time would violate the terms of Mr. Almeida's offer letter.

In 2021, a substantially identical proposal to the 2020 proposal was voted on by stockholders at the company's 2021 Annual Meeting. After the company's adoption of its current independent chair policy, stockholder support for the 2021 proposal decreased to 27% of votes cast from 55% of votes cast. Investors expressed continued support for the company's newly adopted independent chair policy during the company's recently completed annual stockholder engagement program (as described in "Corporate Governance at Baxter International Inc.—Other Corporate Governance Information—Stockholder Engagement").

The full text of this independent chair policy can be found in Section 3 of Baxter's Corporate Governance Guidelines, which are available on Baxter's website at [www.baxter.com](http://www.baxter.com) under "Our Story—Our Governance—Corporate Governance Matters—Corporate Governance Guidelines." As a result, the Board believes that it has substantially adopted the policy requested by the proposal.

### **The Board sought feedback and carefully considered the views of the company's stockholders in adopting its independent chair policy.**

As mentioned above, after a similar proposal received approximately 55% support at the company's 2020 Annual Meeting, the Board carefully considered its response and sought feedback from the company's major stockholders as part of the company's ongoing stockholder outreach program. In the fall of 2020, management and members of the Board, including the company's current Lead Independent Director, Mr. Stroucken, spoke with stockholders representing over 40% of the company's outstanding shares (at December 31, 2020), including a number of investors which had supported the 2020 proposal. Nearly all of the stockholders with whom management and the Board met during its annual stockholder outreach program had expressed support for the company's subsequently adopted independent chair policy and stated that they believe the policy is sufficiently responsive to the 2020 proposal. The full Board reviewed the feedback received from stockholders and other key stakeholders and implemented the independent chair policy, in a form substantially similar to what had been described to stockholders and key investors as part of the annual stockholder outreach program.

### **The Board's approach strikes an appropriate balance to transition to a new Board leadership structure.**

In adopting its current independent chair policy, the Board and some of the company's stockholders were concerned about the unintended consequences or disruptions that may occur if the Chairman and CEO roles were split and an independent chairman was appointed immediately. Consistent with the terms of Mr. Almeida's existing offer letter, the Board's independent chair policy applies prospectively, thus providing the Board with an appropriate succession period to change its leadership structure and allowing the company to continue to benefit from Mr. Almeida's extensive experience in the medical products industry and his integral role in unifying company employees behind the company's current long-range strategy and ongoing culture transformation activities (including those resulting from the recently completed Hillrom acquisition).

Until an independent chairman is appointed (and during any periods in which the Board does not have an independent chairman), the Board continues to have a Lead Independent Director role with robust oversight and leadership responsibilities. In 2021, Mr. Stroucken was named the company's Lead Independent Director, and in said capacity, provides effective oversight and important leadership. For example, as the Lead Independent Director, Mr. Stroucken's duties include, among many others, the following:

- presiding at all Board executive sessions and all meetings of the Board when the Chairman is not present;
- acting as principal liaison between the independent directors and the Chairman and CEO;

- reviewing and approving meeting agendas for the Board and working with the Chairman and CEO to facilitate timely and appropriate information flow to the Board;
- reviewing and approving meeting schedules to assure that there is sufficient time for discussion of all agenda items;
- having the authority to call meetings of the independent directors;
- in consultation with the chair of the NCGPP Committee, leading the annual performance evaluation of the Chairman and CEO (as applicable);
- in consultation with the chair of the NCGPP Committee, leading the CEO succession process;
- engaging with Baxter's stockholders on selected topics including strategy and performance, corporate governance, executive compensation and other environmental, social and sustainability matters; and
- serving as the contact person for interested parties to communicate directly with the independent directors.

Together, Mr. Stroucken and Mr. Almeida promote decisive and accountable leadership, ensure robust oversight of the company and enhance Baxter's ability to communicate and engage with stockholders, customers, employees and other stakeholders.

Moreover, the Board continues to maintain strong corporate governance practices, policies and procedures to promote effective and independent Board oversight, including having regularly scheduled executive sessions led by Mr. Stroucken and the fact that 10 out of 11 of the directors on the Board, and all directors who serve on the Board's standing committees, are independent. Further, the Board recently appointed two new independent directors (Dr. David Wilkes and Ms. Nancy Schlichting (effective February 15, 2021 and December 13, 2021, respectively) and appointed Mr. Thomas Chen as the chair of the NCGPP Committee (effective May 2, 2021). Ms. Schlichting will become the chair of the Compensation Committee on May 2, 2022, in connection with the retirement of Mr. John Forsyth from the Board. These actions demonstrate the Board's ongoing commitment of the Board to effective and independent oversight.

As a result, the Board does not believe that any further action is necessary or appropriate and, therefore, unanimously recommends AGAINST this proposal.

# Exhibit C

PROPOSAL  
7

### Independent Board Chair

Baxter has been advised that Kenneth Steiner will present the following resolution at the 2021 Annual Meeting. Baxter has also been advised that Mr. Steiner is owner of at least 30 shares of Baxter common stock. Baxter will furnish the address of Mr. Steiner promptly upon oral or written request. After thoughtful consideration, the Board of Directors recommends that you vote **AGAINST** this proposal for the reasons set forth in the Board of Directors' statement that follows the proposal.

In accordance with the rules of the SEC, the proposal and supporting statement are being reprinted as they were submitted to Baxter's Corporate Secretary by the proponent. Baxter takes no responsibility for them.

**The Board recommends a vote **AGAINST** this stockholder proposal. Proxies solicited by the Board will be voted **AGAINST** this proposal unless otherwise instructed.**

## Stockholder Proposal

### Proposal 7—Independent Board Chair



The shareholders request the Board of Directors to adopt as policy, and amend the bylaws as necessary, to require the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. This policy could be phased in for the next CEO transition.

If the Board determines that a Chair is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is temporarily waived if, in the unlikely event, no independent director is available and willing to serve as Chair.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing adopted this proposal topic in June 2020.

The 2020 Lowe's (LOW) annual meeting proxy said that Lowe's independent directors determined that having a separate Chairman and Chief Executive Officer affords the CEO the opportunity to focus his time and energy on managing the business and allows the Chairman to devote his time and attention to Board oversight and governance.

This proposal topic won 50%-plus support at 5 major U.S. companies in one-year including 73%-support at Netflix. These 5 majority votes would have been still higher if all shareholders had access to independent proxy voting advice.

It is more important to have an independent Chairman of the Board since our Lead Director, Thomas Stalkamp, at age 74 has 21-years long-tenure. Long-tenure in a director is the opposite of independence and independence can be the most important attribute for a director—especially a Lead Director. Plus Mr. Stalkamp serves on no other Board of Directors to sharpen his skills.

James Gavin, at age 75 with 18-years long-tenure, was another long-tenure director on our Board who serves on no other Board of Directors. Mr. Gavin unfortunately chairs the Governance Committee which is responsible for considering this proposal. Mr. Gavin received the record high number of 2019 negative votes at Baxter—10-times more than certain other Baxter directors.

The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

- The role of the CEO and management is to run the company.
- The role of the Board of Directors is to provide independent oversight of management and the CEO.
- There is a potential conflict of interest for a CEO to have the oversight role of Chairman.



Shareholders are best served by an independent Board Chair who can provide a balance of power between the CEO and the Board. The primary duty of a Board of Directors is to oversee the management of a company on behalf of shareholders. A CEO serving as Chair can result in excessive management influence on the Board and weaker oversight of management.

Please vote yes:  
**Independent Board Chair—Proposal 7**

## Board of Directors' Statement Opposing the Stockholder Proposal

The Board has carefully considered the proposal and recommends that stockholders vote AGAINST the proposal for the following reasons:

### **The Board has already adopted a policy implementing the proposal.**

In 2020, recognizing stockholder sentiment as expressed in a vote on a substantially identical proposal at the company's 2020 Annual Meeting and after extensive engagement with the company's top stockholders throughout the fall of 2020, the Board adopted a policy to require the Chair of the Board to be an independent director unless the appointment of an independent Chair would be inconsistent with the directors' fiduciary duties (as described below). The policy is prospective and will be applied upon the next CEO transition. Applying the policy at this time would violate the terms of Mr. Almeida's offer letter.

The full text of this independent chair policy can be found in Section 3 of Baxter's Corporate Governance Guidelines, which are available on Baxter's website at [www.baxter.com](http://www.baxter.com) under "Our Story—Our Governance—Corporate Governance Matters—Corporate Governance Guidelines." As a result, the Board believes that it has substantially adopted the policy requested by the proposal.

### **The Board sought feedback and carefully considered the views of the company's stockholders in adopting the proposal.**

As mentioned above, after a similar proposal received approximately 55% support at the company's 2020 Annual Meeting, the Board carefully considered how to respond to the proposal, including by seeking feedback from the company's major stockholders as part of the company's ongoing stockholder outreach program. In the spring and fall of 2020, management and members of the Board, including Mr. Stalkamp and Mr. Stroucken, spoke with stockholders representing over 40% of the company's outstanding shares (calculated as of December 31, 2020), including a number of investors which had supported the 2020 proposal. Nearly all of the stockholders with whom Messrs. Stalkamp and Stroucken and company management met in the fall of 2020 expressed support for the company's independent chair policy (as proposed) and stated they believe it is sufficiently responsive to the proposal that passed. The full Board reviewed the feedback received from stockholders and other key stakeholders and, on November 16, 2020, implemented the independent chair policy, in a form substantially similar to what had been described to investors during the company's fall 2020 corporate governance outreach (as described above).

### **The Board's approach strikes an appropriate balance to transition to a new Board leadership structure.**

In adopting the new independent chair policy, the Board and some of the company's stockholders were concerned about the unintended consequences or disruptions that may occur if the Chair and CEO roles were split and an independent chair was appointed immediately. Consistent with the terms of this proposal, and Mr. Almeida's existing employment agreement, the Board's independent chair policy applies prospectively, thus providing the Board with an appropriate succession period to change its leadership structure and allowing the company to continue to benefit from Mr. Almeida's extensive experience in the medical products industry and his integral role in unifying company employees behind the company's current long-range strategy and ongoing culture transformation activities.

Until an independent chair is appointed (and during any periods in which the Board does not have an independent chair), the Board continues to have a Lead Independent Director role with robust oversight and leadership responsibilities. In February 2021, the company announced that Mr. Stroucken was appointed as the Board's new Lead Independent Director. As the Lead Independent Director, Mr. Stroucken provides effective oversight and important leadership. For example, as the Lead Independent Director, Mr. Stroucken's duties include, among many others, the following:

- presiding at all Board executive sessions and all meetings of the Board when the Chair is not present;
- acting as principal liaison between the independent directors and the Chair and CEO;
- reviewing and approving meeting agendas for the Board and working with the Chair and CEO to facilitate timely and appropriate information flow to the Board;
- reviewing and approving meeting schedules to assure that there is sufficient time for discussion of all agenda items;
- having the authority to call meetings of the independent directors;
- in consultation with the chair of the Nominating, Corporate Governance & Public Policy Committee, leading the annual performance evaluation of the Chair and CEO (as applicable);

- in consultation with the chair of the Nominating, Corporate Governance & Public Policy Committee, leading the CEO succession process;
- engaging with Baxter's stockholders on selected topics including strategy and performance, corporate governance, executive compensation and other environmental, social and sustainability matters; and
- serving as the contact person for interested parties to communicate directly with the independent directors.

Together, Mr. Stroucken and Mr. Almeida promote decisive leadership, ensure accountability and oversight of the company and enhance Baxter's ability to communicate with a single and consistent voice to stockholders customers, employees and other stakeholders.

Moreover, the Board continues to have strong corporate governance practices, policies and procedures to promote effective and independent oversight, including having regularly scheduled executive sessions and the fact that 12 out of 13 of the directors on the Board, and all directors who serve on the Board's standing committees, are independent. Further, the Board recently appointed a new independent director (Dr. David Wilkes) and, following Dr. Gavin's retirement from the Board, Mr. Thomas Chen became the new chair of the Nominating, Corporate Governance & Public Policy Committee (effective May 2, 2021). These actions demonstrate the Board's ongoing commitment to Board independence and effective oversight.

As a result, the Board does not believe that any further action is necessary or appropriate and, therefore, unanimously recommends AGAINST this proposal.

# Exhibit D

## Stockholder Proposals

PROPOSAL  
4

### Independent Board Chairman

Baxter has been advised that Kenneth Steiner will present the following resolution at the 2020 Annual Meeting. Baxter has also been advised that Mr. Steiner is owner of approximately 300 shares of Baxter common stock. Baxter will furnish the address of Mr. Steiner promptly upon oral or written request. After thoughtful consideration, the Board of Directors recommends that you vote **AGAINST** this proposal for the reasons set forth in the Board of Directors' statement that follows the proposal.

In accordance with the rules of the SEC, the proposal and supporting statement are being reprinted as they were submitted to Baxter's Corporate Secretary by the proponent. Baxter takes no responsibility for them.

**The Board recommends a vote **AGAINST** this stockholder proposal. Proxies solicited by the Board will be voted **AGAINST** this proposal unless otherwise instructed.**

## Stockholder Proposal

### Proposal 4—Independent Board Chairman

Shareholders request our Board of Directors adopt as policy, and amend our governing documents as necessary, to require that the Chairman of the Board be an independent member of the Board whenever possible. Although it would be better to have an immediate transition to an independent Board Chairman, the Board would have the discretion to phase in this policy for the next Chief Executive Officer transition.

If the Board determines that a Chairman, who was independent when selected is no longer independent, the Board shall select a new Chairman who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman.

This proposal topic won 50%-plus support at 5 major U.S. companies in one-year including 73%-support at Netflix. These 5 majority votes would have been still higher if all shareholders had access to independent proxy voting advice.

It is more important to have an independent Chairman of the Board since our Lead Director, Thomas Stallkamp, has 19-years long-tenure. Long-tenure in a director is the opposite of independence and independence can be the most important attribute for a director—especially a Lead Director. Plus Mr. Stallkamp serves on no other Board of Directors to sharpen his skills.

James Gavin was another long-tenure director on our Board who serves on no other Board of Directors. Mr. Gavin unfortunately chairs the Governance Committee which is responsible for considering this proposal. Mr. Gavin received the record high number of 2019 negative votes at Baxter—10-times more than certain other Baxter directors.

In another matter regarding our directors the Delaware Court of Chancery issued a decision, *In Re VAALCO Energy, Inc.*, in December 2015 in which the Court interpreted Section 141(k) of General Corporation Law of the State of Delaware and held that many companies may improperly state in their certificate of incorporation or bylaws that directors may be removed only for cause. It is not clear whether Baxter directors can be removed without cause.

The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

Please vote yes:

**Independent Board Chairman—Proposal 4**

## Board of Directors' Statement Opposing the Stockholder Proposal

The Board has carefully considered the proposal and the fact that a similar proposal has been rejected by the company's stockholders in both 2018 and 2019, and recommends that stockholders vote AGAINST the proposal for the following reasons:

### **Baxter's leadership structure, including its robust lead independent director role, provides strong and effective independent oversight**

The Board recognizes the need for it to effectively operate independent of management and to have the benefit of meaningful independent leadership. As such, the Board regularly evaluates and reviews its leadership structure to determine if any changes are appropriate based on the current needs of the Board and the company. The Corporate Governance Guidelines provide that so long as the Chief Executive Officer is also the Chairman of the Board, the independent directors will annually elect a lead independent director from among the independent directors. The Corporate Governance Committee is responsible for recommending a candidate for lead independent director. The duties and responsibilities of the lead independent director, including as provided in the Corporate Governance Guidelines, are as follows:

- preside at all Board executive sessions and all meetings of the Board at which the Chairman and CEO is not present;
- act as principal liaison between the independent directors and the Chairman and CEO;
- review and approve meeting agendas for the Board and work with the Chairman and CEO to facilitate timely and appropriate information flow to the Board;
- review and approve meeting schedules to assure that there is sufficient time for discussion of all agenda items;
- have the authority to call special meetings of the independent directors;
- in consultation with the chair of the Corporate Governance Committee, lead the annual performance evaluation of the Chair/CEO and the CEO succession process;
- engage with Baxter's stockholders on selected topics including corporate governance and executive compensation; and
- serve as the contact person for interested parties to communicate directly with the independent directors.

The company's existing governance structure allows the Board to make changes in the company's leadership structure if and when the Board believes that such actions are in the best interests of the company and its stockholders. The Board believes that the company and its stockholders are best served by a flexible policy that permits, but does not require, the same individual to serve as Chairman and Chief Executive Officer. A policy that would restrict the Board's discretion in selecting the Chairman would deprive the Board of the opportunity to select the most qualified and appropriate individual to lead the Board as Chairman. The Board expressed the same position in its response to a similar stockholder proposal considered by stockholders in 2018 and again in 2019. In both years, the proposal received less than 30% support, which indicates that the company's stockholders are broadly supportive of the Board's position on this issue and current leadership structure.

### **The Board has acted in the best long-term interests of its stockholders to identify the right leadership structure**

At this time, having one individual serve as both Chief Executive Officer and Chairman, complemented by a strong lead independent director, allows consistent communication and coordination throughout the company and effective and efficient implementation of corporate strategy. This combined role has been integral in unifying company employees behind the company's current long-range strategy and culture. Additionally, as Chairman, Mr. Almeida discusses all material matters with the Board, and provides regular and robust disclosure of the company's business with the Board.

The independent directors have determined that Mr. Almeida remains eminently qualified to fill this combined role and the Board believes doing so is optimal for the company and its stockholders. Mr. Almeida's decades of experience in the medical products industry, including his previous experience as the chairman and chief executive officer of another publicly held medical device company, make him well positioned to lead Baxter's business, operations and strategy and to serve as the chairman of the Board. Under Mr. Almeida's leadership, the company has achieved strong operational and stock price performance. For example, Baxter delivered strong results for 2019, with the fourth quarter reflecting its strongest operational sales growth since the spin-off of Baxalta, driven by outstanding performance across all its global businesses and regions.

While Mr. Stallkamp has served on the Board since 2000, he has only served as lead independent director since May 2014. He was appointed to that role in advance of the July 2015 Baxalta spin-off and in light of his significant knowledge of the company and his extensive prior experience as an executive and director at other complex, global companies. That experience was invaluable in helping to lead the company through the spin-off and in the recruitment and appointment of Joe Almeida as Chief Executive Officer and Chairman beginning January 1, 2016. In 2019 and 2020, Mr. Stallkamp, together with the other members of the Audit Committee, oversaw the company's internal investigation and restatement process, which resulted in the filing of the company's restated financial statements on March 17, 2020. Mr. Stallkamp's knowledge and experience, and his ability and willingness to devote a significant amount of time and attention to his responsibilities as lead independent director of Baxter, have enabled him to continue to provide the company with valuable insight and effective oversight throughout his tenure.

### **The proposal is not necessary to ensure effective oversight of management and accountability to stockholders**

In addition to having a robust lead independent director, the Board has adopted various governance practices to further promote the active, independent oversight of company management and provide the company's stockholders with meaningful rights. These practices include:

- the use of executive sessions of only the independent directors as part of every regularly scheduled Board meeting during which Baxter's lead independent director facilitates discussions among independent directors of various matters relating to the company and the functioning of the Board.
- 11 out of 12 of the directors on the Board are independent—Mr. Almeida is the single member of management on the Board.
- the Board's four standing committees, which are charged with overseeing many critical matters for the company and the Board, are comprised entirely of independent directors.
- 5 of the 12 directors have an average tenure of less than four years as of December 31, 2019.
- a declassified Board, with all directors standing for election annually.
- a majority voting standard for uncontested director elections.
- the elimination of all super-majority provisions from the company's organizational documents.
- providing stockholders with the ability to call special meetings and to nominate candidates to the Board both through traditional processes and its proxy access procedures.
- ongoing board refreshment, with its robust annual self-assessment process, including third party oversight every two to three years, ultimately leading to the recent director appointments of two new diverse directors in 2019.
- engaging with stockholders in order to seek feedback about the company's corporate governance policies and practices, and making changes as appropriate (as described in "Executive Compensation—Compensation Discussion and Analysis—Summary—Stockholder Engagement"). As the Board's lead independent director, Mr. Stallkamp participates in these outreach efforts, including by meeting directly with several of the company's large institutional stockholders. The company, including Mr. Stallkamp, plans to engage in robust corporate governance outreach with stockholders following the filing of this proxy statement.

In short, the Board believes the adoption of this proposal is unnecessary in light of Baxter's commitment to strong independent leadership and meaningful corporate governance and stockholder engagement policies and practices. The Board believes it is important that it retain the flexibility and ability to exercise judgment, in accordance with its fiduciary duties, to determine the most effective Board leadership structure to best serve the interests of the company and its stockholders today and in the future.

Thus, the Board recommends a vote AGAINST this proposal.

# Exhibit E



## Stockholder Proposals

### PROPOSAL 4

#### Independent Board Chairman

Baxter has been advised that Kenneth Steiner will present the following resolution at the 2019 Annual Meeting. Baxter has also been advised that Mr. Steiner is owner of at least 300 shares of Baxter common stock. Baxter will furnish the address of Mr. Steiner promptly upon oral or written request. After thoughtful consideration, the Board of Directors recommends that you vote **AGAINST** this proposal for the reasons set forth in the Board of Directors' statement that follows the proposal.

In accordance with the rules of the SEC, the proposal and supporting statement are being reprinted as they were submitted to Baxter's Corporate Secretary by the proponent. Baxter takes no responsibility for them.

**The Board recommends a vote **AGAINST** this stockholder proposal. Proxies solicited by the Board will be voted **AGAINST** this proposal unless otherwise instructed.**

## Stockholder Proposal

### Independent Board Chairman—Proposal 4

Shareholders request our Board of Directors to adopt as policy, an amend our governing documents as necessary, to require henceforth that the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next Chief Executive Officer transition, implemented so it does not violate any existing agreement.

If the Board determines that a Chairman, who was independent when selected is no longer independent, the Board shall select a new Chairman who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman. This proposal requests that all the necessary steps be taken to accomplish the above.

This proposal topic was 50%-plus support at 5 major U.S. companies in 2013 including 73%-support at Netflix. This proposal topic also won 48%-support from Baxter shareholders in 2015. This 48%-support would have been above 50% if all shareholders had the same access to independent proxy voting advice.

Shareholder proposals such as this have played a leadership role in improving the governance rules of our company from a shareholder perspective. As a result of shareholder proposals at Baxter an onerous 67% shareholder vote requirement was eliminated (2013), shareholders now have a right to call for a special meeting (2013) and there is now shareholder proxy access at our company (2016).

There is concern that the Baxter Chairman/CEO, José Almeida, received 10-times the negative votes as certain other Baxter directors. Also Thomas Stalkamp, Baxter Lead Director, had 18-years long-tenure. Long-tenure can impair the independence of a director no matter how well qualified. And independence is an all-important qualification for a Lead Director.

An independent Chairman is best positioned to build up the oversight responsibilities of our directors while our CEO addresses the challenging day-to-day issues facing the company. The roles of Chairman of the Board and CEO are fundamentally different and should not be held by the same person. There should be a clear division of responsibilities between these positions to insure a balance of power and authority on the Board.

Please vote yes:

### Independent Board Chairman—Proposal 4

## Board of Directors' Statement Opposing the Stockholder Proposal

The Board has carefully considered the proposal and recommends that stockholders vote AGAINST the proposal for the following reasons:

### **Baxter's lead director role provides strong independent oversight**

The Board recognizes the need for it to effectively operate independent of management and to have the benefit of meaningful independent leadership. As such, the Board regularly evaluates and reviews its leadership structure to determine if any changes are appropriate based on the current needs of the Board and the company. The Corporate Governance Guidelines provide that so long as the Chief Executive Officer is also the Chairman of the Board, the independent directors will annually elect a lead director from among the independent directors. The Corporate Governance Committee is responsible for recommending a candidate for lead director. The duties and responsibilities of the lead director, including as provided in the Corporate Governance Guidelines, are as follows:

- preside at all Board executive sessions and all meetings of the Board at which the Chairman and CEO is not present, including executive sessions of the independent members of the Board;
- act as principal liaison between the independent directors and the Chairman and CEO;
- review and approve meeting agendas for the Board and work with the Chairman and CEO to facilitate timely and appropriate information flow to the Board;
- review and approve meeting schedules to assure that there is sufficient time for discussion of all agenda items;
- have the authority to call special meetings of the independent directors;
- in consultation with the chair of the Corporate Governance Committee, lead the annual performance evaluation of the Chair/CEO and the CEO succession process;
- engage with Baxter's stockholders on selected topics including corporate governance and executive compensation; and
- serve as the contact person for interested parties to communicate directly with the independent directors.

The company's existing governance structure allows the Board to make changes in the company's leadership structure if and when the Board believes that such actions are in the best interests of the company and its stockholders. The Board believes that the company and its stockholders are best served by a flexible policy that permits but does not require the same individual to serve as Chairman and Chief Executive Officer. A policy that would restrict the Board's discretion in selecting the Chairman would deprive the Board of the opportunity to select the most qualified and appropriate individual to lead the Board as Chairman. The Board expressed the same position in its response to a similar stockholder proposal considered by stockholders in 2018. The decreased level of support received by the 2018 proposal (approximately 26% in 2018 down from 30% in 2016 and from 48% in 2015) indicates that company stockholders are widely supportive of the Board's position and current leadership structure.

### **The Board has acted in the best long-term interests of its stockholders to identify the right leadership structure**

At this time, having one individual serve as both Chief Executive Officer and Chairman, complemented by a strong lead director allows consistent communication and coordination throughout the company and effective and efficient implementation of corporate strategy. This combined role has been integral in unifying company employees behind the company's current long-range strategy. Additionally, as Chairman, Mr. Almeida discusses all material matters with the Board, and provides regular and robust disclosure of the company's business with the Board.

The independent directors have determined that Mr. Almeida remains eminently qualified to fill this combined role and the Board believes doing so is optimal for the company and its stockholders. Mr. Almeida's decades of experience in the medical products industry, including his previous experience as the chairman and chief executive officer of another publicly held medical device company, make him well positioned to lead Baxter's business, operations and strategy and to serve as the chairman of the Board.

While Mr. Stallkamp has served on the Board since 2000, he has only served as lead director since May 2014. He was appointed to that role in advance of the July 2015 Baxalta spin-off and in light of his significant knowledge of the company. That experience was invaluable in helping to lead the company through the spin-off and in the recruitment and appointment of Joe Almeida as Chief Executive Officer and Chairman beginning January 1, 2016.

**The proposal is not necessary to ensure effective oversight of management and accountability to stockholders**

The Board has adopted various governance practices to promote the active, independent oversight of company management. These practices include the use of executive sessions of only the independent directors as part of every regularly scheduled Board meeting. During the executive sessions, led by our lead director Mr. Stallkamp, the independent directors discuss various matters relating to the company and the functioning of the Board. Mr. Almeida is the single member of management of the company's 14 directors on the Board—all other members are independent. Furthermore, the Board's four standing committees are comprised entirely of independent directors. Oversight of many critical matters for the company and the Board is entrusted to independent directors serving on these committees. In fact, the Corporate Governance Committee led the search that resulted in the recent appointments of Mses. Patricia Morrison and Amy Wendell as part of its ongoing board refreshment efforts. After giving effect to these appointments, 50% of the directors have an average tenure of less than four years.

Since the 2016 Annual Meeting at which a similar stockholder proposal was defeated, the Board has overseen the complete declassification of the Board. Effective as of last year, all of Baxter's directors are elected to serve one year terms. Additionally, with this change came the elimination of all super-majority provisions from the company's organizational documents.

In 2018, Mr. Stallkamp helped oversee the expansion of the Board's annual self-assessment program, which ultimately led to the recent director appointments (as discussed above). He also participated in the company's annual corporate governance outreach efforts during which he had the opportunity to engage directly with several of the company's large institutional stockholders.

The Board believes it is important that it retain the flexibility and ability to exercise judgment, in accordance with its fiduciary duties, to determine the most effective Board leadership structure to best serve the interests of the company and its stockholders today and in the future.

Thus, the Board recommends a vote AGAINST this proposal.

**9 | \ ]V]h:**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d)**  
**of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): May 3, 2022**

**Baxter International Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**1-4448**  
(Commission  
File Number)

**36-0781620**  
(I.R.S. Employer  
Identification No.)

**One Baxter Parkway, Deerfield, Illinois**  
(Address of principal executive offices)

**60015**  
(Zip Code)

**(224) 948-2000**  
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d 2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class                   | Trading<br>Symbol(s) | Name of each exchange<br>on which registered              |
|---------------------------------------|----------------------|---|
| <b>Common Stock, \$1.00 par value</b> | <b>BAX (NYSE)</b>    | <b>New York Stock Exchange<br/>Chicago Stock Exchange</b> |
| <b>1.3% Global Notes due 2025</b>     | <b>BAX 25</b>        | <b>New York Stock Exchange</b>                            |
| <b>1.3% Global Notes due 2029</b>     | <b>BAX 29</b>        | <b>New York Stock Exchange</b>                            |
| <b>0.4% Global Notes due 2024</b>     | <b>BAX 24</b>        | <b>New York Stock Exchange</b>                            |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter)

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(e) of the Exchange Act

---

**Item 3.03 Material Modification to Rights of Security Holders.**

The information set forth in Item 5.03 of this Current Report on Form 8-K (this “Current Report”) is incorporated herein by reference.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.*****Appointment and Compensation of D. Brent Shafer and Peter M. Wilver as Directors.***

On May 3, 2022, Baxter International Inc. (the “Company”) appointed each of D. Brent Shafer and Peter M. Wilver to its Board of Directors (the “Board”), with such appointments to become effective on May 10, 2022. Upon their appointment to the Board on May 10, 2022, the number of directors constituting the Board will increase to thirteen directors. Upon their appointment to the Board, Mr. Shafer will be appointed to serve on the Audit Committee and Compensation Committee and Mr. Wilver will be appointed to serve on the Compensation Committee.

Mr. Shafer, 64, previously served as the Chairman of the Board and Chief Executive Officer of Cerner Corporation from 2018 to 2021. Prior to Cerner, Mr. Shafer held a number of roles at Koninklijke Philips NV, including Chief Executive Officer of Philips North America and Chief Executive Officer of Philips Home Healthcare Solutions business. Before joining Philips, Mr. Shafer was vice president and general manager of Hillrom’s Patient Care Environment Division and worked at GE Medical Systems where he served in key positions in sales, marketing, and general management. Mr. Shafer has also held senior roles at Hewlett Packard’s Medical Products Group and Johnson & Johnson. He currently serves as a director of Tactile Systems Technology.

Mr. Wilver, 62, previously served as the Executive Vice President and Chief Administrative Officer of Thermo Fisher Scientific, Inc. from 2015 until his retirement in 2017. Mr. Wilver also served as Thermo Fisher’s chief financial officer, a position he held from 2004 to 2015. Prior to Thermo Fisher, Mr. Wilver was the chief financial officer for Honeywell’s Electronic Materials Division. Before joining Honeywell, he held various finance roles at Grimes Aerospace Company and General Electric Company. Mr. Wilver currently serves as a director of Shoals Technologies Group Inc. and Evoqua Water Technologies Corporation.

Mr. Shafer and Mr. Wilver will each be compensated for his service as a director pursuant to the Company’s Non-Employee Director Compensation Plan filed as Exhibit 10.26 to the Company’s Annual Report on Form 10-K filed on February 23, 2022 (the “2022 Form 10-K”), and will be eligible to participate in the Company’s Directors’ Deferred Compensation Plan filed as Exhibit 10.18 to the Company’s 2022 Form 10-K. In connection with joining the Board, Mr. Shafer and Wilver will each be granted equity awards as compensation for a portion of their 2022 service (representing the period between May 10, 2022 and the 2023 Annual Meeting) in an amount consistent with the awards granted annually to non-employee directors, prorated for the full calendar months to be served during such period in accordance with the terms of the Company’s Non-Employee Director Compensation Plan. A description of the Company’s non-employee director compensation arrangements can be found in the section titled “Proposal 1. Election of Directors-Director Compensation” in the Company’s definitive proxy statement for its 2022 Annual Meeting filed on March 21, 2022 (and amended on March 28, 2022) and is incorporated herein by reference.

***Retirement of Mr. Peter S. Hellman.***

On May 4, 2022, Peter S. Hellman notified the Company of his decision to retire from the Board, effective as of June 30, 2022. Following Mr. Hellman’s retirement on June 30, 2022, the number of directors constituting the Board will decrease to twelve directors.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

On May 3, 2022, the Company held its annual meeting of stockholders (the “2022 Annual Meeting”) at which the stockholders approved the following two amendments to the Company’s Amended and Restated Certificate of Incorporation (as further described under Item 5.07 of this Current Report):

- An amendment to add a new Article ELEVENTH to permit stockholder action by written consent following a request by record holders who have beneficially owned shares representing a “net long position” of at least 25% of the Company’s common stock entitled to vote on the matter for at least one year so long as such action is approved by holders of shares representing not less than the minimum number of shares required to take such action at an annual or special meeting, subject to the satisfaction of certain procedural safeguards set forth therein (the “Written Consent Charter Amendment”). A stockholder’s “net long position” is generally defined as those shares of common stock as to which a

stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided, that Net Long Beneficial Ownership does not include any shares as to which such person does not have the right to vote or direct the vote, or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares.

- An amendment to Article TWELFTH to change the stock ownership threshold required for stockholders to request a special meeting from record holders of at least 25% of the Company's outstanding common stock entitled to vote on the matter(s) to be brought before the proposed special meeting to record holders who have beneficially owned shares representing a "net long position" of at least 15% of the outstanding shares of Common Stock entitled to vote on the matter(s) to be brought before the proposed special meeting for at least one year (the "Special Meeting Charter Amendment" and, together with the Written Consent Charter Amendment, the "Charter Amendments")

On May 5, 2022, the Company filed its Amended and Restated Charter (the "Amended and Restated Charter"), reflecting the Charter Amendments, with the Secretary of State of the State of Delaware, with such Amended and Restated Charter becoming effective immediately upon filing.

On February 15, 2022, in connection with the Charter Amendments, the Board approved a corresponding amendment and restatement of the Company's Amended and Restated Bylaws (the "Amended and Restated Bylaws") to reflect the new special meeting ownership threshold, with such Amended and Restated Bylaws becoming effective immediately upon the filing of the Amended and Restated Charter.

The foregoing description of the Amended and Restated Charter and Amended and Restated Bylaws is qualified in its entirety by reference to the text of the Amended and Restated Charter and Amended and Restated Bylaws, copies of which are attached hereto as Exhibits 3.1 and 3.2, respectively, and are incorporated herein by reference.

#### Item 5.07 Submission of Matters to a Vote of Security Holders

On May 3, 2022, the Company held its 2022 Annual Meeting in a virtual format. Of the 503,197,000 shares outstanding and entitled to vote, 447,845,077 shares were represented at the meeting, constituting a quorum of approximately 89%. The following is a summary of the matters voted on at the 2022 Annual Meeting.

- (a) The eleven nominees for director were elected as follows:

| Nominee               | For         | Against    | Abstain   | Broker Non-Votes |
|-----------------------|-------------|------------|-----------|------------------|
| José (Joe) E. Almeida | 384,473,820 | 27,138,213 | 2,192,265 | 34,040,779       |
| Thomas F. Chen        | 397,665,546 | 9,870,623  | 6,268,129 | 34,040,779       |
| Peter S. Hellman      | 389,880,292 | 23,572,504 | 351,502   | 34,040,779       |
| Michael F. Mahoney    | 401,357,935 | 12,096,939 | 349,424   | 34,040,779       |
| Patricia B. Morrison  | 410,121,031 | 3,368,893  | 314,374   | 34,040,779       |
| Stephen N. Oesterle   | 405,592,708 | 7,856,986  | 354,604   | 34,040,779       |
| Nancy M. Schlichting  | 399,354,971 | 14,134,459 | 314,868   | 34,040,779       |
| Cathy R. Smith        | 407,895,932 | 5,599,580  | 308,786   | 34,040,779       |
| Albert P.L. Stroucken | 386,615,470 | 26,844,274 | 344,554   | 34,040,779       |
| Amy A. Wendell        | 406,527,028 | 6,962,497  | 314,773   | 34,040,779       |
| David S. Wilkes       | 411,552,025 | 1,901,999  | 350,274   | 34,040,779       |

- (b) By the following vote, stockholders approved, on an advisory basis, the 2021 compensation paid to the Company's named executive officers:

| For         | Against    | Abstain | Broker Non-Votes |
|-------------|------------|---------|------------------|
| 375,423,883 | 37,478,137 | 902,278 | 34,040,779       |

- (c) The appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for 2022 was ratified by the following vote:

| For         | Against    | Abstain |
|-------------|------------|---------|
| 417,865,402 | 29,622,889 | 356,786 |

- (d) By the following vote, stockholders approved the Written Consent Charter Amendment to permit stockholder action by written consent (as described in Item 5.03 of this Current Report):

| For         | Against   | Abstain | Broker Non-Votes |
|-------------|-----------|---------|------------------|
| 409,319,021 | 3,979,369 | 505,908 | 34,040,779       |

- (e) By the following vote, stockholders approved the Special Meeting Charter Amendment to lower the special meeting threshold (as described in Item 5.03 of this Current Report):

| <b>For</b>  | <b>Against</b> | <b>Abstain</b> | <b>Broker Non-Votes</b> |
|-------------|----------------|----------------|-------------------------|
| 404,787,410 | 7,212,995      | 1,803,893      | 34,040,779              |

- (f) By the following vote, stockholders did not approve the stockholder proposal relating to special shareholder meeting improvement:

| <b>For</b>  | <b>Against</b> | <b>Abstain</b> | <b>Broker Non-Votes</b> |
|-------------|----------------|----------------|-------------------------|
| 144,332,872 | 268,232,028    | 1,239,398      | 34,040,779              |

- (g) By the following vote, stockholders did not approve the stockholder proposal relating to an independent board chairman:

| <b>For</b> | <b>Against</b> | <b>Abstain</b> | <b>Broker Non-Votes</b> |
|------------|----------------|----------------|-------------------------|
| 94,067,610 | 318,684,398    | 1,052,290      | 34,040,779              |

**Item 9.01 Financial Statements and Exhibits.**

**Description**

- 3.1 [Amended and Restated Certificate of Incorporation of Baxter International Inc. dated May 5, 2022](#)
- 3.2 [Amended and Restated Bylaws dated May 5, 2022](#)
- 104 Cover Page Interactive Data File (embedded within the Inline XBRL document).