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

DIVISION OF
CORPORATION FINANCE

March 6, 2023

Kristina V. Fink
American Express Company

Re: American Express Company (the "Company")
Incoming letter dated December 24, 2022

Dear Kristina V. Fink:

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

The Proposal requests that the board issue a public report detailing any known and potential risks and costs to the Company of fulfilling information requests regarding its customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks.

We are unable to concur in your view that the Company may exclude the Proposal under Rules 14a-8(b) and 14a-8(f). In our view, the Proponent's proof of ownership was sufficient.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not micromanage the Company.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Dorrit Lowsen
Change Finance P.B.C.

December 24, 2022

Via Electronic Mail to shareholderproposals@sec.gov

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

Re: Shareholder Proposal Submitted by Change Finance P.B.C.

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), American Express Company, a New York corporation (the "Company"), hereby gives notice of the Company's intention to omit from its proxy statement for its 2023 annual meeting of shareholders (the "2023 Proxy Statement") a shareholder proposal (the "Proposal") submitted by Change Finance P.B.C. ("Change Finance" or the "Proponent") under cover of letter dated November 18, 2022. A copy of the Proposal, together with the supporting statement included in the Proposal (the "Supporting Statement"), is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action if the Company omits the Proposal from the 2023 Proxy Statement pursuant to Rule 14a-8(f)(1) under the Exchange Act because the Proponent has failed to satisfy the eligibility requirements of Rule 14a-8(b) and pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2023 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and its attachments to the Commission via email to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal from the 2023 Proxy Statement to be proper.

THE PROPOSAL

The proposed resolution included in the Proposal provides as follows:

> **Resolved:** Shareholders request that our Board issue a public report detailing any known and potential risks and costs to the Company of fulfilling information requests regarding American Express customers for the enforcement of state laws criminalizing abortion

> access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published no later than September 1, 2024.

The Proponent submitted the Proposal to the Company on November 18, 2022 accompanied by a cover letter purporting that "Change Finance has continuously beneficially owned, for at least one year as of the date hereof, at least $25,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover."

On November 23, 2022, within 14 days of the Company's receipt of the Proposal and after confirming that the Proponent was not a registered holder of the Company's common stock, the Company sent to the Proponent via email a notification of eligibility and procedural deficiencies (the "First Deficiency Letter"). In accordance with Rule 14a-8(f)(1), the First Deficiency Letter requested a written statement from the record holder of Change Finance's shares verifying that at the time the Proposal was submitted, Change Finance had continuously held the requisite number of the Company's shares.

The Proponent provided additional documentation in response to the First Deficiency Letter on December 5, 2022. The documentation included a letter from US Bank dated November 18, 2022 (the "US Bank Letter"), stating that "As of March 21, 2022" the Proponent "beneficially owned" the Company's common stock worth at least $25,000. The US Bank Letter further stated that the custodian of the shares changed on March 21, 2022 and "a separate letter will be submitted to verify beneficial share ownership past that date." This documentation also included a letter from Brown Brothers Harriman & Co. ("BBH") dated December 5, 2022, identifying AXS Change Finance ESG ETF ("AXS Change Finance" or the "Beneficial Owner") as the "Client" of BBH and confirming that AXS Change Finance owned shares of the Company as of March 21, 2022 through November 18, 2022. The Proponent included a cover letter claiming that Change Finance was the investment adviser to the US Large Cap Fossil Fuel Free ETF, which was reorganized into AXS Change Finance, and asserting that a "sub-advisory agreement between Change Finance and [AXS Change Finance]…provides Change Finance with power 'to engage in shareholder advocacy efforts and to vote proxies with respect to [AXS Finance's] securities.'"

The Company sent a second deficiency letter on December 14, 2022 dated the same date (the "Second Deficiency Letter" and, together with the First Deficiency Letter, the "Deficiency Letters"), explaining that it continued to be unclear "whether Change Finance has authority to submit the proposal on behalf of [AXS Change Finance] or whether…[AXS Change Finance] should have submitted the proposal and authorized Change Finance as its representative to act on its behalf in accordance with Rule 14a-8(b)(iv)." The Second Deficiency Letter requested confirmation as to whether Change Finance is a "registered investment adviser providing customary advisory services to [AXS Change Finance]." The Proponent responded on December 19, 2022, without providing any documentation from the Beneficial Owner authorizing Change Finance to serve as its representative and declining to confirm whether Change Finance is a registered investment adviser of the Beneficial Owner. Copies of the Deficiency Letters and all related correspondence are attached hereto as Exhibit B.

BASIS FOR EXCLUSION

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the 2023 Proxy Statement for the following reasons:

A. The Proposal may be omitted pursuant to Rule 14a-8(f)(1) under the Exchange Act because the Proponent has failed to satisfy the eligibility requirements of Rule 14a-8(b); and

B. The Proposal may be omitted pursuant to Rule 14a-8(i)(7) under the Exchange Act, because the Proposal deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company.

ANALYSIS

A. Under Rule 14a-8(b) and Rule 14a-8(f)(1), the Proposal may be omitted because the Proponent failed to establish the requisite eligibility to submit the Proposal.

1) Rule 14a-8(b) and Rule 14a-8(f)(1) Background

Pursuant to Rule 14a-8(b)(1), in order to be eligible to submit a proposal, a shareholder must have continuously held:

- at least $2,000 in market value of the company's common stock for at least three years, preceding and including the date that the proposal was submitted;
- at least $15,000 in market value of the company's common stock for at least two years, preceding and including the date that the proposal was submitted; or
- at least $25,000 in market value of the company's common stock for at least one year, preceding and including the date that the proposal was submitted.

Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14") specifies that shareholders who are not registered holders "must submit an affirmative written statement from the record holder of his or her securities" verifying ownership. See Section C.1.c., SLB 14. The Staff clarified in Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") that the affirmative written statement must come from the "record" holder of the proponent's shares and that only DTC participants are viewed as record holders of securities deposited at DTC. SLB 14F also notes that whether a particular broker or bank is a DTC participant can be confirmed by checking DTC's participant list available online and that if a shareholder's broker or bank is not on DTC's participant list, the shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. In addition, Staff Legal Bulletin No. 14G (Oct. 16, 2012) ("SLB 14G") explained that the affirmative written statement verifying the shareholder's ownership could come from an affiliate of a DTC participant and that if the shareholder's securities are held through an intermediary that is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

On September 23, 2020, the Commission adopted amendments to Rule 14a-8, which generally "apply to any proposal submitted for annual or special meeting to be held on or after January 1, 2022." Exchange Act Release No. 34-89964 (November 4, 2020) (the "2020 Release"). Rule 14a-8(b)(1)(iv), as amended, provides:

> If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:
>
> **(A)** Identifies the company to which the proposal is directed;
>
> **(B)** Identifies the annual or special meeting for which the proposal is submitted;
>
> **(C)** Identifies you as the proponent and identifies the person acting on your behalf as your representative;
>
> **(D)** Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
>
> **(E)** Identifies the specific topic of the proposal to be submitted;
>
> **(F)** Includes your statement supporting the proposal; and
>
> **(G)** Is signed and dated by you.

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if the proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, including failing to provide the beneficial ownership information required under Rule 14a-8(b), provided that the company has timely notified the proponent of the deficiency, and the proponent has failed to correct such deficiency within 14 calendar days of receipt of such notice. *See, e.g., Exxon Mobil Corp.* (avail. Feb. 13, 2017) (concurring with the exclusion of a proposal under Rule 14a-8(b) and Rule 14a-8(f) and noting that "the proponent appears to have failed to supply, within 14 days of receipt of [the company's] request, documentary support sufficiently evidencing that she satisfied the minimum ownership requirement for the one-year period required by [R]ule 14a-8(b)").

2) *The Proposal may be excluded because the Proponent has failed to provide sufficient proof of ownership.*

The Proposal may be excluded under Rule 14a-8(f)(1) because the Proponent has failed to satisfy the eligibility requirements of Rule 14a-8(b). The Proponent has provided a proof of ownership letter that indicates the beneficial owner of the shares is AXS Change Finance, rather than the Proponent. The Staff consistently has concurred with the exclusion of shareholder proposals on the grounds that, despite the company's timely and proper deficiency notice, the proponent provided a proof of ownership letter verifying the share ownership of a beneficial owner having a different name from the proponent. For example, in *The Coca-Cola Co.* (avail. Feb. 4, 2008), the company received a proposal from The Great Neck Capital Appreciation LTD Partnership. However, the broker letter identified the "The Great Neck Cap App Invst Partshp., DJF Discount Broker" and "The Great Neck Cap App Invst Partshp" as the beneficial owners of the company's stock. The company noted that "[t]he [p]roposal was received from The Great Neck Capital Appreciation LTD Partnership and neither of the letters received from [the broker] identif[ies] it as a beneficial owner of the [c]ompany's [c]ommon [s]tock." The Staff concurred with the exclusion of the proposal under Rule 14a-8(b) and Rule 14a-8(f), noting that "the

proponent appears to have failed to supply…documentary support sufficiently evidencing that it satisfied the minimum ownership requirement for the one-year period required by [R]ule 14a-8(b)." *See also Bank of America Corp.* (avail. Feb. 26, 2016) (concurring with the exclusion of a proposal where the proof of ownership letter stated that "the above referenced account currently holds" company stock but did not identify the proponent as the account holder or owner of the stock); *Great Plains Energy Inc.* (avail. Feb. 4, 2013) (concurring with the exclusion of a proposal because the broker letter referred to someone other than the proponent as the owner of the company's stock); and *AT&T Inc.* (avail. Jan. 17, 2008) (same).

3) *The Proposal may be excluded because the Proponent has failed to provide appropriate authorization of authority to submit the Proposal.*

As noted, under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(b). Under Rule 14a-8(b)(1)(iv), a shareholder who uses a representative to submit a shareholder proposal on behalf of the shareholder must provide the company with written documentation describing the shareholder's delegation of authority to the representative.

In its Second Deficiency Letter, the Company noted that it is unclear whether the Proponent has authority to submit the Proposal on behalf of the Beneficial Owner and that, in order to satisfy the eligibility requirements of Rule 14a-8, the Beneficial Owner should have submitted the proposal and authorized the Proponent to act as its representative to act on its behalf in accordance with Rule 14a-8(b)(iv). The Company also asked the Proponent to confirm whether it is a registered investment adviser providing customary advisory services to the Beneficial Owner. Rather than providing written documentation confirming the Proponent's authorization to act as the Beneficial Owner's representative in accordance with the requirements of Rule 14a-8(b)(iv), the Proponent responded by stating that "such request is inappropriate."

The 2020 Release makes clear, however, that the Company's request for confirmation that the Proponent is authorized to act as representative of the Beneficial Owner is consistent with Rule 14a-8(b)(iv). As the Commission explains in Section II.B.3 of the 2020 Release, "[C]ompliance [with Rule 14a-8(b)(iv)] would be required where the agency relationship is not apparent and self-evident. For example, compliance would be required where an investment adviser submits a proposal on behalf of a client that is a shareholder. A private relationship between a third-party investment adviser and the adviser's client would not be apparent or self-evident because these private relationships are generally governed by private contractual arrangements where the scope of the principal-agent relationship does not as a matter of course extend to representation with respect to the submission of proposals."

In addition, Staff Legal Bulletin No. 14G (Oct. 16, 2012) expresses "concern[] that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters." It further states that "some companies' notices of defect make no mention of the . . . specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f)." Here, the Company met its obligation under Rule 14a-8 by sending the Proponent in a timely manner the Deficiency Letters, which specifically and clearly described the deficiencies, set forth

the relevant information and instructions, and attached a copy of both Rule 14a-8 and SLB 14F. *See* Exhibit B.

In ascertaining beneficial ownership of shares for the purposes of establishing eligibility to submit a proposal under Rule 14a-8, the Staff has considered whether the person or entity submitting a proposal has any economic stake in the company to which the proposal is being submitted, including with regard to investment advisory firms that hold company shares in client accounts. For example, in *The Western Union Co.* (avail. Mar. 10, 2010, recon. denied Mar. 19, 2010), the proponent, an asset manager, submitted a proposal, provided a proof of ownership letter stating that it held the company's securities "in its clients' accounts," and claimed to hold voting and investment power over its clients' shares. The Staff concurred with the exclusion of the proposal, noting that "the proponent has no economic stake or investment in the company by virtue of the shares held in its clients' accounts." *See also Chesapeake Energy Corp.* (avail. Apr. 13, 2010) (concurring with the exclusion of a co-proponent's submission where its proof of ownership letter stated that it held the company's securities in "a number of client accounts," and where the Staff confirmed that "it appears that this co-proponent has no economic stake or investment interest in the company by virtue of the shares held in its clients' accounts").

Similar to the precedents above, despite the Company's specific requests that the Proponent provide proof of ownership sufficient to satisfy Rule 14a-8(b) or proof of authorization to act as the representative of the Beneficial Owner, the Proponent has not provided documentation establishing the requisite eligibility to submit the Proposal. Accordingly, the Proposal may be excluded under Rule 14a-8(f)(1).

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

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

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's prior guidance, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." *See* Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

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

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

A shareholder proposal being framed in the form of a request for a report also does not change the nature of the proposal, which in this case relates to the oversight and impact of government regulation on the Company. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). Staff Legal Bulletin No. 14H (Oct. 22, 2015) re-affirms that the analysis of the ordinary business exception "should focus on the underlying subject matter of a proposal's request for board or committee review regardless of how the proposal is framed."

2) *The Proposal may be excluded because it relates to the oversight and evaluation of the impact of government regulation on the Company.*

The Proposal may be excluded under Rule 14a-8(i)(7) because it relates to the oversight and evaluation of the impact of government regulation on the Company. As the Staff explained in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB No. 14E"), it has viewed proposals and supporting statements that relate as a whole to the company engaging in an evaluation of risk as relating to a company's ordinary business operations. *See Amazon.com, Inc.* (Apr. 3, 2019) (concurring with the exclusion of a proposal urging the company to conduct human rights impact assessments for certain food products that the company sells that present a high risk of adverse human rights impacts); *Exxon Mobil Corp.* (Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on "environmental, social, and economic challenges associated with the oil sands," which involved ordinary business matters); *The TJX Companies, Inc.* (Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and provide a report to shareholders on the assessment). Similar to the proposals cited in SLB No. 14E, although this Proposal refers to "risks and costs to the

Company of fulfilling information requests regarding American Express customers for the enforcement of state laws criminalizing abortion access," its primary focus is the ordinary business matter of how the Company chooses to oversee and manage these risks. For example, the Proposal asks not just that the Company detail risks but also that it "set[] forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks," which clearly relates to how management evaluates these risks.

In addition, the Proposal relates to the Company's collection and storage practices for consumer data. The Company provides shareholders with information on the Company's data management and risk management functions in the Company's Annual Report on Form 10-K filed with the Commission. Given the sensitive nature of consumer information and the critical need for the Company's security systems to be as robust as possible, any further information relating to the specifics of the Company's use, collection and risk management in respect of consumer data would not be appropriate for public disclosure, could place the Company at risk of potential litigation and would not be beneficial to shareholders. Some of this information is sensitive in and of itself, particularly if it provides insight into how and where consumer data is collected and kept (which may provide hackers and other bad actors insight into how to breach the Company's security systems or may provide competitors with insight into proprietary data software). *See Citigroup Inc.* (Feb. 11, 2016) (permitting exclusion of a proposal that requested a study of the company's derivatives activities where the company argued that information about its derivatives activities was highly confidential and sensitive and therefore related to its ordinary business operations).

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

The Proposal may also be excluded under Rule 14a-8(i)(7) because it seeks to micromanage the Company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* 1998 Release. In SLB No. 14L, the Staff clarified that in evaluating companies' micromanagement arguments, it will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff further noted that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing *high-level direction on large strategic corporate matters*" (emphasis added).

The Proposal attempts to probe too deeply into the judgment of management and the Company's Board of Directors (the "Board") by requesting that the Company detail its strategies to minimize or mitigate risks associated with fulfilling information requests related to the enforcement of state laws criminalizing abortion. The Supporting Statement goes so far as to seek to shape the strategies themselves, recommending that the Board "consider the implementation of a data privacy policy wherein consumers nationwide would have 'deletion rights,' and would be notified by the Company about any law enforcement information requests." It also incorrectly states that the Company already complies with "deletion rights" under California law. The Company is regulated by the federal Gramm-Leach-Bliley Act as a federal banking institution and is therefore exempt from a majority of the requirements of the California Consumer Privacy Act, so it does not honor requests for deletion rights for consumers. The Company does,

however, delete consumer data when there is no business justification for the data's retention and such retention is no longer required by law, a common practice among federally regulated banking institutions. As this example clearly demonstrates, decision-making about whether the Company should provide consumers with "deletion rights" requires extensive knowledge of the federal and state regulations by which the Company is bound as well as industry best practices, subjects about which shareholders are not well-positioned to make informed judgments. Further, as the Supporting Statement itself notes, an evaluation of the relevant risks necessarily implicates sensitive personal information such as geolocation data, browsing history and financial activity, all of which the Company is in a better position to assess than its shareholders. The design and implementation of risk mitigation strategies and data privacy policy are both multi-faceted endeavors guided by numerous factors, including but not limited to legal and regulatory requirements, and business and technological considerations. The Staff has consistently concurred with the exclusion of proposals based on micromanagement where the proposal attempts to substitute shareholder judgment for that of management with respect to complex day-to-day business operations. In *SeaWorld Entertainment, Inc.* (avail. Apr. 20, 2021), for example, the proposal requested the company's board conduct a study to determine how soon SeaWorld could feasibly eliminate animal-based programs and the company prepare "a report" addressing various complex operational aspects of the company's business, affording the company's management no flexibility or discretion in determining how to address certain aspects of the company's operations. The Staff concurred that the proposal thereby sought to micromanage the company's operations and was properly excludable under Rule 14a-8(i)(7). In *Tesla, Inc.* (avail. May 6, 2022), the proposal requested "that the company adopt a policy of immediate (within five business days) liquidatin of newly-acquired cryptocurrency assets, and fully divest from existing cryptocurrency assets (including mining hardware) within one year," on the basis that cryptocurrency assets had a large carbon footprint and other environmental concerns. The Staff concurred that the proposal micromanaged the company by imposing "an inappropriate limitation on the discretion of the board of directors and management of the [c]ompany in managing the financial condition of the [c]ompany." *See also The Coca-Cola Company* (avail. Feb. 16, 2022) (concurring with the exclusion of a proposal because it micromanaged the company by requiring the company to submit any proposed political statement to shareholders at the next shareholder meeting for approval prior to issuing the subject statement publicly).

All of these considerations are beyond the expertise and experience of shareholders, and they require management and the Board to have the discretion to exercise their independent judgment in making determinations appropriate for the Company and its customers. The Company devotes significant time and resources to evaluate the potential impact of proposed laws and regulations on its complex business. This process involves the study of a number of concrete factors, including the dynamics of public policy formulation in the jurisdictions in which the Company operates, the evaluation of potential responses to such regulations by the Company, and the anticipated effect of public policies on the Company's financial position and shareholder value. Assessing the impact of such initiatives involves complex and dynamic considerations that each implicate numerous aspects of the ordinary course operation of the Company's business. Accordingly, as with the precedents cited above, the Proposal seeks to subject to shareholder oversight ordinary business assessments that are within the scope of Rule 14a-8(i)(7) and as such may properly be excluded. In requesting that the Company issue a public report setting forth the details of its strategies related to information requests specifically related to the enforcement of

state abortion laws, the Proposal is seeking precisely the level of granularity that the Staff highlighted in SLB No. 14L, and thus may be excluded under Rule 14a-8(i)(7).

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

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

The Staff has made clear that the mere mention of an issue with a broad societal impact, or the mere fact that an ordinary business issue might tangentially impact society more broadly, is insufficient to transform a proposal that is otherwise about ordinary business issues into one that pertains to "high-level direction on large strategic corporate matters" that the Staff recently confirmed in SLB No. 14L as deserving shareholder oversight and vote. For example, in *Dominion Resources, Inc.* (avail. Feb. 3, 2011), a proposal requested that the company promote "stewardship of the environment" by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation. Even though the proposal touched upon environmental matters, the Staff concluded that the subject matter of the proposal actually related to "the products and services offered for sale by the company" and therefore determined that the proposal could be excluded under Rule 14a-8(i)(7). *Id. See also Wells Fargo & Co. (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) (concurring with the exclusion of a proposal raising multiple issues that may arguably have been of significance to the company, but failed to focus on any of them, as the "Resolved" clause focused on customer service); *Amazon.com, Inc. (Domini Impact Equity Fund)* (avail. Mar. 28, 2019) (concurring with the exclusion of a proposal that might have touched on significant sustainability concerns, but was so broadly worded the Staff concurred that the proposal did not focus on any single issue that transcended the company's ordinary business); *Deere & Co.* (avail. Nov. 14, 2014 *recon. denied* Jan. 5, 2016) (concurring with the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an anti-discrimination policy where the proposal also related to the company's "policies concerning its employees," an ordinary business matter); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and a report to shareholders on the assessment as "relating to TJX's ordinary business operations" because "the proposal relates to decisions concerning the company's tax expenses and sources of financing"); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation

of equal employment opportunity policies based on certain principles and noting that "some of the principles relate to Apache's ordinary business operations").

The Staff has reaffirmed its position that proposals that reference or touch on topics that might raise significant social policy issues —but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business after the publication of SLB No. 14L with its decisions in *Deere & Company* (Jan. 3, 2022) and *American Express Company* (Mar. 11, 2022), in both of which the Staff agreed that proposals seeking the publication of the company's employee training materials did not transcend ordinary business matters despite their concern with anti-racism and racial equity issues. Here, although the Proposal touches on issues related to abortion rights, its main request focuses primarily on the ordinary business matter of the Company's oversight and evaluation of its risk exposures. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

[*Remainder of page intentionally left blank*.]

CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company omits the Proposal from its 2023 Proxy Statement.

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

Sincerely,

Kristina V. Fink

Kristina V. Fink
Corporate Secretary and Chief Governance Officer

Enclosure

cc: Dorrit Lowsen, via email at [redacted]
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP
Lillian Tsu, Cleary Gottlieb Steen & Hamilton LLP

Exhibit A

The Proposal

See attached.

November 18, 2022

Via email (corporatesecretarysoffice@aexp.com)

American Express Company
200 Vesey Street
New York, NY 10285
Attn: Kristina V. Fink,
Corporate Secretary & Chief Governance Officer

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Ms. Fink,

On behalf of Change Finance P.B.C. ("Change Finance"), I am submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of American Express Company (the "Company") for its 2023 annual meeting of shareholders. Change Finance is the lead filer for the Proposal and may be joined by other shareholders as co-filers.

Change Finance has continuously beneficially owned, for at least one year as of the date hereof, at least $25,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. Change Finance intends to continue to hold such shares through the date of the Company's 2023 annual meeting of shareholders.

I, as co-CEO of Change Finance, am available to meet with the Company via teleconference on November 30 from 2:00 pm ET or December 14 at 2 pm or 3 pm ET. Any co-filers have authorized Change Finance to conduct the initial engagement meeting, but may participate subject to their availability.

I can be contacted on [redacted] or by email at [redacted] to schedule a meeting. Please feel free to contact me with any questions.

Sincerely,

Dorrit Lowsen
Co-CEO
Change Finance, P.B.C.

Encl: Shareholder proposal

ABORTION & CONSUMER DATA PRIVACY

WHEREAS: Following the revocation of the constitutional right to an abortion in June 2022, policymakers and legislators have become alarmed by the use of personal digital data for the enforcement of state laws that ban or limit abortion access. Congress is considering bills that would increase privacy protections for personal reproductive health information. California now requires out-of-state law enforcement seeking personal data from California corporations to attest that the investigation does not involve any crime related to an abortion that is lawful under California law.

Law enforcement frequently relies on digital consumer data. While American Express does not publicly report figures on its compliance with law enforcement requests, Alphabet and Meta alone collectively received around 110,000 requests in the second half of 2021, and each complied with about 80% of those requests. In 2022, Meta satisfied a Nebraska police warrant for private Facebook messages from a defendant facing felony charges for allegedly helping her daughter terminate a pregnancy.

Financial institutions collect sensitive personal information such as geolocation data, browsing history and financial activity. There is reason for concern that such data will be accessed without consumer consent by states that criminalize abortion. Indeed, the American Express Privacy Statement declares that the Company "may share [p]ersonal [i]nformation as require[d] or as permitted by law, with . . . governmental agencies to comply with . . . government requests." However, such law enforcement requests may seek evidence of consumer acts that are inappropriate for the bank to voluntarily share – for example, evidence of a customer's financial activities that were legal in the state where they occurred, such as purchasing abortion pills.

Since American Express collects and stores digital consumer data, the Company is not immune to abortion-related law enforcement requests that may create significant reputational, financial, and legal risks. American Express is already complying with "deletion rights" under California law, wherein consumers may request that the Company delete collected personal data that is not legally required to retain. Accordingly, there is a strong market benefit to upholding and increasing longstanding consumer privacy expectations.

RESOLVED: Shareholders request that our Board issue a public report detailing any known and potential risks and costs to the Company of fulfilling information requests regarding American Express customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks.

The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published no later than September 1, 2024.

SUPPORTING STATEMENT: Shareholders recommend that the report, in the discretion of board and management, should:

(1) Consider the implementation of a data privacy policy wherein consumers nationwide would have "deletion rights," and would be notified by the Company about any law enforcement information requests regarding their data prior to complying with any such request; and,

(2) Reflect the input or participation of reproductive rights and civil liberties organizations.

Exhibit B

Deficiency Letters and Related Correspondence

See attached.

November 23, 2022

Via email only to:

Change Finance, P.B.C.
Attn: Ms. Dorrit Lowsen
[redacted]

Re: Shareholder Proposal Regarding
Abortion and Consumer Data Privacy

Dear Ms. Lowsen:

On behalf of American Express Company (the "Company"), we formally acknowledge receipt, on November 18, 2022, of the shareholder proposal submitted by Change Finance, P.B.C. ("Change Finance") relating to abortion and consumer data privacy for inclusion in the Company's proxy statement for the 2023 annual meeting of shareholders (the "Submission").

Rule 14a-8(b)(1): Proof of Ownership

Since the Company's records do not indicate that Change Finance is a registered holder of the Company's stock, you are required to submit to the Company a written statement from the record holder of Change Finance's shares verifying Change Finance's eligibility pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934. A copy of Rule 14a-8(b)(1) is enclosed.[1] Rule 14a-8(b)(1) requires that shareholder proponents continuously hold the company's shares, constituting at least (i) $2,000 in market value for at least three years, (ii) $15,000 in market value for at least two years, or (iii) $25,000 in market value for at least one year, in each case preceding and including the date the proposal was submitted to the company.

Since the Company's records do not indicate that Change Finance is a registered holder, you are required by Rule 14a-8(b)(1) to submit to the Company a written statement from the record holder of Change Finance's shares of the Company's common stock (usually a broker or bank) verifying that at the time the proposal was submitted, Change Finance had continuously held the requisite number of shares.

The Securities and Exchange Commission ("SEC") Staff published Staff Legal Bulletins No. 14F ("SLB 14F")[2] and No. 14G ("SLB 14G")[3] to provide guidance in helping shareholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the securities. In SLB 14F, the SEC Staff stated that only brokers or banks

[1] An electronic version of Rule 14a-8 is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c5l7290a19689f72f6355af8d66&node=se17.4.240_114a_68&rgn=div8#.
[2] An electronic version of SLB 14F is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14f-shareholder-proposals.
[3] An electronic version of SLB 14G is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14gshareholder-proposals.

that are Depository Trust Company ("DTC") participants (clarified in SLB 14G to include affiliates thereof) will be viewed as "record" holders for purposes of Rule 14a-8. You can confirm whether Change Finance's broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at: http://www.dtcc.com/client-center/dtc-directories. If Change Finance's shares are held through a broker or bank that is *not* a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds Change Finance's Company shares. You should be able to find out the name of the DTC participant(s) by asking Change Finance's broker or bank.

If the DTC participant that holds Change Finance's shares knows its broker or bank's holdings, but does not know Change Finance's holdings, you may satisfy the proof of ownership requirements by submitting two proof-of-ownership statements: one from Change Finance's broker or bank confirming Change Finance's ownership and the other from the DTC participant confirming the broker or bank's ownership.

The SEC Staff previously issued Staff Legal Bulletin 14L ("SLB 14L"),[4] which provides the following as a suggested format for a broker or bank statement providing the required proof of ownership as of the date of the proposal's submission for purposes of Rule 14a-8(b):

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities]."

Alternatively, if applicable, you may provide us with a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed with the SEC, or amendments to those documents or updated forms, reflecting Change Finance's ownership of the required amount of Company shares as of the date on which the one-year eligibility period begins, along with a written statement that Change Finance continuously held the required number or amount of shares for the requisite period as of the date of the statement.

To date, the Company has not received sufficient proof that Change Finance has satisfied Rule 14a-8's ownership requirements as of the date of the Submission.

The SEC's rules require you to remedy the procedural deficiency described above in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defect discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2023 annual meeting of shareholders and from the Company's proxy statement for the 2023 annual meeting of shareholders.

[4] An electronic version of SLB 14L is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals.

Please direct all correspondence to Kristina V. Fink, Vice President, Corporate Secretary and Chief Governance Officer, American Express, [redacted].
Very truly yours,

Kristina V. Fink

Kristina Fink
Vice President, Corporate Secretary and Chief Governance Officer

Enclosure

§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement 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 submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(*1*) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(*2*) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(*3*) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.,* one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions.* If the proposal 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 if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

CHANGE
FINANCE, P.B.C

INVESTING IN SERVICE TO LIFE

December 5, 2022

American Express Company
200 Vesey Street
New York, NY 10285
Attn: Kristina V. Fink,
Vice President, Corporate Secretary & Chief Governance Officer

[redacted]

Re: Proof of ownership for submission of shareholder proposal

Dear Ms. Fink,

On behalf of Change Finance, P.B.C. ("Change Finance"), I write in response to the American Express Company (the "Company") letter dated November 23, 2022 concerning Change Finance's proof of share ownership for eligibility to submit a shareholder proposal regarding abortion and consumer data privacy (the "Proposal") pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934.

Rule 13d-3(a) of the Securities Exchange Act of 1934 provides that "a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security."

From October 9, 2017 through March 18, 2022, Change Finance was the investment adviser to the US Large Cap Fossil Fuel Free ETF (the "Original Fund"), a series of ETF Series Solutions, which owned the Company's common stock. The advisory agreement between Change Finance and the Original Fund (the "Advisory Agreement") provided Change Finance with authority to "exercise [the Original Fund's] proxy voting responsibilities."

Effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance ESG ETF (the "New Fund"), a newly created series of Investment Managers Series Trust II with the same investment objective and investment strategies. As a result of the conversion, shareholders of the Original Fund became shareholders of the New Fund. The conversion also shifted management responsibility – Change Finance has since served as the investment sub-adviser to the New Fund.

The sub-advisory agreement between Change Finance and the New Fund (the "Sub-Advisory Agreement") provides Change Finance with power "to engage in shareholder advocacy efforts and to vote proxies with respect to [the New Fund's] securities," which power authorizes Change Finance "to exercise full discretion and act for the [New Fund] in

the same manner and with the same force and effect as the [New Fund] . . ., as well as with respect to all other things necessary or incidental to the furtherance or conduct of shareholder advocacy efforts and proxy voting with respect to the securities of the [New Fund]."

Since both the Advisory Agreement and the Sub-Advisory Agreement explicitly provided Change Finance with "[v]oting power which includes the power to vote, or to direct the voting of, [the Company's] security," Change Finance has been the beneficial owner of the Company's common stock pursuant to Rule 13d-3(a) for the necessary time period to submit the Proposal. Moreover, Change Finance's beneficial ownership of the Company's common stock has been continuous for at least one year as of the Proposal submission date, given that, as a result of the conversion, shareholders of the Original Fund immediately became shareholders of the New Fund. Therefore, as the continuous beneficial owner of the Company's common stock, Change Finance is eligible to file the Proposal with the Company pursuant to Rule 14a-8(b)(1).

Enclosed you will find Change Finance's proof of ownership of the Company's common stock by way of letters from U.S. Bank, the share custodian through the March 18, 2022 conversion, and Brown Brothers Harriman & Co., the current share custodian since the conversion date.

Sincerely,

Dorrit Lowsen
Co-CEO
Change Finance, P.B.C.
[redacted]

Enclosures:

Ownership verification from U.S. Bank
Ownership verification from Brown Brothers Harriman & Co.

November 18, 2022

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
Attn: Ms. Anat Hakim
General Counsel and Secretary

Re: Shareholder proposal submitted by Change Finance, PBC

Dear Ms. Hakim,

I write concerning a shareholder proposal (the "Proposal") submitted to Eli Lilly & Co (the "Company") by Change Finance, PBC.

As of March 21, 2022, Change Finance, PBC beneficially owned, and had beneficially owned continuously since 1/12/2018, 4,707.00 shares of the Company's common stock worth at least $25,000 (the "Shares")." Please note that the custodian changed on March 21, 2022, and a separate letter will be submitted to verify beneficial share ownership past that date.

US Bank acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at [redacted].

Very truly yours,

Mitchell Hauser-Smetana

Mitchell Hauser-Smetana
Officer | Fund Custody Account Manager

December 5, 2022

Brown Brothers Harriman & Co.
50 Post Office Square
Boston, MA 02110

RE: Proof of Holdings Instruction Letter in respect of: America Express Company (the "Shares")

Dear Brown Brothers Harriman & Co.:

Reference is made to the custodian agreement between Investment Managers Series Trust II in respect of its series, AXS Change Finance ESG ETF ("Client") and Brown Brothers Harriman & Co. ("BBH"), (as amended, restated, modified, and/or supplemented, and otherwise in effect from time to time, the "Agreement"). Further reference is made to the Proof of Holdings Letter relating to the Shares held by the Client attached hereto as Appendix A (the "Proof of Holdings Letter").

Client instructs BBH to sign and address the Proof of Holdings Letter as set forth below. Client further confirms that:

1. On November 18, 2022 it held 6,520 of Shares in custody with BBH;
2. From the period March 21, 2022 through November 18, 2022, Client held at least 5,812 Shares continuously;
3. From March 21, 2022 through November 18, 2022 (i) Client beneficially owned, and (ii) Client had beneficially owned continuously for at least March 21, 2022 through November 18, 2022 Shares worth at least $25,000;
4. The Proof of Holdings Letter should be addressed to:
   American Express Company
   200 Vesey Street
   New York, NY 10285
   Attn: Kristina V. Fink,
   Corporate Secretary & Chief Governance Officer

The Client represents and warrants that all statements, representations and/or warranties set forth in the Proof of Holdings Letter, are true, accurate, and complete, and that this letter of direction is signed by an authorized person or persons with all necessary authority to sign on behalf of the Client. Client further instructs that, after BBH executes the Proof of Holdings Letter, BBH email the Proof of Holdings Letter to the Client at: [redacted]. This letter of instruction shall be deemed an Instruction as defined under the Agreement.

Sincerely,
Investment Managers Series Trust II

By: _____
Name: Joshua Gohr
Title: Assistant Treasurer

APPENDIX A

To The Proof of Holdings Instruction Letter in respect of American Express Company Dated December [redacted], 2022

December [redacted] 2022

American Express Company
200 Vesey Street
New York, NY 10285
Attn: Kristina V. Fink,
Corporate Secretary & Chief Governance Officer

Dear Sir or Madam:

References is made to a shareholder proposal submitted to American Express by Investment Managers Series Trust II on behalf of its series, AXS Change Finance ESG ETF ("Client").

Brown Brothers Harriman & Co. ("BBH"), acting as custodian for Client, hereby confirms that, as of November 18, 2022, Client beneficially owned, and had beneficially owned continuously since March 21, 2022, at least 5,812 shares of American Express worth at least $25,000 (the "Shares"), [redacted].

BBH has acted as record holder of the Shares and is a Depository Trust and Clearing Corporation participant since March 21, 2022.

The above information is provided at the request and direction of the Client. The above statements do not constitute legal advice or legal conclusions. BBH assumes no liability or responsibility for any party's reliance on this document and will not be responsible for any loss or damage (direct, indirect or consequential) incurred as a result of any reliance thereon.

Sincerely,

Brown Brothers Harriman & Co.

By:
Name: Hugh Bolton
Title: Managing Director

AMERICAN EXPRESS

Kristina V. Fink
Vice President
Corporate Secretary and Chief Governance Officer

December 14, 2022

Via email only to:

Change Finance, P.B.C.
Attn: Ms. Dorrit Lowsen
[redacted]

Re: Shareholder Proposal Regarding
Abortion and Consumer Data Privacy

Dear Ms. Lowsen:

On behalf of American Express Company (the "Company"), we formally acknowledge receipt of your letter dated December 5, 2022 purporting to provide proof of stock ownership in response to the procedural deficiency notice we sent to you dated November 23, 2022. This pertains to the shareholder proposal submitted by Change Finance, P.B.C. ("Change Finance") relating to abortion and consumer data privacy for inclusion in the Company's proxy statement for the 2023 annual meeting of shareholders (the "Submission").

Upon review of the ownership information you provided in your December 5, 2022 letter and the enclosures, we are writing to notify of you certain remaining deficiencies. First, the letter you provided from US Bank is addressed to Eli Lilly and Company and pertains to Change Finance's beneficial ownership of shares of stock of Eli Lilly & Co. stock. This letter does not provide any evidence of ownership by Change Finance of shares of the Company's common stock. Please provide evidence of ownership of the Company's stock by Change Finance. Any letter providing such evidence should not make legal conclusions as to whether Change Finance beneficially owns the shares, but rather should speak to the ownership of shares by the account holder. I have enclosed my prior letter dated November 23,2022 explaining the form of proof of ownership that would be sufficient to prove ownership of the Company's stock.

[redacted]
office: [redacted]
fax: [redacted]
200 Vesey Street
New York, NY 10285

Second, your letter explains that Change Finance is the beneficial owner of shares held by the Original Fund and the New Fund (as such terms are defined in your December 5, 2022 letter). Your letter indicates that, pursuant to the sub-advisory agreement between Change Finance and the New Fund, Change Finance has power to engage in advocacy efforts and to vote proxies with respect to the new Fund's securities and related matters. However, it is unclear whether Change Finance qualifies as the investment adviser to the New Fund, having broader investment advisory authority with respect to shares held by the New Fund (such as the authority to make investment decisions with respect to the shares). Accordingly, it is unclear whether Change Finance has authority to submit the proposal on behalf of the New Fund or whether, in order to satisfy the eligibility requirements of Rule 14a-8, the New Fund should have submitted the proposal and authorized Change Finance as its representative to act on its behalf in accordance with Rule 14a-8(b)(iv). In particular, it is unclear whether Change Finance is a registered investment adviser, clearly acting as an agent of a client. A copy of Rule 14a-8(b)(1) is enclosed.[1] Please confirm whether Change Finance is a registered investment adviser providing customary advisory services to the New Fund.

The Securities and Exchange Commission's rules require you to remedy the procedural deficiencies described above in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defects discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2023 annual meeting of shareholders and from the Company's proxy statement for the 2023 annual meeting of shareholders.

Please direct all correspondence to Kristina V. Fink, Vice President, Corporate Secretary and Chief Governance Officer, American Express, [redacted]

Very truly yours,

Kristina V. Fink

Kristina Fink
Vice President, Corporate Secretary and Chief Governance Officer

Enclosure

[1] An electronic version of Rule 14a-8 is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c5l7290a19689f72f6355af8d66&node=se17.4.240_114a_68&rgn=div8#.

§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement 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 submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(*1*) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(*2*) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(*3*) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.,* one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions.* If the proposal 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 if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

December 19, 2022

American Express Company
200 Vesey Street
New York, NY 10285
Attn: Kristina V. Fink,
Vice President, Corporate Secretary & Chief Governance Officer

[redacted]
Via email: [redacted]

Re: Proof of ownership for submission of shareholder proposal

Dear Ms. Fink,

On behalf of Change Finance, P.B.C. ("Change Finance"), I write in response to the American Express Company (the "Company") letter dated December 14, 2022 (the "Supplemental Deficiency Letter") concerning Change Finance's eligibility, as a beneficial owner of the Company's common stock, to submit a shareholder proposal regarding abortion and consumer data privacy (the "Proposal") pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934.

As you may know, Rule 13d-3(a) of the Securities Exchange Act of 1934 provides that "a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security" (emphasis added). The rule makes clear that beneficial ownership is contingent upon a showing of either voting *or* investment power.

In response to the Company's deficiency notice dated November 23, 2022 regarding Change Finance's proof of share ownership (*see* Attachments 1 and 2), we detailed that, from October 9, 2017 through March 18, 2022, Change Finance was the investment adviser to the US Large Cap Fossil Fuel Free ETF (the "Original Fund"), which owned the Company's common stock, pursuant to an advisory agreement that provided Change Finance with authority to "exercise [the Original Fund's] proxy voting responsibilities." Effective March 18, 2022, the

Trust reorganized into AXS Change Finance ESG ETF (the "New Fund"), which reorganization automatically made shareholders of the Original Fund into shareholders of the New Fund. The sub-advisory agreement governing the relationship between Change Finance and the New Fund authorizes Change Finance "to vote proxies with respect to [the New Fund's] securities" and related matters. It should be noted that the sub-advisory agreement provides that Change Finance is authorized to exercise such voting power and engage in shareholder advocacy efforts "as agent and attorney-in-fact for the [New Fund]."

As the foregoing unquestionably demonstrates, Change Finance had explicit, continuous authority to vote proxies with respect to the securities of the Original Fund and New Fund during the relevant time period, thereby making Change Finance eligible to file the Proposal as a beneficial owner of the Company's common stock. Although your Supplemental Deficiency Letter requests confirmation as to "whether Change Finance is a registered investment adviser providing customary advisory services to the New Fund," such request is inappropriate given that Rule 13d-3(a) does not require such a showing.

Should you have any questions, I can be reached by telephone at [redacted] or by email at [redacted]

Sincerely,

Dorrit Lowsen
Co-CEO
[redacted]C.

Enclosures:

Attachment 1 – Change Finance deficiency notice response letter, dated December 5, 2022.

Attachment 2 – Company's Supplemental Deficiency Letter, dated December 14, 2022.

CHANGE
FINANCE, P.B.C

INVESTING IN SERVICE TO LIFE

December 5, 2022

American Express Company
200 Vesey Street
New York, NY 10285
Attn: Kristina V. Fink,
Vice President, Corporate Secretary & Chief Governance Officer

[redacted]

Re: Proof of ownership for submission of shareholder proposal

Dear Ms. Fink,

On behalf of Change Finance, P.B.C. ("Change Finance"), I write in response to the American Express Company (the "Company") letter dated November 23, 2022 concerning Change Finance's proof of share ownership for eligibility to submit a shareholder proposal regarding abortion and consumer data privacy (the "Proposal") pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934.

Rule 13d-3(a) of the Securities Exchange Act of 1934 provides that "a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security."

From October 9, 2017 through March 18, 2022, Change Finance was the investment adviser to the US Large Cap Fossil Fuel Free ETF (the "Original Fund"), a series of ETF Series Solutions, which owned the Company's common stock. The advisory agreement between Change Finance and the Original Fund (the "Advisory Agreement") provided Change Finance with authority to "exercise [the Original Fund's] proxy voting responsibilities."

Effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance ESG ETF (the "New Fund"), a newly created series of Investment Managers Series Trust II with the same investment objective and investment strategies. As a result of the conversion, shareholders of the Original Fund became shareholders of the New Fund. The conversion also shifted management responsibility – Change Finance has since served as the investment sub-adviser to the New Fund.

The sub-advisory agreement between Change Finance and the New Fund (the "Sub-Advisory Agreement") provides Change Finance with power "to engage in shareholder advocacy efforts and to vote proxies with respect to [the New Fund's] securities," which power authorizes Change Finance "to exercise full discretion and act for the [New Fund] in

the same manner and with the same force and effect as the [New Fund] . . ., as well as with respect to all other things necessary or incidental to the furtherance or conduct of shareholder advocacy efforts and proxy voting with respect to the securities of the [New Fund]."

Since both the Advisory Agreement and the Sub-Advisory Agreement explicitly provided Change Finance with "[v]oting power which includes the power to vote, or to direct the voting of, [the Company's] security," Change Finance has been the beneficial owner of the Company's common stock pursuant to Rule 13d-3(a) for the necessary time period to submit the Proposal. Moreover, Change Finance's beneficial ownership of the Company's common stock has been continuous for at least one year as of the Proposal submission date, given that, as a result of the conversion, shareholders of the Original Fund immediately became shareholders of the New Fund. Therefore, as the continuous beneficial owner of the Company's common stock, Change Finance is eligible to file the Proposal with the Company pursuant to Rule 14a-8(b)(1).

Enclosed you will find Change Finance's proof of ownership of the Company's common stock by way of letters from U.S. Bank, the share custodian through the March 18, 2022 conversion, and Brown Brothers Harriman & Co., the current share custodian since the conversion date.

[redacted]

Sincerely, [redacted]

Dorrit Lowsen
Co-CEO
Change Finance, P.B.C.
[redacted]

Enclosures:

Ownership verification from U.S. Bank
Ownership verification from Brown Brothers Harriman & Co.

APPENDIX A

To The Proof of Holdings Instruction Letter in respect of American Express Company Dated December [redacted], 2022

December [redacted], 2022

American Express Company
200 Vesey Street
New York, NY 10285
Attn: Kristina V. Fink,
Corporate Secretary & Chief Governance Officer

Dear Sir or Madam:

References is made to a shareholder proposal submitted to American Express by Investment Managers Series Trust II on behalf of its series, AXS Change Finance ESG ETF ("Client").

Brown Brothers Harriman & Co. ("BBH"), acting as custodian for Client, hereby confirms that, as of November 18, 2022, Client beneficially owned, and had beneficially owned continuously since March 21, 2022, at least 5,812 shares of American Express worth at least $25,000 (the "Shares"), [redacted].

BBH has acted as record holder of the Shares and is a Depository Trust and Clearing Corporation participant since March 21, 2022.

The above information is provided at the request and direction of the Client. The above statements do not constitute legal advice or legal conclusions. BBH assumes no liability or responsibility for any party's reliance on this document and will not be responsible for any loss or damage (direct, indirect or consequential) incurred as a result of any reliance thereon.

Sincerely,

Brown Brothers Harriman & Co.

By:
Name: Hugh Bolton
Title: Managing Director

December 5, 2022

Brown Brothers Harriman & Co.
50 Post Office Square
Boston, MA 02110

RE: Proof of Holdings Instruction Letter in respect of: American Express Company (the "Shares")

Dear Brown Brothers Harriman & Co.:

Reference is made to the custodian agreement between Investment Managers Series Trust II in respect of its series, AXS Change Finance ESG ETF ("Client") and Brown Brothers Harriman & Co. ("BBH"), (as amended, restated, modified, and/or supplemented, and otherwise in effect from time to time, the "Agreement"). Further reference is made to the Proof of Holdings Letter relating to the Shares held by the Client attached hereto as Appendix A (the "Proof of Holdings Letter").

Client instructs BBH to sign and address the Proof of Holdings Letter as set forth below. Client further confirms that:

1. On November 18, 2022 it held 6,520 of Shares in custody with BBH;
2. From the period March 21, 2022 through November 18, 2022, Client held at least 5,812 Shares continuously;
3. From March 21, 2022 through November 18, 2022 (i) Client beneficially owned, and (ii) Client had beneficially owned continuously for at least March 21, 2022 through November 18, 2022 Shares worth at least $25,000;
4. The Proof of Holdings Letter should be addressed to:
   American Express Company
   200 Vesey Street
   New York, NY 10285
   Attn: Kristina V. Fink,
   Corporate Secretary & Chief Governance Officer

The Client represents and warrants that all statements, representations and/or warranties set forth in the Proof of Holdings Letter, are true, accurate, and complete, and that this letter of direction is signed by an authorized person or persons with all necessary authority to sign on behalf of the Client. Client further instructs that, after BBH executes the Proof of Holdings Letter, BBH email the Proof of Holdings Letter to the Client at: [redacted]. This letter of instruction shall be deemed an Instruction as defined under the Agreement.

Sincerely,
Investment Managers Series Trust II

By: _____
Name: Joshua Gohr
Title: Assistant Treasurer

November 18, 2022

American Express Company
200 Vesey Street
New York, NY 10285
Attn: Kristina V. Fink,
Corporate Secretary & Chief Governance Officer

Re: Shareholder proposal submitted by Change Finance, PBC

Dear Ms. Fink,

I write concerning a shareholder proposal (the "Proposal") submitted to American Express (the "Company") by Change Finance, PBC.

As of March 21, 2022, Change Finance, PBC beneficially owned, and had beneficially owned continuously since 3/15/2018, 6,046.00 shares of the Company's common stock worth at least $25,000 (the "Shares")." Please note that the custodian changed on March 21, 2022, and a separate letter will be submitted to verify beneficial share ownership past that date.

US Bank acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at [redacted]

Very truly yours,

Mitchell Hauser-Smetana

Mitchell Hauser-Smetana
Officer | Fund Custody Account Manager

AMERICAN EXPRESS

Kristina V. Fink
Vice President
Corporate Secretary and Chief Governance Officer

December 14, 2022

Via email only to:

Change Finance, P.B.C.
Attn: Ms. Dorrit Lowsen
[redacted]

Re: Shareholder Proposal Regarding
Abortion and Consumer Data Privacy

Dear Ms. Lowsen:

On behalf of American Express Company (the "Company"), we formally acknowledge receipt of your letter dated December 5, 2022 purporting to provide proof of stock ownership in response to the procedural deficiency notice we sent to you dated November 23, 2022. This pertains to the shareholder proposal submitted by Change Finance, P.B.C. ("Change Finance") relating to abortion and consumer data privacy for inclusion in the Company's proxy statement for the 2023 annual meeting of shareholders (the "Submission").

Upon review of the ownership information you provided in your December 5, 2022 letter and the enclosures, we are writing to notify of you certain remaining deficiencies. First, the letter you provided from US Bank is addressed to Eli Lilly and Company and pertains to Change Finance's beneficial ownership of shares of stock of Eli Lilly & Co. stock. This letter does not provide any evidence of ownership by Change Finance of shares of the Company's common stock. Please provide evidence of ownership of the Company's stock by Change Finance. Any letter providing such evidence should not make legal conclusions as to whether Change Finance beneficially owns the shares, but rather should speak to the ownership of shares by the account holder. I have enclosed my prior letter dated November 23,2022 explaining the form of proof of ownership that would be sufficient to prove ownership of the Company's stock.

office:
fax:
200 Vesey Street
New York, NY 10285

Second, your letter explains that Change Finance is the beneficial owner of shares held by the Original Fund and the New Fund (as such terms are defined in your December 5, 2022 letter). Your letter indicates that, pursuant to the sub-advisory agreement between Change Finance and the New Fund, Change Finance has power to engage in advocacy efforts and to vote proxies with respect to the new Fund's securities and related matters. However, it is unclear whether Change Finance qualifies as the investment adviser to the New Fund, having broader investment advisory authority with respect to shares held by the New Fund (such as the authority to make investment decisions with respect to the shares). Accordingly, it is unclear whether Change Finance has authority to submit the proposal on behalf of the New Fund or whether, in order to satisfy the eligibility requirements of Rule 14a-8, the New Fund should have submitted the proposal and authorized Change Finance as its representative to act on its behalf in accordance with Rule 14a-8(b)(iv). In particular, it is unclear whether Change Finance is a registered investment adviser, clearly acting as an agent of a client. A copy of Rule 14a-8(b)(1) is enclosed.[1] Please confirm whether Change Finance is a registered investment adviser providing customary advisory services to the New Fund.

The Securities and Exchange Commission's rules require you to remedy the procedural deficiencies described above in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defects discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2023 annual meeting of shareholders and from the Company's proxy statement for the 2023 annual meeting of shareholders.

Please direct all correspondence to Kristina V. Fink, Vice President, Corporate Secretary and Chief Governance Officer, American Express, [redacted].

Very truly yours,

Kristina V. Fink

Kristina Fink
Vice President, Corporate Secretary and Chief Governance Officer

Enclosure

[1] An electronic version of Rule 14a-8 is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c5l7290a19689f72f6355af8d66&node=se17.4.240_114a_68&rgn=div8#.

November 23, 2022

Via email only to:

Change Finance, P.B.C.
Attn: Ms. Dorrit Lowsen
[redacted]

Re: Shareholder Proposal Regarding
Abortion and Consumer Data Privacy

Dear Ms. Lowsen:

On behalf of American Express Company (the "Company"), we formally acknowledge receipt, on November 18, 2022, of the shareholder proposal submitted by Change Finance, P.B.C. ("Change Finance") relating to abortion and consumer data privacy for inclusion in the Company's proxy statement for the 2023 annual meeting of shareholders (the "Submission").

Rule 14a-8(b)(1): Proof of Ownership

Since the Company's records do not indicate that Change Finance is a registered holder of the Company's stock, you are required to submit to the Company a written statement from the record holder of Change Finance's shares verifying Change Finance's eligibility pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934. A copy of Rule 14a-8(b)(1) is enclosed.[1] Rule 14a-8(b)(1) requires that shareholder proponents continuously hold the company's shares, constituting at least (i) $2,000 in market value for at least three years, (ii) $15,000 in market value for at least two years, or (iii) $25,000 in market value for at least one year, in each case preceding and including the date the proposal was submitted to the company.

Since the Company's records do not indicate that Change Finance is a registered holder, you are required by Rule 14a-8(b)(1) to submit to the Company a written statement from the record holder of Change Finance's shares of the Company's common stock (usually a broker or bank) verifying that at the time the proposal was submitted, Change Finance had continuously held the requisite number of shares.

The Securities and Exchange Commission ("SEC") Staff published Staff Legal Bulletins No. 14F ("SLB 14F")[2] and No. 14G ("SLB 14G")[3] to provide guidance in helping shareholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the securities. In SLB 14F, the SEC Staff stated that only brokers or banks

[1] An electronic version of Rule 14a-8 is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=eda72c5l7290a19689f72f6355af8d66&node=se17.4.240_114a_68&rgn=div8#.
[2] An electronic version of SLB 14F is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14f-shareholder-proposals.
[3] An electronic version of SLB 14G is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14gshareholder-proposals.

that are Depository Trust Company ("DTC") participants (clarified in SLB 14G to include affiliates thereof) will be viewed as "record" holders for purposes of Rule 14a-8. You can confirm whether Change Finance's broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at: http://www.dtcc.com/client-center/dtc-directories. If Change Finance's shares are held through a broker or bank that is *not* a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds Change Finance's Company shares. You should be able to find out the name of the DTC participant(s) by asking Change Finance's broker or bank.

If the DTC participant that holds Change Finance's shares knows its broker or bank's holdings, but does not know Change Finance's holdings, you may satisfy the proof of ownership requirements by submitting two proof-of-ownership statements: one from Change Finance's broker or bank confirming Change Finance's ownership and the other from the DTC participant confirming the broker or bank's ownership.

The SEC Staff previously issued Staff Legal Bulletin 14L ("SLB 14L"),[4] which provides the following as a suggested format for a broker or bank statement providing the required proof of ownership as of the date of the proposal's submission for purposes of Rule 14a-8(b):

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities]."

Alternatively, if applicable, you may provide us with a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed with the SEC, or amendments to those documents or updated forms, reflecting Change Finance's ownership of the required amount of Company shares as of the date on which the one-year eligibility period begins, along with a written statement that Change Finance continuously held the required number or amount of shares for the requisite period as of the date of the statement.

To date, the Company has not received sufficient proof that Change Finance has satisfied Rule 14a-8's ownership requirements as of the date of the Submission.

The SEC's rules require you to remedy the procedural deficiency described above in a response that is either postmarked or transmitted electronically to the Company no later than 14 days from the date you receive this letter. If you do not remedy the procedural defect discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the proposal from consideration at the 2023 annual meeting of shareholders and from the Company's proxy statement for the 2023 annual meeting of shareholders.

[4] An electronic version of SLB 14L is available at: https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals.

Please direct all correspondence to Kristina V. Fink, Vice President, Corporate Secretary and Chief Governance Officer, American Express, [redacted]
Very truly yours,

Kristina V. Fink

Kristina Fink
Vice President, Corporate Secretary and Chief Governance Officer

Enclosure

Sanford Lewis & Associates

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

January 23, 2023
Via electronic mail

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

Re: Shareholder proposal to American Express Company on behalf of Change Finance, P.B.C.

Ladies and Gentlemen:

Change Finance, P.B.C. (the "Proponent") is the beneficial owner of common stock of American Express Company (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. We have been asked by the Proponent to respond to the letter dated December 24, 2022 (the "Company Letter") sent to the Securities and Exchange Commission by Kristina V. Fink, American Express Corporate Secretary and Chief Governance Officer. In that letter, the Company contends that the Proposal may be excluded from the Company's 2023 proxy statement. A copy of this letter is being emailed concurrently to Ms. Fink.

SUMMARY

The Proposal (attached hereto as Exhibit A) requests that the Company issue a public report detailing any known and potential risks and costs to the Company from fulfilling information requests regarding American Express customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks.

The Supporting Statement adds that shareholders recommend the report, in the discretion of board and management, should consider the implementation of a data privacy policy wherein consumers nationwide would have "deletion rights" akin to those provided by California law, and would be notified by the Company about any law enforcement information requests regarding their data prior to complying with any such request. The Supporting Statement further recommends that the report reflect the input or participation of reproductive rights and civil liberties organizations.

The Company seeks exclusion of the Proposal on both procedural and substantive bases

pursuant to Rule 14a-8(f)(1) and Rule 14a-8(i)(7), respectively.

The Company challenges the Proponent's eligibility to submit the Proposal without proper authorization to act as a representative. This procedural contention is wholly misdirected, since the Proponent is the beneficial owner of the Company's common stock based on its voting power over the stock – as opposed to a representative – and submitted appropriate documentation showing its eligibility to submit the Proposal.

In addition, the Company claims under Rule 14a-8(i)(7) that the Proposal failed to address a significant policy issue and merely relates to the Company's ordinary business operations — namely, the Company's assessment of the impact of government regulation. The Company further claims that the Proposal micromanages, given the complexity of the data privacy issues and the purportedly prescriptive nature of its recommended courses of action.

However, the Proposal centers reproductive rights, a significant and contentious public issue that is deeply intertwined with the Company's business. In particular, the Proposal focuses on the vulnerability of individuals exercising their reproductive rights to mismanagement of data privacy rights by the Company. Lax commercial data privacy policies, including those of the Company, may provide law enforcement with easy access to consumer data for the enforcement of laws that criminalize abortion access, even if the reproductive rights were exercised in states where those rights are still protected.

Furthermore, the Proposal does not micromanage but rather focuses on matters that are accessible and comprehensible to investors, while simultaneously affording the Company wide discretion in completing the recommended courses of action. The Proposal calls on the Company to assess the business risks of high-profile reproductive rights laws that are well known and within the grasp of investors. The Proposal does not in any way dictate how the Company should mitigate any such risks.

Lastly, the Proposal adheres to Staff precedent declining to exclude digital privacy and reproductive rights proposals under the ordinary business rule. Accordingly, exclusion is unwarranted pursuant to Rule 14a-8(i)(7) in this matter, because the Proposal transcends ordinary business and does not micromanage.

BRIEF BACKGROUND

In 1973, the Supreme Court of the United States ruled in *Roe v Wade* (410 U.S. 113) that the right to privacy rooted in the Fourteenth Amendment of the United States Constitution protected abortion as a fundamental right. The decision struck down many federal and state laws criminalizing or severely restricting abortion access. In its June 2022 *Dobbs v Jackson Women's*

Health Center (142 S.Ct. 2228) decision, however, the Supreme Court reversed decades of precedent guaranteeing the constitutional right to abortion, leaving the matter to the states. Since then, at least a dozen states have criminalized abortion, and about half of the states are expected to enact laws making abortion broadly illegal.[1] Consequently, nearly 36 million people today may be deprived of access to safe and legal abortions in the event of pregnancy.[2]

Law enforcement in abortion-restrictive states are expected to use consumer digital data to investigate and prosecute individuals who provide, aid, or receive the procedure, even if the abortions are conducted in states where the procedures remain legal. Since the *Dobbs* decision, major news outlets have extensively reported on how a digital reproductive health footprint could be accessed by law enforcement and lead to criminal charges. Meta, which owns Facebook, recently received negative press after complying with a data request from a local Nebraska police department for private social media messages between a mother and daughter, who were subsequently charged with felony crimes related to the alleged illegal termination of the daughter's pregnancy.[3]

American Express has been largely silent on the issue. Given the massive data that the Company holds, it may be vulnerable to similar abortion-related requests.

Policymakers are considering government strategies to mitigate the negative impact of criminal abortion laws may on privacy rights and expectations. Shortly after the *Dobbs* decision, several U.S. Senators requested that the Federal Trade Commission initiate an investigation of specific companies regarding practices that compromised the data of "individuals seeking abortions and other reproductive healthcare."[4] President Biden further signed an executive order calling upon certain agencies to protect consumer health data and to address concerns of "digital surveillance related to reproductive healthcare services."[5] Federal legislators are considering laws like the *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) and the *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265) to protect consumer data from abortion-related prosecutions. California recently enacted legislation safeguarding digital data from being used by out-of-state law enforcement for abortion conduct that is lawful in that state. Washington, among other states, is considering a bill that would make it illegal to sell any type of health information,

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[1] *See Interactive Map: US Abortion Policies and Access After Roe,* Guttmacher Institute (last visited Oct. 17, 2022), https://states.guttmacher.org/policies/west-virginia/abortion-policies.

[2] *Court Cases: Dobbs v Jackson Women's Health Center*, ACLU (last updated June 27, 2022), https://www.aclu.org/cases/dobbs-v-jackson-womens-health-organization.

[3] *See* Aaron Sanderford, F*acebook data used to prosecute Nebraska mother, daughter after alleged abortion*, Nebraska Examiner (Aug. 10, 2022), https://nebraskaexaminer.com/2022/08/10/facebook-data-used-to-prosecute-nebraska-mother-daughter-after-alleged-abortion/.

[4] *See Letter to Federal Commission Chair Lina Khan from U.S. Senators* (June 24, 2022), https://cdn.arstechnica.net/wp-content/uploads/2022/06/Letter-to-FTC-Chair-Lina-Khan-on-Ad-IDs-and-Privacy.pdf

[5] Exec. Order (Jul. 8, 2022), https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/.

including reproductive health data.[6]

As the new patchwork of state laws regulating abortion access comes into force, companies with nationwide operations like American Express will be especially vulnerable to law enforcement information requests related to abortion, particularly in interstate conflicts regarding exercise of reproductive rights in states where abortion remains legal. Shareholders have reason to be concerned about whether the enforcement of criminal abortion laws will impact the reputation and financial wellbeing of the Company. The Proposal therefore calls upon management to examine the risks associated with the Company's current data handling practices, including its response to government information requests, in the face of new restrictive abortion laws.

ANALYSIS

A. The Proponent established the requisite eligibility to submit the Proposal.

The Company contends that the Proposal should be excluded pursuant to Rule 14a-8(f)(1) because the Proponent failed to provide documentation that it had authority to act as a representative of AXS Change Finance ESG ETF – an entity named as the stock owner in the proof of ownership documentation. Such contention, however, fundamentally ignores that the Proponent is the beneficial owner of the Company's common stock, not acting as a representative in the manner required by the rule. With the submission of the Proposal, the Proponent has always represented itself as the beneficial owner and shareholder-proponent, as opposed to filing as a representative of AXS Change Finance ESG ETF. Accordingly, as will be further explained below, exclusion of the Proposal under 14a-8(f)(1) is unwarranted since the Proponent fulfilled the necessary eligibility requirements to submit the Proposal as a shareholder-proponent.

1. Applicable rules

Rule 14a-8(f)(1) generally allows a company to omit a proposal from its forthcoming proxy statement if the shareholder-proponent "fail[s] to follow one of the eligibility or procedural requirements" outlined in Rule 14a-8(a)-(d), and only after the company has timely notified the shareholder-proponent of the problem and the proponent has timely failed to adequately correct the problem.

Rule 14a-8(b)(1) requires that, in order to submit a proposal, the shareholder-proponent

[6] *See Bill would force period tracking apps to follow privacy laws*, Associated Press (Jan. 16, 2022), https://apnews.com/article/health-washington-state-government-privacy-3fc4813c3e075191e00b4ec9f7684ce9.

"must have continuously held . . . [a]t least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year." Rule 14a-8(b)(1)(i)(C). Rule 14a-8(b)(2) outlines several ways by which a shareholder-proponent may demonstrate ownership of the requisite securities. One such method applies to proponents who are not the register holders of their securities, wherein they must submit a "a written statement from the 'record' holder of [the shareholder's] securities" verifying that, at the time of the proposal's submission, the shareholder "continuously held" the requisite amount of shares during the above-mentioned specified time frame. Rule 14a-8(b)(2)(ii)(A). In Staff Legal Bulletin No. 14F (Oct. 18, 2011), the Division clarified that only Depository Trust Company ("DTC") participants are viewed as record holders of securities deposited at the DTC.

A shareholder-proponent may be the beneficial owner of the company's shares. Pursuant to Rule 13d-3(a), "a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security." The Commission clarified in Exchange Act Release No. 34-17517 (Feb. 5, 1981) that the definition of "beneficial ownership" provided by Rule 13d-3(a) is applicable for proxy purposes under Rule 14a-8.

2. *Factual background*

On November 18, 2022, the Proponent submitted the Proposal to the Company along with a filing letter indicating that the Proponent, as the shareholder-proponent, met the necessary eligibility and ownership requirements. On November 23, 2022, the Company notified the Proponent in writing (the "First Deficiency Notice") that it "ha[d] not received sufficient proof that Change Finance has satisfied Rule 14a-8's ownership requirements as of the date of the [Proposal s]ubmission." On December 5, 2022, the Proponent responded to the First Deficiency Notice with a letter and supporting documentation (the "First Deficiency Response"), explaining that it was submitting two separate proofs of ownership given that corporate restructuring during the relevant time period had affected share ownership.

As the First Deficiency Response outlines, from October 9, 2017 through March 18, 2022, the Proponent was the registered investment adviser to the US Large Cap Fossil Fuel Free ETF (the "Original Fund"), a series of ETF Series Solutions, which owned the Company's common stock. The advisory agreement between the Proponent and the Original Fund provided the Proponent with explicit authority to "exercise [the Original Fund's] proxy voting responsibilities."

Effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance

ESG ETF (the "New Fund"), a newly created series of Investment Managers Series Trust II with the same investment objective and investment strategies. As a result of the conversion, shareholders of the Original Fund immediately became shareholders of the New Fund. The conversion also shifted management responsibility – the Proponent has since served as the investment sub-adviser to the New Fund.

The sub-advisory agreement between the Proponent and the New Fund (the "Sub-Advisory Agreement") provides the Proponent with power "to engage in shareholder advocacy efforts and to vote proxies with respect to [the New Fund's] securities," which power authorizes the Proponent "to exercise full discretion and act for the [New Fund] in the same manner and with the same force and effect as the [New Fund] . . ., as well as with respect to all other things necessary or incidental to the furtherance or conduct of shareholder advocacy efforts and proxy voting with respect to the securities of the [New Fund]." Accordingly, the First Deficiency Response noted that, since both the Advisory Agreement and the Sub-Advisory Agreement explicitly provided the Proponent with"[v]oting power" on the Company's securities for the requisite time period, the Proponent had been the "beneficial owner" of the Company's common stock pursuant to Rule 13d-3(a) for the necessary time period, which made it eligible to submit the Proposal pursuant to Rule 14a-8(b)(1).

The First Deficiency Response further included a letter from US Bank (the "First US Bank Letter"), a DTC participant, verifying that, "[a]s of March 21, 2022, Change Finance, PBC beneficially owned, and had beneficially owned continuously since 3/15/2018, 6,046.00 shares of the Company's common stock worth at least $25,000." The First Deficiency Response also included a letter from Brown Brothers Harriman & Co. (the "BBH Letter"), a DTC participant, confirming that the New Fund – that is, AXS Change Finance ESG ETF – continuously held at least $25,000 of the Company's securities from March 21, 2022 through November 18, 2022.

On December 14, 2022, the Company notified the Proponent via letter (the "Second Deficiency Notice") that the First US Bank Letter was erroneously addressed to "Eli Lilly and Company," thereby failing to confirm the Proponent's ownership of the Company's common stock during the specified time. In addition, the Second Deficiency Notice alerted the Proponent that, despite the explanations provided in the First Deficiency Response, "it [was] unclear whether [the Proponent] has authority to submit the proposal on behalf of the New Fund or whether, in order to satisfy the eligibility requirements of Rule 14a-8, the New Fund should have submitted the proposal and authorized [the Proponent] as its representative to act on its behalf in accordance with Rule 14a-8(b)(iv)." The Company noted that, "[i]n particular, it [was] unclear whether [the Proponent] is a registered investment adviser, clearly acting as an agent of a client." Accordingly, the Company requested confirmation as to "whether [the Proponent] is a registered investment adviser providing customary advisory services to the New Fund."

On December 19, 2022, the Proponent responded to the Second Deficiency Notice (the "Second Deficiency Response"), including a corrected proof of ownership letter from US Bank (the "Second US Bank Letter") addressed to the Company, which verified that "[a]s of March 21, 2022, *Change Finance, PBC* beneficially owned, and had beneficially owned continuously since 3/15/2018, 6,046.00 shares of the Company's common stock worth at least $25,000" (emphasis added). As to the issue of the Proponent's investment powers, the Second Deficiency Response reiterated that "[the Proponent] had explicit, continuous authority to vote proxies with respect to the securities of the Original Fund and New Fund during the relevant time period, thereby making [the Proponent] eligible to file the Proposal as a beneficial owner of the Company's common stock," without the need to confirm whether it was a registered investment adviser to the New Fund.

3. *The Proponent is the beneficial owner of the Company's common stock and provided required documentation proving its eligibility to submit the Proposal.*

The Company now contends that because the BBH Letter identified the New Fund as the shareholder, as opposed to the Proponent, the New Fund was required to provide written documentation authorizing the Proponent to act as its representative. In the absence of any such authorization, the Company argues that exclusion of the Proposal is justified since the Proponent failed to comply with ownership requirements under Rule 14a-8(b), proving that it was the owner of the Company's stock during the relevant time period. However, the Company's attempts to exclude the Proposal on this basis is meritless given that the Proponent is the beneficial owner of such shares and therefore had authority to submit the Proposal as the shareholder-proponent.

As the Proponent explained in both its First and Second Deficiency Responses, since the Advisory Agreement and the Sub-Advisory Agreement explicitly provided the Proponent with "[v]oting power" over the Company's securities pursuant to Rule 13d-3(a), the Proponent has been the beneficial owner of the Company's common stock for the time period governing eligibility to submit the Proposal. Additionally, the Proponent's beneficial ownership of the Company's common stock has been continuous for at least one year as of the Proposal submission date, given that as a result of the corporate restructuring of the Funds, shareholders of the Original Fund immediately became shareholders of the New Fund. In the Company Letter, the Company does not dispute that the BBH Letter and/or the Second US Bank Letter verify the temporal and value requirements for proof of ownership under Rule 14a-8(b)(1)(i)(C). The Company also does not dispute that the Proponent was the owner of the requisite stocks from March 15, 2015 through March 21, 2022 and, in any event, the Second US Bank Letter confirms that, during that time, the Proponent was the beneficial owner of such stocks. Given the foregoing, the Proponent, as the continuous beneficial owner of the Company's common stock, is eligible to directly file the Proposal as the shareholder-proponent pursuant to Rule 14a-

8(b)(1).[7]

B. The Proposal focuses on issues that transcend ordinary business, and does not micromanage.

The Company also seeks exclusion pursuant to Rule 14a-8(i)(7) upon its view that the Proposal interferes with ordinary business without implicating a transcendent significant policy issue, and further micromanages. As to ordinary business, the Company contends that the Proposal merely concerns corporate risk management and changes to corporate data "security systems," day-to-day tasks inappropriate for direct shareholder oversight. Moreover, the Company asserts that the subject matter of the proposal does not transcend ordinary business. The Company further asserts a micromanagement challenge, arguing that the Proposal raises issues too complex for shareholders to deliberate upon, and leaves no discretion to management in completing the recommended courses of action.

As the ensuing sections will show, the Company's arguments mischaracterize the Proposal's request, ignore Staff precedent, and undermine investors' judgment. In essence, the Proposal's focus is on the transcendent policy issue of reproductive rights, including related rights of privacy in the wake of new criminal abortion laws across various states, which will inevitably impact the Company's business. The Proposal does not interfere with management's ability to run the Company but only asks for a report on the Company's assessment of the risks and mitigation opportunities, needed to give shareholders more insight into the Company's response to how the rollback of reproductive rights in the United States intersects with the Company's business. Finally, the Proposal explicitly affords management sufficient discretion in preparing such report, and largely considers known and debated social and economic issues. Thus, we submit that the Company's request for relief under Rule 14a-8(i)(7) should be denied.

1. *Rule 14a-8(i)(7): ordinary business according to the Commission*

Rule 14a-8(i)(7) ordinarily permits a Company to omit a shareholder proposal from its

[7] Even assuming, arguendo, that the Proponent, as the beneficial owner of the Company's shares, cannot act as the shareholder-proponent to submit the Proposal, the Company's procedural challenge still fails. While Rule 14a-8(b)(2)(iv) ordinarily requires an authorization letter from the shareholder, the rule expressly carves out an exception "for shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf." In Exchange Act Release No. 34-89964 (Nov. 4, 2020), the Commission stated that such exception would apply in situations "where an adviser to an investment company submits a proposal on behalf of an investment company." The Proponent is a registered investment adviser (*see* SEC Investment Adviser Public Disclosure, CRD # 287807/SEC#:801-110973, available at https://adviserinfo.sec.gov/firm/summary/287807) with authority to direct disposition of the securities of the New Fund. Therefore, the Proponent squarely meets the type of situation where the Commission recognized that an authorization letter is unnecessary, pursuant to the "apparent and self-evident" exception of Rule 14a-8(b)(2)(iv).

proxy statement "[i]f the proposal deals with a matter relating to the company's ordinary business operations." In 1998, the Commission issued Release No. 34-40018 (May 21, 1998) (the "1998 Release"), updating and interpreting the ordinary business rule by both reiterating and clarifying past precedents. To date, the 1998 Release serves as the Commission's authoritative interpretation of the meaning and scope of the ordinary business exclusion. In it, the Commission summarized two central considerations in making ordinary business determinations: whether the proposal addresses a significant social policy issue, and whether it micromanages.

First, the Commission noted that certain tasks were generally considered so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight (e.g., the hiring, promotion, and termination of employees, as well as decisions on retention of suppliers, and production quality and quantity). However, proposals related to such matters but focused on sufficiently "significant social policy issues" (i.e., significant discrimination matters) generally would not be excludable.

Second, proposals could be excluded to the extent they seek to "micromanage" a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment. This concern did not, however, result in the exclusion of all proposals seeking detailed timeframes or methods. Proposals that passed muster under the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of whether the proposal probes too deeply for shareholder deliberation.

2. *The Proposal focuses on a significant social policy issue that transcends ordinary business.*

The Company argues that the Proposal should be excluded under Rule 14a-8(i)(7) because it failed to raise a significant policy matter transcending ordinary business. Yet, the Proposal clearly focuses on reproductive rights and related consumer privacy concerns, which the Staff has consistently identified as significant policy issues transcending ordinary business.

a. The Proposal concerns a significant policy issue.

The Proposal is fundamentally focused on reproductive rights. In particular, the Proposal concerns the risks to the Company from fulfilling information requests and breaching consumer privacy expectations regarding American Express customers for the enforcement of state laws that criminalize abortion access, including in instances where abortion may be legal in the state where it is conducted.

Abortion and reproductive rights are one of the most significant social controversies of

our era. Although abortion access had been constitutionally protected since *Roe v Wade* in 1973, the Supreme Court of the United States revoked all such protections following its *Dobbs* decision in June 2022. Since then, a dozen U.S. states have criminalized the abortion activities of providing, aiding, and receiving the procedure. Texas, for example, enacted what has been referred to as the "vigilante abortion law," which incentivizes citizens with a cash "bounty" if they succeed in suing individuals who have helped a person get an illegal abortion.[8] Missouri outright banned all abortions, only except when the mother's life is threatened, and punishes providers with 5 to 15 years of imprisonment.[9] It is expected that about half of the states will enact similar laws making abortion broadly illegal.[10]

Following the *Dobbs* decision, a substantial portion of the US population — 36 million people — may be deprived of access to safe and legal abortions in the event of pregnancy,[11] notwithstanding that such access has been recognized as a fundamental human right by the United Nations Human Rights Committee.[12] Fifteen million women of color and nearly 3 million women with disabilities, who frequently have less access to quality reproductive and maternal healthcare, live in the states that have already banned, or are likely to ban, abortion.[13] So far, at least 60 reproductive health clinics have closed or paused in the U.S., affecting access to reproductive healthcare, including contraception, particularly in communities with poor maternal healthcare outcomes.[14] Indeed, it has been shown that "[a] third of American women of reproductive age now face excessive travel times to obtain an abortion" – for example, women in Texas and Louisiana went from median travel times of roughly 15 minutes to obtain an abortion before the *Dobbs* decision to more than six-hour trips.[15]

Civil society organizations like Planned Parenthood, the National Partnership for Women and Families, and the nonpartisan Center for American Progress have all called this a "crisis

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[8] Emma Bowman, *As states ban abortion, the Texas bounty law offers a way to survive legal challenges*, NPR News (July 1, 2022), https://www.npr.org/2022/07/11/1107741175/texas-abortion-bounty-law.

[9] *Abortion ruling prompts variety of reactions from states*, Associated Press (July 21, 2022), https://apnews.com/article/supreme-court-abortion-ruling-states-a767801145ad01617100e57410a0a21d.

[10] *See Interactive Map: US Abortion Policies and Access After Roe,* Guttmacher Institute (last visited Oct. 17, 2022), https://states.guttmacher.org/policies/west-virginia/abortion-policies.

[11] *Court Cases: Dobbs v Jackson Women's Health Center*, ACLU (last updated June 27, 2022), https://www.aclu.org/cases/dobbs-v-jackson-womens-health-organization.

[12] *See Information Series on Sexual and Reproductive Health and Rights: Abortion*, U.N. Human Rights Office (2020), https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf.

[13] Laura Valle Gutierrez, *The Dobbs Decision's Cost to Women and Families*, The Century Foundation (Aug. 18, 2022), https://tcf.org/content/commentary/the-dobbs-decisions-cost-to-women-and-families/.

[14] *See* Karl Stark, *What We Know About Abortion So Far*, U. of Penn. Leonard Davis Institute of Health Economics (Oct. 4, 2022), https://ldi.upenn.edu/our-work/research-updates/what-we-know-about-abortion-so-far/.

[15] Cameron Scott, *Model Shows Where Women Lost Access to Abortion After Dobbs*, U. of Cal. San Francisco (Nov. 1, 2022), https://www.ucsf.edu/news/2022/10/424121/model-shows-where-women-lost-access-abortion-after-dobbs.

moment."[16] The American College of Obstetricians and Gynecologists remarked "that this is a dark and dangerous time for the women and doctors of America,"[17] while the American Medical Association called the *Dobbs* decision "an egregious allowance of government intrusion into the medical examination room, a direct attack on the practice of medicine and the patient-physician relationship, and a brazen violation of patients' rights to evidence-based reproductive health services."[18] Other medical associations like the American College of Physicians and the American Academy of Pediatrics, as well as the editorial board of the New England Journal of Medicine have similarly condemned the Supreme Court's decision to overturn constitutional reproductive rights, noting that it will exacerbate inequities in healthcare and undermine science.[19]

The repercussions of the *Dobbs* decision have not gone unnoticed by the general public and policymakers. Internet search trends mentioning "abortion pill" or "abortion medications" spiked 162% to an all-time high in the 72 hours after the leaked Supreme Court draft of the *Dobbs* decision in May 2022,[20] representing a wave of public fear and anxiety. Following the eventual publication of the *Dobbs* decision, a Gallup national survey from July 2022 found that abortion ranked fourth in its "most important problem" list.[21] A September 2022 Marist poll concerning the 2022 congressional elections found that "abortion [constituted] a key issue for the campaigns," since it ranked as the second most important voting issue nationally.[22]

Given the heightened awareness of abortion restrictions in the United States, American consumers are becoming increasingly wary about the data they share and with which companies. For instance, an increasing number of consumers have switched from the most popular period-

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[16] *See* Jocelyn Frye, *Crisis Moment for Abortion Access*, National Partnership for Women and Families (May 3, 2022), https://www.nationalpartnership.org/our-impact/news-room/press-statements/crisis-moment-for-abortion.html; Brad Chester, *A Crisis Moment for Abortion Access*, CAP Action (May 3, 2022), https://www.americanprogressaction.org/article/a-crisis-moment-for-abortion-access/; Planned Parenthood tweet, Twitter (May 2, 2022), https://twitter.com/PPFA/status/1521309734925742086.

[17] Iffath Abbasi Hoskins, MD, FACOG, *ACOG Statement on the Decision in Dobbs V. Jackson*, American College of Obstetricians and Gynecologists (June 24, 2022), https://www.acog.org/news/news-releases/2022/06/acog-statement-on-the-decision-in-dobbs-v-jackson.

[18] Jack Resneck Jr., MD, *Dobbs ruling is an assault on reproductive health, safe medical practice*, American Medical Association (June 24, 2022), https://www.ama-assn.org/about/leadership/dobbs-ruling-assault-reproductive-health-safe-medical-practice.

[19] *See* Patrick McGroarty, *Medical Groups Condemn Dobbs Decision*, Wall Street Journal (June 24, 2022), https://www.wsj.com/livecoverage/supreme-court-decision-roe-v-wade-6-24-2022/card/medical-groups-condemn-dobbs-decision-G1X3ztrS8Pb4JFgV151n.

[20] Mary Kekatos, *Spike in Google searches for abortion pills may lead to rise in unsafe abortions: Study*, ABC News (June 29, 2022), https://abcnews.go.com/Health/spike-google-searches-abortion-pills-lead-rise-unsafe/story?id=85854789.

[21] *See* Frank Newport, *Abortion Moves Up on "Most Important Problem" List*, Gallup (Aug. 1, 2022), https://news.gallup.com/poll/395408/abortion-moves-important-problem-list.aspx.

[22] *The 2022 Midterm Elections, Sep 2022*, NPR/PBS NewsHour/Marist National Poll (Sept. 8, 2022), https://maristpoll.marist.edu/polls/the-2022-midterm-elections-sep-2022/.

tracking app to rival platforms that offer stronger privacy protections.[23] Indeed, data privacy expectations and rights are inextricably connected to reproductive rights.

Article 12 of the Universal Declaration of Human Rights provides privacy rights, which have been recognized to include the right to bodily autonomy and privacy with respect to abortion. The U.S. Supreme Court has recognized the existence of a constitutional right to privacy in health and family matters. Although abortion privacy safeguards have recently been eroded at the constitutional level, federal laws like the Health Insurance Portability and Accountability Act of 1996 continue to offer some privacy protections around reproductive health information.[24]

In the wake of newly-enacted restrictive abortion laws, Congress is considering several bills addressing data privacy, two of which are specifically focused on personal reproductive health information. The *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) would create various privacy protections for "personal reproductive or sexual health information," including a requirement that entities only collect and use these data if the individual has consented or if they are strictly necessary to provide a service or product that the individual has requested. The *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265) would prohibit law enforcement and intelligence agencies from purchasing communications data from data brokers. States are also taking matters into their own hands, with California having recently enacted laws protecting digital information from being used by out-of-state investigators for abortion activities that are lawful in that state. One such law (AB 1242) prohibits California courts from authorizing searches that would assist other states with investigations related to providing, facilitating or obtaining abortion services, whereas another law (AB 2091) requires that medical information concerning an individual seeking or obtaining an abortion not be disclosed for the enforcement of another state's laws that ban or limit abortion access. At least seven states, including New York, Maryland, Oregon, New Jersey and Washington, are also weighing legislation targeting specific subsets of data, such as the collection and use of health information, or seeking to put limits on third-party data brokers. Some of the bills appear aimed at addressing privacy concerns raised by the Supreme Court decision to overturn federal abortion rights under *Roe v. Wade*.[25]

Against this backdrop, reproductive rights represent a significant policy issue within the meaning of Rule 14a-8(i)(7) as an important matter of social concern and a hotly debated topic.

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[23] *See* Sarah Perez, *Consumers swap period tracking apps in search of increased privacy following Roe v. Wade ruling*, TechCrunch (June 27, 2022), https://techcrunch.com/2022/06/27/consumers-swap-period-tracking-apps-in-search-of-increased-privacy-following-roe-v-wade-ruling/.

[24] Many countries including South Korea, Spain and the United Kingdom recognize privacy rights as constitutionally protected freedoms.

[25] *See* Cristiano Lima, *States are readying a flurry of privacy bills as Washington stalls*, Wash. Post (Jan. 20, 2023), https://www.washingtonpost.com/politics/2023/01/20/states-are-readying-flurry-privacy-bills-washington-stalls/.

In fact, the Staff has recently declined to exclude proposals under an ordinary business challenge when the proposals raised reproductive rights issues. (*see e.g., The TJX Companies, Inc.* (April 15, 2022) (proposal requesting a risk assessment report related to "state policies severely restricting reproductive rights"); *Walmart Inc.* (April 12, 2022) (same); *Lowe's Companies, Inc.* (April 7, 2022) (same)).

b. The subject matter of the proposal transcends ordinary business operations.

In the Proposal, reproductive rights are unquestionably the central matter of concern – the background section frames the data privacy issues within a newly-effectuated legal framework criminalizing abortion in more than a dozen states, while the "resolved" clause explicitly states that the risk assessment report concerns law enforcement requests related to the enforcement of such criminal abortion laws, and the Supporting Statement recommends participation of "reproductive rights" organizations in the process. Without a doubt, reproductive rights, or the absence of those rights, have a significant relation to the Company as a result of its data management and potential provision of data for law enforcement.

As the Proposal notes, law enforcement is expected to rely on digital consumer data for the enforcement of these new abortion criminal laws. For instance, they may identify suspects through reverse keyword and geofence searches using troves of consumer data, or gather evidence from commercial digital data to support charges against specific defendants. The *New York Times* reported in June 2022 that "[p]ayment data could become evidence of [criminalized] abortion[s]."[26] For that article, reporters asked American Express "how [it] would approach data privacy around abortion," to which the Company "declined to comment." American Express does not publicly provide transparency reporting or details related to law enforcement information requests.

Other digital economy companies, such as Alphabet and Meta, on the other hand, do publish such figures, which provide insight into the reliance of law enforcement on commercial data. Just in the second half of 2021, each respectively received around 50,000 and 60,000 law enforcement information requests, and complied with about 80% of those requests.[27] Meta, which owns Facebook, more recently complied with a warrant from a local Nebraska police

[26] Ron Lieber & Tara Siegel Bernard, P*ayment Data Could Become Evidence of Abortion, Now Illegal in Some States*, N.Y. Times (June 29, 2022), https://www.nytimes.com/2022/06/29/business/payment-data-abortion-evidence.html.

[27] *See* Irina Ivanova, *Why even discussing abortion can now get you arrested*, CBS News (Aug. 16, 2022), https://www.cbsnews.com/news/nebraska-abortion-felony-facebook-privacy-data/; *see also Transparency Report: Global requests for user information*, Google (last visited Sept. 12, 2022), https://transparencyreport.google.com/user-data/overview?user_requests_report_period=authority:US&user_data_produced=authority:US;series:compliance&lu=user_data_produced; *Transparency Center: Requests by country, United States*, Facebook (last visited Sept. 12, 2022), https://transparency.fb.com/data/government-data-requests/country/us/

department for private social media messages from a defendant who subsequently faced felony charges for allegedly helping her daughter terminate a pregnancy.[28] Similarly, Fog Data Science, a data broker, has been identified as selling raw location data about individual people to federal, state, and local law enforcement agencies.[29] Since American Express has 56.4 million cards in circulation in the United States alone,[30] and about 10.6 million U.S. merchant locations accept these credit cards,[31] many customers are now at risk of law enforcement accessing their data for the investigations and prosecutions of abortion-related acts that, just months ago, were legal across the United States, and also which may remain legal in the state where the activity or service is provided, but not where the customer resides.

Indeed, as a Company with nationwide operations, the Company is extremely likely to be implicated in interstate conflicts regarding reproductive rights and freedoms. For example, if a company stores data in an abortion-restricted state like South Dakota, law enforcement could use the company's presence in that state by way of its data storage facility to compel the company to turn over any data regarding suspected abortions, regardless if the company is a resident of a jurisdiction that offers strong abortion-related data protections, like California. Furthermore, states that ban abortions may seek to legally punish those who leave the state to get an abortion, or punish people who help them secure an out-of-state abortion. Although no state has yet enacted a law banning abortion-related travel, Missouri state legislators have attempted several times to introduce bills that would enforce abortion restrictions through civil lawsuits if the abortion were administered outside the state.[32] The Company could therefore be a target of law enforcement data inquiries investigating reproductive healthcare decisions that may be legal in one state but illegal in another.

Overall, consumers are subject to startling surprises and breaches of expectations regarding the security of their digital data, which in turn may undercut the Company's brand and goodwill. A 2019 Pew Research Center nationally-representative survey indicated that while

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[28] *See* Martin Kaste, *Nebraska cops used Facebook messages to investigate an alleged illegal abortion*, NPR (Aug. 12, 2022), https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion.

[29] *See* Bennett Cyphers, *Inside Fog Data Science, the Secretive Company Selling Mass Surveillance to Local Police*, Electronic Frontier Foundation (Aug. 31, 2022), https://www.eff.org/deeplinks/2022/08/inside-fog-data-science-secretive-company-selling-mass-surveillance-local-police.

[30] Form 10-K, American Express Company at p. 47 (fiscal year ending Dec. 31, 2021), https://s26.q4cdn.com/747928648/files/doc_financials/2021/q4/d13acb37-2f7e-411d-8ed1-6516668bf861.pdf.

[31] *See* Alexandria White, *99% of merchants in the U.S. who accept credit cards now take American Express*, NBC News (Oct. 19, 2021), https://www.cnbc.com/select/american-express-merchant-acceptance/.

[32] *See* Diego Mendoza, *Will lawmakers try to ban out-of-state abortions?*, King5 NBC (June 24, 2022), https://www.king5.com/article/news/nation-world/how-states-could-limit-out-of-state-abortions/507-46e54b41-ab4c-4d6a-9498-97ca2b29ab44. In a similar vein, the Idaho legislature is currently considering a bill criminalizing cases of children traveling out-of-state to obtain gender-affirming medical care (*see* Tyler Kingkade, *Idaho lawmakers seek to punish parents who take trans youth to other states for health care*, NBC News (Mar. 9, 2022), https://www.nbcnews.com/news/us-news/idaho-trans-health-care-youth-bill-rcna19287.

most Americans are very worried about their digital privacy, they are not always diligent about scrutinizing the privacy policies and terms of service they regularly encounter: only about one-in-five adults overall said they always (9%) or often (13%) read a company's privacy policy before agreeing to it.[33] Moreover, only 6% of adults said that they understand "a great deal what companies do with the data collected," and a similar share (4%) said they know "a great deal about what the government does with the data." Conversely, 78% said that they understand "very little or nothing about what is being done with their data by the government," and 59% stated the same about corporate practices.[34] Prior to the current changes in abortion laws, federal agencies had already identified companies that have implemented deceptive data collection practices.[35]

Many companies are collecting larger volumes of data than strictly necessary for a requested consumer service or product. In the wake of a new patchwork of state laws regulating abortion access, examination of the risks associated with the Company's current consumer data privacy practices vis-à-vis law enforcement data requests is an appropriate shareholder inquiry given the potential damage to the Company's reputation and goodwill if consumer expectations regarding privacy are breached by company disclosures that put numerous consumers exercising their reproductive rights in legal jeopardy. As the Proposal indicates, the Company could face reputational and financial consequences stemming from the actual and potential use of customer data by law enforcement seeking to investigate individuals allegedly engaged in abortion-related activities.

To that end, a recent empirical study in the *Journal of Marketing* by Kelly Martin and colleagues showed that vulnerabilities concerning the misuse of commercial data can generate negative outcomes for businesses, including negative abnormal stock returns and damaging customer behaviors such as negative word of mouth and switching to a close business rival.[36] These findings could apply to data vulnerabilities from actual and potential disclosures of abortion-related data to law enforcement, thereby amplifying consumer worries about data misuse. Consequently, corporations collecting large troves of consumer data, such as American Express, are likely exposing themselves to higher financial and reputational risks. Apropos to the current Proposal, the study found that data transparency and heightened customer control practices can suppress these detrimental effects.

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[33] Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information*, Pew Research Center (Nov. 2019), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/11/Pew-Research-Center_PI_2019.11.15_Privacy_FINAL.pdf.

[34] *Id.*

[35] *See* Press Release, *Fed. Trade Comm'n, Facebook Settles FTC Charges That It Deceived Consumers by Failing to Keep Privacy Promises* (Nov. 29, 2011), https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep; Press Release, *Fed. Trade Comm'n, FTC Takes Action against the Operators of Copycat Military websites* (Sept. 6, 2018), https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites

[36] *See* Kelly D. Martin et al., *Data Privacy: Effects on Customer and Firm Performance*, 81.1 Journal of Marketing at 36-58 (2017).

Given the conditions surfaced as a result of the revocation of abortion rights in the United States, the Company may face substantial reputational damage, and related difficulties in attracting new customers or maintaining existing ones.

Abortion is a common medical procedure: nearly one in four women in the United States will have an abortion by age 45.[37] The reach of new criminal abortion laws casts a wide net that implicates not just these women, but also friends, family, partners, and medical professionals involved in the provision or access to the procedure. As a business reaching millions of customers nationwide, the Company will inevitably face data demands related to the new laws criminalizing abortion.

The Proposal consequently calls for the Company to assess data privacy risks and vulnerabilities as it relates to information requests serving the enforcement of criminal laws infringing upon reproductive rights, and to set forth mitigation strategies that could ameliorate any such risks and vulnerabilities. The Proposal requests a risk assessment report of the Company's data handling practices vis-a-vis law enforcement requests concerning abortion-related crimes, which should also identify mitigation strategies. Nowhere in the Proposal is there a call for public disclosure of sensitive or confidential information, and management is ultimately empowered to select the type of information it includes in the report. In any event, the Proposal clearly states in its "resolved" clause that the sought-out report should "exclude proprietary or legally privileged information," thereby undermining any such claim that the requested report would inevitably disclose confidential information.

The Staff has found proposals to pass muster under Rule 14a-8(i)(7) because reproductive rights, as a significant policy issue, transcended ordinary business matters. In *Lowe's Companies, Inc.* (April 7, 2022), for example, the challenged proposal requested that "Lowe's issue a public report . . . detailing any known and any potential risks and costs to [Lowe's] caused by enacted or proposed state policies severely restricting reproductive health care, and detailing any strategies beyond litigation and legal compliance that [Lowe's] may deploy to minimize or mitigate these risks" (*see The TJX Companies, Inc.* (April 15, 2022) (nearly identical proposal request); *Walmart Inc.* (April 12, 2022) (same); *see also Walmart, Inc.* (March 28, 2011) (proposal requesting that the board issue a report disclosing the business risks related to climate change was not excluded under Rule 14a-8(i)(7)); *General Electric Company* (February 8, 2011) (same); *Goldman Sachs Group, Inc.* (February 7, 2011) (same)).

[37] *See* Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, Guttmacher Institute (Oct. 2017), https://www.guttmacher.org/article/2017/10/population-group-abortion-rates-and-lifetime-incidence-abortion-united-states-2008.

The Staff has also declined exclusion under Rule 14a-8(i)(7) when consumer privacy rights and expectations are a main focus of the proposal, since such privacy issues normally transcend ordinary business. In *Meta Platforms, Inc.* (April 2, 2022), a proposal seeking "a report and . . . advisory shareholder vote on [Meta's] metaverse project" survived exclusion under Rule 14a-8(i)(7) upon the Staff's view that it "transcend[ed] ordinary business matters." The proponent in that matter notably argued that the proposal concerned "issues of social impact" including issues related with "[u]ndermining [p]rivacy." In *Amazon.com, Inc.* (March 28, 2019), the Staff found that a proposal seeking to "prohibit sales of facial recognition technology to government agencies unless the Board concludes, after an evaluation using independent evidence, that the technology does not cause or contribute to actual or potential violations of civil and human rights" was not excludable under Rule 14a-8(i)(7) because it also "transcend[ed] ordinary business matters." Similar to the subject Proposal, the *Amazon* proposal's supporting statement recommended the Board consult with technology and civil liberties experts, and civil and human rights advocates to assess "the extent to which such technology may endanger or violate *privacy or civil rights*" (emphasis added), as well as how Amazon would mitigate these risks and the extent to which such technologies may be marketed and sold to repressive governments.

3. The Proposal does not micromanage.

The Company next contends that the Proposal may be excluded because it seeks to micromanage by requesting that the Company detail its strategies to minimize or mitigate risks associated with fulfilling information requests related to the enforcement of state laws criminalizing abortion since, in its view, "the design and implementation of risk mitigation strategies and data privacy policy are both multi-faceted endeavors."

Staff Legal Bulletin 14L (Nov. 3, 2021) states that the success of a micromanagement challenge largely rests upon consideration of whether the proposal micromanages the company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." According to the Staff, such analysis requires examination of two central questions: (1) whether the proposal frames the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace, and (2) whether the proposal leaves sufficient flexibility for board and management discretion.

This is not an instance of micromanagement, because it is not an instance in "which shareholders, as a group, would not be in a position to make an informed judgment." To the contrary, the issues raised in the Proposal are comprehensible and known to investors so that they can make informed judgments around the Company's responses to state laws criminalizing abortion. Moreover, the Proposal clearly affords management with substantial discretion in

accomplishing the courses of action recommended in the Proposal, such that it should not warrant exclusion under Rule 14a-8(i)(7) for allegedly micromanaging the Company.

a. The Proposal concerns issues comprehensible to investors.

The issues relevant to the Proposal have been discussed by policymakers, the media, investor publications, and civic institutions for many years. Prompted by the *Dobbs* decision in 2022, members of Congress have publicly expressed concerns that law enforcement officials may seek to collect abortion-related personal data for prosecutions in states that have criminalized abortions. For example, certain U.S. Senators wrote Federal Trade Commission Chair Lina Khan in June 2022 requesting an investigation upon two companies for "unfair and deceptive practices by enabling the collection and sale of hundreds of millions of mobile phone users' personal data" which could particularly compromise "individuals seeking abortions and other reproductive healthcare."[38] On July 8, 2022, President Biden signed an executive order addressing abortion rights, protection of sensitive health information, and protection of consumer data privacy. In the executive order, President Biden specifically called upon the Federal Trade Commission and Department of Health and Human Services to protect consumer health data and to address concerns of "digital surveillance related to reproductive healthcare services."[39]

Federal legislators are also considering legislation to protect consumers from criminal abortion laws, which include the aforementioned *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) and the *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265). Congress is also considering addressing this issue as part of a comprehensive privacy bill, such as the *American Data Privacy and Protection Act* (H.R. 8152), which would create a comprehensive federal consumer privacy framework, including giving consumers various rights to access, correct, and delete their data held by covered entities. States including California, Washington, and Oregon have committed to protect reproductive health data from being accessed by out-of-state law enforcement officials seeking to prosecute abortion-related acts.

The media has also taken note of the issue. In March 2022, *Time* published a comprehensive article on how a digital abortion footprint could lead to criminal charges, along with an exploration of government mitigation strategies.[40] Similar coverage on the issues of data privacy, law enforcement requests and reproductive rights has also been published within the

[38] *See Letter to Federal Commission Chair Lina Khan from U.S. Senators* (June 24, 2022), https://cdn.arstechnica.net/wp-content/uploads/2022/06/Letter-to-FTC-Chair-Lina-Khan-on-Ad-IDs-and-Privacy.pdf

[39] Exec. Order (Jul. 8, 2022), https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/.

[40] Abby Vesoulis, *How a Digital Abortion Footprint Could Lead to Criminal Charges—And What Congress Can Do About It*, Time (Mar. 10, 2022), https://time.com/6175194/digital-data-abortion-congress/.

past year by popular media outlets such as *CNN*,[41] *NPR*,[42] *The Washington Post*,[43] *The New York Time,*[44] *Axios*,[45] and *Vice*,[46] among others. Most notably, as the Proposal references, the issue of law enforcement requests and reproductive rights was the subject of widespread media scrutiny after Facebook complied with a local Nebraska police department warrant seeking personal consumer data that included private Facebook messages from a mother facing felony charges for allegedly helping her daughter terminate a pregnancy.[47]

Civic organizations have similarly been discussing the issues raised in the Proposal with their members and the general public. The ACLU, for instance, has published numerous commentaries regarding data privacy in the new era of criminal abortion laws.[48] The Electronic Frontier Foundation and the Center for Democracy & Technology have created resource guides regarding data security and privacy tips for people seeking an abortion.[49] The Brookings Institute further reported on the "scope of the problem" and provided "basic steps that . . . companies can take to protect consumers from being prosecuted from abortion-related . . . activity."[50]

In an attempt to show that the issues raised in the Proposal are too complex for shareholders, the Company asserts that the Proposal "incorrectly states that the Company already complies with 'deletion rights' under California law" since "[t]he Company is regulated by the

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[41] Brian Fung & Clare Duffy, *A big question for tech companies post-Roe: How to respond to law enforcement requests for data?*, CNN (June 28, 2022), https://www.cnn.com/2022/06/28/tech/big-tech-abortion-data-law-enforcement/index.html.

[42] Bobby Allen, *Privacy advocates fear Google will be used to prosecute abortion seekers*, NPR (July 11, 2022), https://www.npr.org/2022/07/11/1110391316/google-data-abortion-prosecutions.

[43] Cristiano Lima & Aaron Schaffer, *Law enforcement may fully unleash its data collection tools on abortion*, The Wash. Post (Mar. 5, 2022), https://www.washingtonpost.com/politics/2022/05/05/law-enforcement-may-fully-unleash-its-data-collection-tools-abortion/.

[44] Shira Ovide, *Our Data Is a Curse, With or Without Roe*, The N.Y. Times (June 29, 2022), https://www.nytimes.com/2022/06/29/technology/abortion-data-privacy.html.

[45] Ina Fried & Margaret Harding McGill, *Tech companies may surrender abortion-related data*, Axios (June 28, 2022), https://www.axios.com/2022/06/28/tech-companies-surrender-abortion-related-data.

[46] Joseph Cox, *Tech Companies Won't Say If They'll Give Cops Abortion Data*, Vice (June 27, 2022), https://www.vice.com/en/article/v7vmm4/tech-companies-wont-say-abortion-data-roe-v-wade.

[47] *See* Johana Bhuiyan**,** *Facebook gave police their private data. Now, this duo face abortion charges*, The Guardian (Aug. 10, 2022), https://www.theguardian.com/us-news/2022/aug/10/facebook-user-data-abortion-nebraska-police.

[48] *See* Kate Crockford & Nathan Freed Wessler, *Impending Threat of Abortion Criminalization Brings New Urgency to the Fight for Digital Privacy*, ACLU (May 17, 2022), https://www.aclu.org/news/privacy-technology/impending-threat-of-abortion-criminalization-brings-new-urgency-to-the-fight-for-digital-privacy.

[49] *See* Daly Barnett, *Security and Privacy Tips for People Seeking An Abortion*, Electronic Frontier Foundation (June 23, 2022), https://www.eff.org/deeplinks/2022/06/security-and-privacy-tips-people-seeking-abortion; Nick Doty, *Selectively Redacting Sensitive Places from Location Data to Protect Reproductive Health Privacy,* Center for Democracy & Technology (Aug. 25, 2022), https://cdt.org/insights/selectively-redacting-sensitive-places-from-location-data-to-protect-reproductive-health-privacy/.

[50] Jordan Famularo & Richmond Wong, *How the tech sector can protect personal data post-Roe*, Brookings Institute (Oct. 27, 2022), https://www.brookings.edu/techstream/how-tech-firms-can-protect-personal-data-after-roe-us-privacy-abortion-surveillance/.

federal Gramm-Leach-Bliley Act as a federal banking institution and is therefore exempt from a majority of the requirements of the California Consumer Privacy Act" ("CCPA"), including its deletion rights requirements.[51] Contrary to the Company's assertion, however, CCPA does not outright exempt businesses that are financial institutions or that provide financial products or services as defined by the Gramm-Leach-Bliley Act ("GLBA"). The CCPA does include an exception for personal information that is collected, processed, or disclosed pursuant to GLBA. This is because, a consumer of GLBA products or services already has many of the rights under the CCPA. Nevertheless, where GLBA does not apply, the CCPA does. Since not all information collected by the Company is regulated by the GLBA, deletion rights under the CCPA are still applicable to relevant categories of data concerning reproductive rights.

Thus, given the widespread public debate on reproductive rights and data privacy within the context of law enforcement information requests, the introduction of the issue as a topic for the Company's shareholder meeting is appropriate and pitched consistent with shareholder understanding and deliberation.

b. The Proposal affords sufficient flexibility for board and management discretion.

Contrary to the Company's contention, the Proposal does not seek "to substitute shareholder judgment for that of management with respect to complex day-to-day business operations" regarding data privacy and management in the face of new criminal abortion laws. To the contrary, the Proposal completely defers to management in identifying "potential risks and costs to the Company of fulfilling information requests regarding American Express customers for the enforcement of state laws criminalizing abortion access" as well as mitigation strategies for any such risks.

The only argument that the Company raises regarding management's discretion concerns the Proposal's supporting statement, which, as the Company acknowledges, "*recommend[s]* that the report, *in the discretion of board and management*, should . . . *[c]onsider* the implementation of a data privacy policy wherein consumers nationwide would have 'deletion rights,' and would be notified by the Company about any law enforcement information requests regarding their data prior to complying with any such request" (emphasis added). The Proposal intentionally noted at least three times that the "deletion rights" policy was a *recommended* matter for *consideration* by board and management in creating the risk assessment report, but in no way *required* management to consider or implement such policy.

Staff precedent supports that the instant Proposal affords sufficient discretion to

[51] Notwithstanding this assertion, it should be noted that the Company does not claim the Proposal contains a materially false or misleading statement as prohibited by Rule 14a-8(i)(3).

management. For instance, shareholders requested in *Alphabet Inc.* (April 12, 2022) that the company "commission a report assessing the siting of Google Cloud Data Centers in countries of significant human rights concern, and the Company's strategies for mitigating the related impacts." Notably, that proposal is analogous to the instant Proposal in that both requested a risk assessment report regarding individual rights that included identification of harm mitigation strategies. The Staff ultimately declined to exclude the *Alphabet* proposal under the micromanagement rule, despite Alphabet's argument "that proposals that focus on governing business conduct with regard to internal operating policies and legal compliance programs interfere with management's judgment" or that the shareholders would micromanage the Company "by auditing management with respect to each decision made in connection with choosing to build and operate a data center[s] . . ., including decisions relating to mitigation of human rights violations, management of government requests for access to data and implementation of broader privacy and information access policies." Here, the Company's contentions mirror those rejected in the *Alphabet* matter, indicating that they pass muster under a micromanagement analysis.

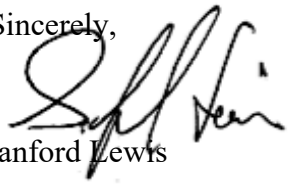
Various other Staff decisions recognize the propriety of seeking disclosure of impacts and mitigation measures. For example, in *Amazon.com Inc.* (Feb. 7, 2020), the Staff did not exclude a proposal under Rule 14a-8(i)(7) that called for Amazon to publish certain human rights impact assessments examining the actual and potential impact of high-risk products sold by the company or its subsidiaries. The proposal recommended that the assessment include, among other things, an overview of how the findings would be acted upon in order to prevent, mitigate and/or remedy impacts, as is the case here. In *Citigroup Inc.* (Feb. 21, 2008), the Staff declined to exclude a proposal under Rule 14a-8(i)(7) that urged the board to prepare a report discussing how certain corporate policies address or could address human rights issues. That proposal called for the report to review the current investment policies of Citigroup with a view toward adding appropriate policies and procedures to apply when a company in which Citigroup is invested, or its subsidiaries or affiliates, is identified as contributing to human rights violations through their businesses or operations in a country with a clear pattern of mass atrocities or genocide.

In sum, shareholders asking the Company to report on risks associated with the role it may play in undercutting consumers' remaining reproductive rights, including expectations of privacy regarding the exercise of those rights, is reasonable and appropriate, transcends ordinary business, and does not micromanage.

CONCLUSION

As the foregoing demonstrates, the Proposal comports with Rule 14a-8(b) and Rule 14a-8(i)(7), such that its exclusion is unwarranted pursuant to Rule 14a-8. Accordingly, the Proponent respectfully submits that the Company's request for no-action relief be denied.

Sincerely,



Sanford Lewis

Antonio Pontón-Núñez

EXHIBIT A: THE PROPOSAL

ABORTION & CONSUMER DATA PRIVACY

WHEREAS: Following the revocation of the constitutional right to an abortion in June 2022, policymakers and legislators have become alarmed by the use of personal digital data for the enforcement of state laws that ban or limit abortion access. Congress is considering bills that would increase privacy protections for personal reproductive health information. California now requires out-of-state law enforcement seeking personal data from California corporations to attest that the investigation does not involve any crime related to an abortion that is lawful under California law.

Law enforcement frequently relies on digital consumer data. While American Express does not publicly report figures on its compliance with law enforcement requests, Alphabet and Meta alone collectively received around 110,000 requests in the second half of 2021, and each complied with about 80% of those requests. In 2022, Meta satisfied a Nebraska police warrant for private Facebook messages from a defendant facing felony charges for allegedly helping her daughter terminate a pregnancy.

Financial institutions collect sensitive personal information such as geolocation data, browsing history and financial activity. There is reason for concern that such data will be accessed without consumer consent by states that criminalize abortion. Indeed, the American Express Privacy Statement declares that the Company "may share [p]ersonal [i]nformation as require[d] or as permitted by law, with . . . governmental agencies to comply with . . . government requests." However, such law enforcement requests may seek evidence of consumer acts that are inappropriate for the bank to voluntarily share – for example, evidence of a customer's financial activities that were legal in the state where they occurred, such as purchasing abortion pills.

Since American Express collects and stores digital consumer data, the Company is not immune to abortion-related law enforcement requests that may create significant reputational, financial, and legal risks. American Express is already complying with "deletion rights" under California law, wherein consumers may request that the Company delete collected personal data that is not legally required to retain. Accordingly, there is a strong market benefit to upholding and increasing longstanding consumer privacy expectations.

RESOLVED: Shareholders request that our Board issue a public report detailing any known and potential risks and costs to the Company of fulfilling information requests regarding American Express customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or

legally privileged information, and be published no later than September 1, 2024.

SUPPORTING STATEMENT: Shareholders recommend that the report, in the discretion of board and management, should:

(1) Consider the implementation of a data privacy policy wherein consumers nationwide would have "deletion rights," and would be notified by the Company about any law enforcement information requests regarding their data prior to complying with any such request; and,
(2) Reflect the input or participation of reproductive rights and civil liberties organizations.