



DIVISION OF  
CORPORATION FINANCE

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

March 7, 2025

John B. Beckman  
Hogan Lovells US LLP

Re: Bristol-Myers Squibb Company (the "Company")  
Incoming letter dated December 23, 2024

Dear John B. Beckman:

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

The Proposal requests a report, updated annually, disclosing the Company's policy and procedures governing direct and indirect lobbying and grassroots lobbying communications; payments used for direct or indirect lobbying or grassroots lobbying communications, in each case including the amount of the payment and the recipient; the Company's membership in and payments to any tax-exempt organization that writes and endorses model legislation; and a description of management's decision-making process and the board's oversight for making the aforementioned payments.

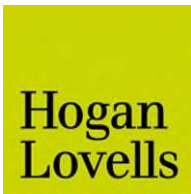
There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal seeks to micromanage the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

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

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden



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Washington, DC 20004  
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December 23, 2024

**Rule 14a-8(i)(7)**

**VIA ONLINE SHAREHOLDER PROPOSAL FORM**

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

Re: ***Bristol-Myers Squibb Company – Proposal Submitted by John Chevedden***

To Whom it May Concern:

On behalf of Bristol-Myers Squibb Company (the “***Company***”), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 to notify the Securities and Exchange Commission (the “***Commission***”) of the Company’s intention to exclude a shareholder proposal (the “***Proposal***”), and a statement in support thereof (the “***Supporting Statement***”) submitted by John Chevedden (the “***Proponent***”) from the Company’s proxy statement and form of proxy (together, the “***2025 Proxy Materials***”) to be distributed to the Company’s shareholders in connection with its 2025 annual meeting of shareholders (the “***2025 Annual Meeting***”). The Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the “***Staff***”) will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from the 2025 Proxy Materials for the reasons discussed below.

In accordance with Staff guidance, this letter is being submitted using the Staff’s online Shareholder Proposal Form. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponent. Rule 14a-8(k) and SLB No. 14D provide that a shareholder proponent is required to send to the Company a copy of any correspondence the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned on behalf of the Company (by e-mail).

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the Staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

The Company intends to file its definitive 2025 Proxy Materials with the Commission on or about March 26, 2025.

### **THE PROPOSAL**

The Proposal sets forth the following resolution to be voted on by shareholders at the 2025 Annual Meeting:

**Resolved**, shareholders request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by BMS used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. BMS's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of management's decision-making process and the Board's oversight for making payments described in section 2 above.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. "Indirect lobbying" is lobbying engaged in by a trade association or other organization of which BMS is a member.

Both "direct and indirect lobbying" and "grassroots lobbying communications" include efforts at the local, state and federal levels.

The report shall be presented to the Committee on Directors and Corporate Governance and posted on BMS's website.

A copy of the Proponent's complete submission, including the Proposal, the Supporting Statement, and related materials, is attached hereto as Exhibit A.

## **BASIS FOR EXCLUSION**

The Company hereby respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and seeks to impermissibly micromanage the Company.

### **I. Rule 14a-8(i)(7) – The Proposal Relates to the Company's Ordinary Business Operations and Seeks to Impermissibly Micromanage the Company**

#### **A. Overview of Rule 14a-8(i)(7)**

A shareholder proposal may be excluded under Rule 14a-8(i)(7) if “the proposal deals with a matter relating to the company's ordinary business operations.”

The term “ordinary business” refers to matters that are not necessarily “ordinary” in the common meaning of the word; 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 Securities Exchange Act Release No. 34-40018 (May 21, 1998) (the “**1998 Release**”). Per the 1998 Release, 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.”

In the 1998 Release, the Commission explained that the ordinary business exclusion rests on two central considerations: first, 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”; and second, the degree to which the proposal attempts to “micromanage” a 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.”

Further, the Commission noted in the 1998 Release that determinations as to the excludability of proposals on the basis of micromanagement will “be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” In addition, the Commission has indicated that “the Staff will take a measured approach to evaluating companies' micromanagement arguments” and “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.” See Staff Legal Bulletin No. 14L (November 3, 2021).

A shareholder proposal may be excluded under Rule 14a-8(i)(7) if it pertains to *core matters involving the company's business and operations* that are traditionally and properly the domain of management and board discretion and judgment.

***B. The Proposal May be Excluded Under Rule 14a-8(i)(7) Because it Relates to the Company's Ordinary Business Operations***

The Company is one of the world's leading biopharmaceutical companies and is engaged in the discovery, development, licensing, manufacturing, marketing, distribution, and sale of biopharmaceutical products on a global basis. The Company's principal strategy is to combine the resources, scale, and capability of a pharmaceutical company with the speed and focus on innovation of the biotech industry, focusing on discovering, developing, and delivering transformational medicines for patients facing serious diseases in areas where the Company believes that it has an opportunity to make a meaningful difference: oncology, hematology, immunology, cardiovascular, and neuroscience. The Company's priorities are to continue renewing and diversifying its portfolio, advancing our early, mid-, and late-stage pipeline, and executing disciplined business development.

As part of its business strategy, the Company provides information, analysis and opinion to legislators and government leaders to allow for informed and balanced decision-making in regard to healthcare policy, regulatory policy, corporate tax policy, intellectual property policy, and other policies that may impact its ability to deliver life-extending and life-enhancing medicines to patients. The provision of such items is governed by the Company's Corporate Policy on Political Contributions<sup>1</sup> and aligns with the Company's values and mission. The Company provides extensive disclosures regarding its political and advocacy efforts and has received recognition of its transparency efforts by the Center of Political Accountability. The CPA-Zicklin Index of Corporate Political Disclosure and Accountability is the only measure of electoral spending transparency and oversight among the U.S.'s largest public corporations (S&P 500). The Index measures performance in three areas: disclosure, company political spending decision-making policies, and board oversight and accountability policies. BMS stands amongst the top scored Biopharma companies on the 2024 CPA-Zicklin Index with a rating of 94.3, which is classified as a "trendsetter."<sup>2</sup>

***1. The Proposal is Excludable Because it Targets the Company's Association with Specific Organizations and Types of Organizations***

Although the Proposal is facially neutral, in that it appears to center on the Company's general lobbying activities and expenditures, the text of the Supporting Statement, including the websites referenced in its footnotes, makes clear that the Proposal is narrowly focused on specific organizations, namely the U.S. Chamber of Commerce (the "**Chamber**"), the Pharmaceutical Research and Manufacturers of America ("**PhRMA**"), and Alliance for Patient Access ("**AfPA**"), and more generally on the Company's possible involvement with organizations concerned with

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<sup>1</sup> <https://www.bms.com/assets/bms/us/en-us/pdf/summary-of-bms-corporate-policy-on-political-contributions.pdf>

<sup>2</sup> <https://www.politicalaccountability.net/wp-content/uploads/2024/10/CPA-2024-CPA-Zicklin-Index-press-release-10-25-24-official.pdf>

drug pricing advocacy and those espousing a pro-business viewpoint. The first, third and fourth footnote to the Supporting Statement (out of four total footnotes) contain references to websites that are explicitly critical of PhRMA, AfPA, other trade associations and, more generally, pro-business organizations. In addition, the Supporting Statement directly condemns certain actions taken by PhRMA and AfPA.

The Staff has consistently permitted the exclusion of facially neutral proposals under Rule 14a-8(i)(7) as relating to a company's ordinary business operations if the supporting statement (including any accompanying footnotes) indicates that the proposal relates to the company's association, or possible association, with specific organizations or types of organizations. *See e.g., Walmart Inc.* (April 18, 2024) (permitting exclusion under Rule 14a-8(i)(7) of a facially neutral proposal requesting a study and report of associations with "external organizations" when the supporting statement exclusively referenced associations with and donations to groups supporting LGBTQ+ rights); *Johnson & Johnson* (March 2, 2023) (permitting exclusion of a facially neutral proposal submitted seeking a report explaining the business rationale for participation in corporate and executive membership organizations); *Netflix, Inc.* (April 9, 2021) (permitting exclusion of a proposal calling for the company to prepare and annually update a report to shareholders listing and analyzing charitable contributions made or committed during the prior year, in which the proposal and the supporting statement, when read together, focused primarily on the company's contributions to organizations that support social justice movements); *Johnson & Johnson* (February 10, 2014) (permitting exclusion of a facially neutral proposal requesting a report on contributions that appear incongruent with the company's corporate values because the proposal and supporting statement, when read together, focused on specific contributions that related to the operation of the company's business); *PepsiCo, Inc.* (March 3, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a facially neutral proposal requesting a report on the company's process for identifying and prioritizing advocacy activities where the supporting statement focused on the company's membership in the U.S. Climate Action Partnership and support of cap and trade legislation); *see also Pfizer Inc.* (February 12, 2018) (permitting exclusion of a facially neutral proposal seeking a report on human rights policies that focused on the company's relationships with specific organizations); *Johnson & Johnson* (January 31, 2018) (permitting exclusion of a facially neutral proposal relating to "pressure campaigns from outside organizations" when the Supporting Statement referenced a particular organization); *PG&E Corp.* (February 4, 2015) (permitting exclusion of a proposal recommending the formation of a committee to determine the effect of charitable contributions to groups expressing a particular viewpoint); *The Home Depot, Inc.* (March 18, 2011) (permitting exclusion of a facially neutral proposal where the Supporting Statement made clear that the proposal related to charitable contributions to specific types of organizations).

The Proposal, though facially neutral, targets affiliation with the Chamber, PhRMA, and AfPA and with groups espousing pro-business perspectives more generally. Facially neutral proposals have consistently been permitted exclusion by the Staff as relating to ordinary business matters when the supporting statement indicates that it is likely that shareholders will view the proposal as a referendum on the Company's continued participation in an organization – in other words, as a request to cease contributions to or affiliations with a specific organization or

categories of similar organizations. Here, the Supporting Statement is focused on the Company's participation in the Chamber and PhRMA, payments to AfPA, and, as discussed below, the Company's stance on contentious issues in the pharmaceutical industry, particularly drug pricing and accessibility. Although the Supporting Statement also alludes to the potential risk of discrepancies between the Company's lobbying activities and its public statements, the information requested by the Proposal merely relates to membership in and payments to trade associations and other groups. It does not request any information about the positions of the Company and such groups on any particular issue, and, therefore, the Proposal if implemented would not shed light on when the "lobbying contradicts company public positions." The disconnect between these concepts reveals the real purpose of the Proposal, as reflected in the Supporting Statement and websites included in the Supporting Statement's footnotes: to target the Company's association with certain organizations and types of organization and, as described below, to express the Proponent's apparent opposition to the Company's approach to issues constituting core components of the Company's business.

As in *Walmart* and similar precedents referenced above, when a facially neutral proposal hides the actual intent of the proposal to oppose association with specific organizations or types of organizations, the proposal may be omitted from the company's proxy materials as relating to its ordinary business. Although the Proposal refers generically to lobbying engaged in by a "trade association or other organization of which BMS is a member" and "any tax-exempt organization that writes and endorses model legislation," the Supporting Statement refers exclusively to the Chamber, PhRMA, AfPA, and organizations concerned with drug pricing advocacy and those espousing a pro-business viewpoint, despite the fact that the Company has been over time a member of many groups involved in the legislative process for a wide variety of reasons. Even so, the Supporting Statement is focused exclusively on these specific organizations, while the website references contain general criticism of business organizations and their approaches to drug pricing and accessibility and has limited discussion of any other organizations, or other types of organizations. This focus distinguishes the Proposal from proposals where the Staff concluded that particular organizations or types of organizations were not singled out, resulting in a determination that the proposal was not excludable as a matter of ordinary business. Because the Proposal is directed at specific organizations and types of organizations, the Proposal relates to the Company's ordinary business operations and is properly excludable under Rule 14a-8(i)(7).

## ***2. The Proposal is Excludable Because it Relates to Specific Lobbying Activities Related to the Company's Approach to Drug Pricing and Accessibility***

In addition to being excludable for targeting the Company's involvement with specific organizations and types of organizations, the Proposal also is excludable under Rule 14a-8(i)(7) because it relates to specific lobbying activities, in particular those relating to legislation involving drug pricing and accessibility and challenges thereto.

The Supporting Statement, when not addressing association with specific trade associations, as discussed above, is focused on the matter of drug pricing and accessibility. These portions of the Supporting Statement, including the footnotes, refer to lobbying activities

involving drug pricing-related legislation and programs, particularly challenges to the Medicare Drug Price Negotiation Program, the 340B Drug Pricing Program, and the Inflation Reduction Act, and an article referenced in the fourth footnote that is focused primarily on lobbying efforts by AfPA and expressly mentions that the Company is one of AfPA's associate members and financial supporters.

The Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that are directed at specific lobbying activities in recognition of the fact that such actions are an inherent part of a company's ordinary business operations that are not an appropriate topic for direct shareholder oversight. *See e.g., Deere & Company* (December 29, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking a report assessing the benefits and drawbacks of opposing "Right to Repair" regulation, as well as the financial and reputational risk associated with such opposition); *Chevron Corporation* (March 6, 2020) (permitting exclusion of a proposal requiring the company "to support legislators and legislation that promote significant climate action"); *The Goldman Sachs Group, Inc.* (February 13, 2015) (permitting exclusion of a proposal that requested that the board adopt a set of public policy advocacy guidelines regarding any laws or regulations relating to corporate governance and accountability); *Bristol-Myers Squibb Company* (January 29, 2013, recon. denied March 12, 2013) (permitting exclusion of a lobbying proposal related to a specific law and disclosures regarding the company's memberships in professional associations); *Bristol-Myers Squibb Company* (February 17, 2009) (permitting exclusion of a proposal requesting a report on the company's lobbying activities and expenses relating to Medicare Prescription Drug Plans (Part D)); *Abbott Laboratories* (February 11, 2009) (permitting exclusion of a proposal on similar grounds).

As in the above-mentioned precedents, the Proposal addresses the Company's ordinary business operations, by focusing on lobbying related drug pricing and accessibility. The Proposal is accordingly excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations. As disclosed in the Company's 2024 Proxy Statement and the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023, the Company's strategy with respect to drug pricing, and thus accessibility, regulatory requirements and legislation involving drug pricing, and drug pricing transparency are core components of the Company's business. Decisions regarding lobbying initiatives with respect to these matters require a detailed understanding of the Company's business, business model, strategy, operations (including technically complex information, such as the domestic and certain international drug pricing programs and related legislation governing drug pricing, as well as the implications of each on the Company and its supply chain), regulatory environment and competitive conditions. As the Staff recognized in the precedents cited in the prior paragraph, the decision whether and in what manner to engage with governments and other stakeholders with respect to these projects involves analysis of many complex factors that shareholders are not positioned to make.

***C. The Proposal May be Excluded Under Rule 14a-8(i)(7) Because it Seeks to Micromanage the Company***

As mentioned above, a proposal that seeks to micromanage a company is excludable under Rule 14a-8(i)(7). As stated by the Commission, the exclusion of a proposal under Rule 14a-8(i)(7) on micromanagement grounds “may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time frames or methods for implementing complex policies.” 1998 Release. Proposals that impermissibly micromanage a 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” are excludable under Rule 14a-8(i)(7), even in circumstances where the proposal is found to address a significant social policy. *Id.* A proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds under the Staff’s longstanding precedent. To that end, the Staff has stated 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.” Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“**SLB 14L**”). SLB 14L set forth the Staff’s current approach to the micromanagement analysis, which is to “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.” *Id.*

In the period following the release of SLB 14L, the Staff has permitted exclusion under micromanagement grounds of numerous proposals requesting reporting of information that is significantly less complex and detailed than the information requested by the Proposal. *See e.g., Delta Air Lines, Inc.* (April 24, 2024) (permitting exclusion of a proposal requiring a report regarding “union suppression expenditures,” including internal and external expenses); *Paramount Global* (April 19, 2024) (permitting exclusion of a proposal requesting disclosure of the recipients of corporate charitable contributions of \$5,000 or more); *Walmart Inc.* (April 18, 2024) (permitting exclusion of a proposal submitted by Green Century Capital Management requiring a breakdown of greenhouse gas emissions for different categories of products in a manner inconsistent with existing reporting frameworks); *Amazon.com, Inc.* (April 1, 2024) (permitting exclusion of proposal calling for highly detailed living wage report); *Amazon.com, Inc.* (April 7, 2023) (permitting exclusion of proposal requesting the company measure and disclose scope 3 greenhouse gas emissions from the company’s full value chain by imposing a specific method for implementing a complex policy without affording discretion to management); *Chubb Limited* (March 27, 2023) (permitting exclusion of a proposal requesting the board adopt and disclose a policy related to risks associated with new fossil fuel exploration and development project would micromanage the company); *Phillips 66* (March 20, 2023) (permitting exclusion of a proposal requesting an audited report describing the undiscounted expected value to settle obligations for the company’s asset retirement obligations with indeterminate settlement dates); *The Coca-Cola Co.* (February 16, 2022) (permitting exclusion of proposal requiring the company to submit any proposed political statement to the next shareholder meeting for approval prior to issuing the statement publicly); *Deere & Co.* (January 3, 2022) (permitting exclusion of proposal requesting publication of employee-training materials).

Most recently (and significantly), in *Air Products & Chemicals, Inc.* (November 29, 2024) (“**Air Products**”), the Staff permitted exclusion on micromanagement grounds of a substantially

identical proposal as the Proposal (also submitted by the Proponent). The company in *Air Products* argued that the proposal micromanaged the Company “by requesting a highly prescriptive and detailed report that requires dozens of distinct pieces of information,” and listed in detail all of the burdensome and granular disclosure requirements that implementation of the proposal would impose. The Proposal is excludable here for the same reasons set forth in *Air Products*, as set forth in more detail below.

The Proposal would micromanage the Company by requesting a highly prescriptive report that requires extensive detail comprised of dozens of distinct pieces of information. In particular, the Proposal requests an annual report on the Company’s lobbying activities and payments, which is to be subdivided into four sections, with each section being further subdivided into multiple subsections. The first section of the report requests disclosure of the Company’s “policy and procedures governing” both “direct and indirect lobbying” and “grassroots lobbying communications.” The Proposal defines the term “grassroots lobbying communications” as a “communication directed to the general public,” which must satisfy a three-pronged test. Additionally, the Proposal provides definitions of both “direct and indirect lobbying” and “grassroots lobbying communications,” which would require all of the foregoing information at the local, state, and federal matters. The requested report would have a second section focused on the Company’s payments related to direct or indirect lobbying or grassroots lobbying communications, “in each case including the amount of the payment and the recipient.” The third section of the requested report would require disclosure of the Company’s “membership in and payments” to any “tax-exemption organization,” which “writes and endorses model legislation.” The fourth section of the report would include disclosure of the Company’s management and board of directors’ “decision-making process” and “oversight” of payments covered by the second section. Finally, the Proposal prescribes the manner in which the report would be reviewed by the board of directors and disclosed to the public. A chart illustrating the dozens of discrete pieces of information required by the Proposal is attached hereto as Exhibit B. All of this additional disclosure would be required on top of the Company’s existing and extensive public policy and lobbying disclosures, which, as mentioned, have been rated as being among the most transparent disclosures in the S&P 500.

The highly prescriptive and granular nature of the Proposal would significantly micromanage the manner in which the Company provides information regarding its lobbying and public policy initiatives. In addition, the Proposal would require the Company to collect and report a substantial amount of information from third parties with respect to their activities. The Proposal does not track to any established framework for reporting lobbying activities (unlike frameworks that exist for providing disclosure on many other complex topics, including political contributions or climate disclosures), and are much more detailed than the disclosures provided by the Company’s peers and other public companies. The fact that the information requested is much more detailed and granular than the information required by the other micromanagement precedents listed above explains the Staff’s decision in *Air Products*.

If adopted, like in *Air Products*, the Proposal would be unduly burdensome by requiring the Company to provide granular disclosure of prescribed lobbying activities regardless of their

significance to the Company's operations, or even with respect to their significance to the Company's overall government relations activities. Importantly, the Proposal includes no limiting principle for its required disclosures: any and all any associations with or contributions to a covered organization would be required to be disclosed, even if the Company's involvement is tangential or if the amount contributed is *de minimis* or if management determines that disclosure is not otherwise required and could be detrimental to the Company's interests. This level of detail is asymmetrical to the level of detail that the Company provides with respect to its other business activities or categories of operating expenditures. Furthermore, the Proposal ignores the fact that lobbying activities are highly complex and based on a range of considerations related to the day-to-day operations of the business, and also that such activities are already subject to disclosure under the Lobbying Disclosure Act and similar state and foreign requirements, and that the Company already files publicly accessible reports relating to its public policy and lobbying activities.

In sum, the Proposal seeks to micromanage the Company by probing too deeply into matters of a complex nature in seeking disclosure of the intricate details of the manner in which the Company reports on lobbying activities, and eliminates any discretion to choose the form, substance, or manner of its disclosure. Furthermore, the Proposal seeks to indirectly influence management's decisions and assessments of how best to support the execution of the Company's mission and strategy and engage with community, regulatory and legislative stakeholders for such items. These requirements certainly and impermissibly interfere with the discretion of management and the board of directors with respect to Company's lobbying and public policy disclosures. It is neither appropriate nor realistic for shareholders to direct such decisions at an annual meeting. Accordingly, the Proposal should be excluded under Rule 14a-8(i)(7) because it seeks to micromanage the Company with respect to its lobbying activities and related disclosures.

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**CONCLUSION**

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2025 Proxy Materials. We request the Staff's concurrence in our view or, alternatively, confirmation that the Staff will not recommend any enforcement action if the Company omits the Proposal.

If you have any questions or need additional information, please feel free to contact me at (202) 637-5464. Correspondence regarding this letter may be sent to me by e-mail at: [john.beckman@hoganlovells.com](mailto:john.beckman@hoganlovells.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "John B. Beckman", is written over a light blue rectangular background.

John B. Beckman

Enclosures

cc: Amy Fallone, Bristol-Myers Squibb Company  
Lisa A. Atkins, Bristol-Myers Squibb Company  
John Chevedden

**Exhibit A**

**Proponent's Submission**

Ms. Kimberly Jablonski  
Corporate Secretary  
Bristol-Myers Squibb Company (BMY)  
430 East 29th Street, 14th Floor  
New York, NY, 10016  
PH: 212-546-4000

Dear Ms. Jablonski,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting.

I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

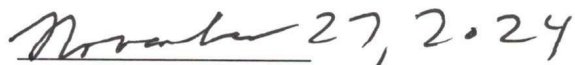
**Please use the title of the proposal in bold in all references to the proposal in the proxy including the table of contents, like Board of Directors proposals, and on the ballot.** If there is objection to the title please negotiate or seek no action relief as a last resort.

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

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

Sincerely,

  
John Chevedden

  
Date

cc: "Atkins, Lisa" <██████████@bms.com>  
"Bail, Sophie" <██████████@bms.com>  
"Fallone, Amy" <██████████@bms.com>

**Proposal 4 – Support for Transparency in Lobbying**

**Resolved**, shareholders request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by BMS used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. BMS’s membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of management’s decision-making process and the Board’s oversight for making payments described in section 2 above.

For purposes of this proposal, a “grassroots lobbying communication” is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. “Indirect lobbying” is lobbying engaged in by a trade association or other organization of which BMS is a member.

Both “direct and indirect lobbying” and “grassroots lobbying communications” include efforts at the local, state and federal levels.

The report shall be presented to the Committee on Directors and Corporate Governance and posted on BMS’s website.

**Supporting Statement**

Full disclosure of BMS’s lobbying activities and expenditures is needed to assess whether BMS’s lobbying is consistent with its expressed goals and stockholder interests. BMS spent \$61 million from 2010 – 2023 on federal lobbying. BMS also lobbies at the state level, spending over \$1.9 million on lobbying in California from 2010 – 2023. And BMS lobbies abroad, spending between €1,000,000 – 1,249,999 on lobbying in Europe for 2023.

Companies can give unlimited amounts to third party groups that spend millions on lobbying and undisclosed grassroots activity.<sup>1</sup> BMS sits on the boards of the Chamber of Commerce and the Pharmaceutical Research and Manufacturers of America (PhRMA), which together have spent over \$2.4 billion on lobbying since 1998. BMS’s trade association disclosure leaves out many memberships in trade associations that lobby, like Biocom California, the Healthcare Distribution Alliance, Healthcare Institute of New Jersey and MassBio. And unlike peer Biogen, BMS’s disclosure critically leaves out its payments to social welfare groups, including the Alliance for Patient Access (AfPA), Alliance for Regenerative Medicine, Bay Area Council, Caregiver Action Network and Public Affairs Council.

BMS’s lack of disclosure presents reputational risk when its lobbying contradicts company public positions. On company positions, BMS states it is committed to providing access to its prescription medicines at fair prices, yet PhRMA sued the federal government’s plan to negotiate Medicare drug prices.<sup>2</sup> And BMS funds AfPA, a social welfare group which “claims to be pro-consumer but consistently advocates against policies to lower drug prices”<sup>3</sup> and is described as a foil “for the pharmaceutical industry instead of advancing patient interests.”<sup>4</sup>

Improved Bristol-Myers lobbying disclosure will protect the reputation of Bristol-Myers and preserve shareholder value.

<sup>1</sup> <https://theintercept.com/2019/08/06/business-group-spending-on-lobbying-in-washington-is-at-least-double-whats-publicly-reported/>.

<sup>2</sup> [https://www.centralegondaily.com/news/nation-world/drugmaker-lobbying-group-sues-over-plan-to-negotiate-medicare-drug-prices/article\\_ce2e7741-a721-5875-8f01-f09785144e64.html?=&subcategory=615%7CCraft+Fairs;](https://www.centralegondaily.com/news/nation-world/drugmaker-lobbying-group-sues-over-plan-to-negotiate-medicare-drug-prices/article_ce2e7741-a721-5875-8f01-f09785144e64.html?=&subcategory=615%7CCraft+Fairs;)  
<https://news.bloomberglaw.com/health-law-and-business/phrma-to-revive-medicare-drug-price-lawsuit-before-fifth-circuit>.

<sup>3</sup> <https://prospect.org/power/astroturf-campaign-attacks-discount-drug-program-for-poor/>.

<sup>4</sup> <https://apnews.com/article/7c8d0728c38345cd8dfc0fe1abd456ae>.

Notes:

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

The proposal number and title at the top of proposal is the number and title intended for publication in the proxy and on the ballot – word for word with no added words or mixture of shareholder words with management words.

It is critically important that the proponent have control of the ballot title with no words added or subtracted from the title because the title of the proposal may be the only words a voting shareholder sees. If management disagrees then it has the option of negotiating now or asking for no action relief.

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

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

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

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

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

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

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

The proponent intends to continue holding the same required amount of Company shares through the date of the Company’s 2025 Annual Meeting of Stockholders as is or will be documented in his ownership proof.

Please acknowledge this proposal promptly by email [REDACTED] (at) earthlink.net].

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



**Exhibit B**

**Information Required by the Proposal**

<b>Information Required by the Proposal</b>	
<b>Policies and Procedures Governing:</b>	Direct Lobbying - Local
	Direct Lobbying - State
	Direct Lobbying - Federal
	Indirect Trade Association Lobbying — Local
	Indirect Trade Association Lobbying — State
	Indirect Trade Association Lobbying — Federal
	Social Welfare Group Lobbying — Local
	Social Welfare Group Lobbying — State
	Social Welfare Group Lobbying — Federal
	Indirect Other Organization Lobbying — Local
	Indirect Other Organization Lobbying — State
	Indirect Other Organization Lobbying — Federal
	Grassroots Lobbying — Local
	Grassroots Lobbying — State
Grassroots Lobbying — Federal	
<b>Recipient of Payments Used for or Made to:</b>	Direct Lobbying - Local
	Direct Lobbying - State
	Direct Lobbying - Federal
	Indirect Trade Association Lobbying — Local
	Indirect Trade Association Lobbying — State
	Indirect Trade Association Lobbying — Federal
	Social Welfare Group Lobbying — Local
	Social Welfare Group Lobbying — State
	Social Welfare Group Lobbying — Federal
	Other Organization Lobbying — Local
	Other Organization Lobbying — State
	Other Organization Lobbying — Federal
	Grassroots Lobbying — Local
	Grassroots Lobbying — State
	Grassroots Lobbying — Federal
Any Tax-Exempt Organization that Writes and Endorses Model Legislation	
<b>Amount Paid to Each Recipient Regarding:</b>	Direct Lobbying — Local
	Direct Lobbying — State
	Direct Lobbying — Federal
	Indirect Trade Association Lobbying — Local
	Indirect Trade Association Lobbying — State
	Indirect Trade Association Lobbying — Federal
	Social Welfare Group Lobbying — Local
	Social Welfare Group Lobbying — State

	Social Welfare Group Lobbying — Federal
	Other Organization Lobbying — Local
	Other Organization Lobbying — State
	Other Organization Lobbying — Federal
	Grassroots Lobbying — Local
	Grassroots Lobbying — State
	Grassroots Lobbying — Federal
	Any Tax-Exempt Organization that Writes and Endorses Model
<b>Management's Decision-Making Process for Making Payments Related To:</b>	Direct Lobbying — Local
	Direct Lobbying — State
	Direct Lobbying — Federal
	Indirect Trade Association Lobbying — Local
	Indirect Trade Association Lobbying — State
	Indirect Trade Association Lobbying — Federal
	Social Welfare Group Lobbying — Local
	Social Welfare Group Lobbying — State
	Social Welfare Group Lobbying — Federal
	Other Organization Lobbying — Local
	Other Organization Lobbying — State
	Other Organization Lobbying — Federal
	Grassroots Lobbying — Local
	Grassroots Lobbying — State
	Grassroots Lobbying — Federal
<b>Board Oversight for Making Payments Related to:</b>	Direct Lobbying — Local
	Direct Lobbying — State
	Direct Lobbying — Federal
	Indirect Trade Association Lobbying — Local
	Indirect Trade Association Lobbying — State
	Indirect Trade Association Lobbying — Federal
	Social Welfare Group Lobbying — Local
	Social Welfare Group Lobbying — State
	Social Welfare Group Lobbying — Federal
	Other Organization Lobbying — Local
	Other Organization Lobbying — State
	Other Organization Lobbying — Federal
	Grassroots Lobbying — Local
	Grassroots Lobbying — State
	Grassroots Lobbying — Federal

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January 22, 2025

Via Shareholder Proposal Portal

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

Re: Request by Bristol-Myers Squibb Company to omit proposal submitted by John Chevedden

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, John Chevedden (the “Proponent”) submitted a shareholder proposal (the “Proposal”) to Bristol-Myers Squibb Company (“BMS” or the “Company”). The Proposal asks BMS to report on certain information related to its direct and indirect lobbying activities. As counsel to the Interfaith Center on Corporate Responsibility (“ICCR”), I submit this response on behalf of Mr. Chevedden, who is an ICCR member.

In a letter to the Division dated December 23, 2024 (the “No-Action Request”), BMS stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company’s 2025 annual meeting of shareholders. BMS argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal’s subject relates to its ordinary business operations and because the Proposal would micromanage the Company.

Because the Proposal deals with BMS’s “general political activities,” not relationships with specific organizations or advocacy on drug pricing, the Proposal’s subject is a significant social policy issue transcending ordinary business. BMS’s micromanagement claim is undermined by the fact that the Proposal requests a reasonable amount of detail, does not inappropriately limit management and the board’s discretion, and addresses a topic on which shareholders can make an informed judgment. Accordingly, BMS has failed to meet its burden of proving that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7), and its request for relief should be denied.

## **THE PROPOSAL**

The Proposal states:

Resolved, shareholders request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by BMS used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. BMS's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of management's decision-making process and the Board's oversight for making payments described in sections 2 and 3 above.

### **ORDINARY BUSINESS**

Rule 14a-8(i)(7) allows a company to exclude a proposal related to the company's ordinary business operations. The Commission's 1998 release reversing its policy on employment-related proposals<sup>1</sup> (the "1998 Release") described the two considerations animating the ordinary business exclusion. First, "[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 was 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."

The 1998 Release reiterated the standard, articulated in the Commission's 1976 release (the "1976 Release"),<sup>2</sup> that some proposals on subjects that would otherwise be viewed as implicating day-to-day matters would nonetheless not be excludable if they raise sufficiently significant social policy issues. It also emphasized that not all proposals "seeking detail, or seeking to promote time-frames or methods, necessarily amount to 'ordinary business'; rather, a proposal "may seek a reasonable level of detail" without micromanaging the company.

The Division clarified its approach to micromanagement three years ago. In Staff Legal Bulletin 14L ("SLB 14L"), the Division explained that recent application of the micromanagement doctrine had "expanded the concept of micromanagement beyond the Commission's policy directives" and "may have been taken to mean that any limit on company or board discretion constitutes micromanagement." Going forward, SLB 14L stated, the Staff would consider "the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

### **The Proposal's Subject**

BMS argues that the Proposal's subject is a matter of the Company's ordinary business operations because the Proposal (1) addresses BMS's payments to and membership in certain

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<sup>1</sup> Exch. Act Rel. No. 40018 (May 21, 1998)

<sup>2</sup> Exch. Act Rel. No. 12999 (Nov. 22, 1976) (announcing that henceforth, "certain matters which have significant policy, economic or other implications inherent in them" would no longer be considered ordinary business)

indirect lobbying organizations cited in the supporting statement, and (2) is aimed at lobbying activities related to BMS's approach to drug pricing and access to medicines. Those claims are contradicted by the language of the Proposal as well as the fundamental differences between the Proposal and the proposals at issue in the determinations BMS cites.

Proposals addressing a company's general political activities, including lobbying, have long been viewed by the Commission and Staff as not dealing with ordinary business operations. In the 1976 Release, the Commission stated:

As originally proposed . . . , [subparagraph (c)(8)] would have allowed the omission of any proposal which related to a 'corporate, political or other election to office.' However, the Commission has deleted the words 'corporate, political or other' from the adopted provision, since it is apparent that the inclusion of those words in the proposed version led many commentators to the erroneous belief that the Commission intended to expand the scope of the existing exclusion to cover proposals dealing with matters previously held not excludable by the Commission, such as cumulative voting rights, general qualifications for directors, and political contributions by the issuer.

The Staff has rejected many companies' claims that the subject of lobbying disclosure proposals substantially similar to the Proposal did not qualify as a significant social policy issue. In IBM,<sup>3</sup> Raytheon,<sup>4</sup> and Bank of America,<sup>5</sup> the companies argued that the proposals' element requiring identification of employees who decided to make lobbying expenditures, which is not present in the Proposal, meant that those proposals' subjects were not significant social policy issues. The Staff disagreed, stating that the proposals "focuse[d] primarily on [the companies'] general political activities" and were thus not excludable on ordinary business grounds.

Likewise, Devon Energy<sup>6</sup> sought to exclude on ordinary business grounds a proposal that, like the Proposal, lacked the individual employee identification element found in the IBM, Raytheon, and Bank of America proposals. Devon argued that the proposal did not address a significant social policy issue because it requested information about indirect lobbying through trade associations, which serve non-lobbying functions as well. The Staff did not concur, stating that "the proposal focuses primarily on Devon Energy's general political activities."

More recently, in 2018, both Citigroup<sup>7</sup> and Eli Lilly<sup>8</sup> unsuccessfully challenged substantially similar lobbying disclosure proposals. Both requests focus on the lack of a nexus between the issue of lobbying and the companies' business—the Division's guidance has since dropped the nexus requirement—to argue that lobbying disclosure was not a significant social policy issue for the companies. Their requests for relief were denied.

In 2020, GEO Group<sup>9</sup> argued that as a government contractor, it should be permitted to exclude a lobbying disclosure proposal like the Proposal on ordinary business grounds, since

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<sup>3</sup> International Business Machines Corporation (Jan. 24, 2011)

<sup>4</sup> Raytheon Company (Mar. 29, 2011)

<sup>5</sup> Bank of America Corporation (Mar. 7, 2011)

<sup>6</sup> Devon Energy Corp. (Mar. 27, 2012)

<sup>7</sup> Citigroup Inc. (Mar. 6, 2018)

<sup>8</sup> Eli Lilly and Company (Mar. 2, 2018) (New York State Common Retirement Fund)

<sup>9</sup> GEO Group Inc. (Mar. 27, 2020)

interacting with government officials was fundamental to its business model. GEO argued that previous determinations were inapplicable for that reason. The Staff did not grant relief

*The Supporting Statement's Examples of Groups That Lobby Indirectly for BMS Would Not Confuse Shareholders Into Viewing the Proposal as a "Referendum" on BMS's Involvement With Those Organizations*

BMS tries to distinguish these previous determinations by arguing that the Proposal, which BMS concedes is "facially neutral," is excludable because it "targets" BMS's "association, or possible association, with specific organizations or types of organizations."<sup>10</sup> According to BMS, "it is likely that shareholders will view the [P]roposal as a referendum on the Company's continued participation" in organizations—the U.S. Chamber of Commerce (the "Chamber"), Pharmaceutical Research and Manufacturers of America ("PhRMA"), and Alliance for Patient Access ("AfPA")—mentioned in the supporting statement.

That assertion badly underestimates shareholders' intelligence. The Chamber, PhRMA, and AfPA are referenced not to argue that BMS should cease membership in them, but in order to make the case to shareholders that indirect lobbying—that done through trade associations and other intermediary groups—is a relevant issue for BMS. The resolved clause clearly focuses solely on disclosure, and nothing in the supporting statement could reasonably be read as urging BMS to reexamine its memberships.

Shareholders are accustomed to differentiating between the specific action sought in a proposal and information provided in the supporting statement to illustrate why the proposal is needed. For example, a proposal requesting general human rights disclosure might cite a company's involvement in high-risk countries such as China as bolstering the case for disclosure. Shareholders have the experience and reading comprehension skills to understand that the reference to China does not transform the proposal into one urging the company to stop doing business there.

An interpretive approach that ignores clear language in the resolved clause in favor of recharacterizing pieces of the supporting statement as the proposal's subject would have no logical limits; that lack of clarity would likely cause the number of no-action requests to skyrocket. As well, such an approach would impair proponents' ability to explain why a requested action is warranted at a particular company.

The determinations on which BMS relies on this point are unpersuasive, for several reasons. Most important, unlike the Proposal, none of the proposals sought general disclosure on lobbying—"general political activities," as the Staff put it in the determinations discussed above. No determination BMS cites allowed exclusion of a general lobbying disclosure proposal whose supporting statement mentioned one or more specific organizations that engaged in indirect lobbying.

Second, the resolved clauses of three proposals in determinations on which BMS relies focused specifically on companies' relationships with outside organizations; in other words, those relationships themselves were the primary focus of the proposals, not a significant social policy issue like lobbying disclosure. That fact counters BMS's suggestion that references to particular organizations in those proposals' supporting statements were dispositive.

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<sup>10</sup> No-Action Request, at 4

- The Walmart<sup>11</sup> proposal asked the company to study and report on “the risks and consequences of the Company’s associations with external organizations, to determine whether they threaten the growth and sustainability of the Company.”
- The similar proposal submitted to Johnson & Johnson<sup>12</sup> asked the company to report on “known and potential risks and costs to the Company caused by pressure campaigns from outside organizations that seek to dictate the Company’s free speech and freedom of association rights.”
- A slightly broader proposal, also submitted to Johnson & Johnson, sought a report “explaining the business rationale for [the company’s] participation in corporate and executive membership organizations and how such involvement by the Company and its corporate leaders fulfills its [sic] fiduciary duty to shareholders.” The organizations mentioned in the supporting statement, the World Economic Forum, Council on Foreign Relations, and Business Roundtable, which were attacked as advancing an “anti-human, anti-freedom agenda,” had no tie to a significant social policy issue.

Determinations allowing exclusion of proposals whose primary focus and core request are disclosure of companies’ relationships with external organizations have no bearing on the excludability of a proposal requesting general lobbying disclosure, which only mentions organizations through which BMS engages in indirect lobbying for illustrative purposes in the supporting statement.

Finally, BMS points to two determinations seeking disclosure of charitable contributions, arguing that they stand for the proposition that mentioning specific organizations in a supporting statement justifies exclusion on ordinary business grounds. It is beyond dispute that proposals whose resolved clauses attack or suggest contributions to a specific organization are excludable. For example, in Target,<sup>13</sup> the proposal’s resolved clause requested a report on the company’s charitable contributions and similar payments, its policies governing contributions, and “the feasibility of concrete policy changes, including minimizing donations to charities that fund animal experiments.” The Staff granted relief, stating that “the proposal relates to charitable contributions directed to organizations that fund animal experiments. Proposals that concern charitable contributions directed to specific types of organizations are generally excludable under rule 14a-8(i)(7).”

The approach to charitable contributions proposals that do not mention specific organizations in the resolved clause, however, is murkier. BMS highlights the determination allowing exclusion in Netflix,<sup>14</sup> for which no written determination was issued. Although that proposal did not refer to any organization in the supporting statement or resolved clause, URLs in footnotes suggested the proponent’s antipathy to racial justice causes.

But more recently, an argument like BMS’s did not persuade the Staff to concur with Disney’s<sup>15</sup> claim that it was entitled to exclude a proposal requesting disclosure of charitable

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<sup>11</sup> Walmart Inc. (Apr. 18, 2024) (NLPC)

<sup>12</sup> Johnson & Johnson (Jan. 31, 2018)

<sup>13</sup> Target Corporation (Mar. 31, 2010)

<sup>14</sup> Netflix Inc. (Apr. 9, 2021)

<sup>15</sup> The Walt Disney Company (Jan. 12, 2023)

contributions in excess of \$10,000 on ordinary business grounds. Disney pointed to the supporting statement's reference to several specific organizations, including Planned Parenthood, urging that the proposal's subject was really contributions to those specific groups. The determination stated that despite these mentions, the proposal "relate[d] to the Company's charitable contributions generally" and was therefore not excludable. Similarly, a proposal to Wells Fargo<sup>16</sup> requesting disclosure of proposals in excess of \$5000 was not excludable, despite the company's argument that the supporting statement's focus on three "controversial" groups meant that the proposal's subject was really contributions to specific types of organizations.

The Proposal requests general lobbying disclosure and does not explicitly or implicitly seek to alter BMS's association with specific organizations. Mention of specific organizations in the supporting statement serves to illustrate how indirect lobbying can create risks for companies like BMS, and no reasonable shareholder would construe those examples as a referendum on BMS' memberships and financial support of the groups.

*The Proposal's Subject is Not Advocacy on Drug Pricing*

Equally unconvincing is BMS's claim that the Proposal is excludable because its subject is lobbying specifically related to drug pricing and accessibility. The Proposal requests disclosure on lobbying generally, regardless of the issue. The supporting statement provides examples of BMS's participation in groups that lobby, in some cases taking positions that appear inconsistent with BMS's expressed values, to illustrate the salience of indirect lobbying for BMS. The Proposal's subject is not lobbying on drug pricing simply because the supporting statement cites these examples.

The determinations on which BMS relies do not support exclusion of the Proposal. Most involved proposals that explicitly directed companies to lobby in particular ways about core business matters or sought disclosure relating to such lobbying. None were general lobbying disclosure proposals like the Proposal. For example:

- A 2009 proposal submitted to BMS requested that the Company report on its "lobbying activities and expenses relating to the Medicare Part D Prescription Drug Program, together with a description of the lobbying activities and expenses of any entity supported by the Company, during the 110th Congress." All but one paragraph of the supporting statement discussed the Medicare Part D program; the remaining paragraph addressed the issue of government drug price negotiation more generally, and no mention was made of risks associated with lobbying more generally or the benefits of full disclosure regarding lobbying. The Staff concurred with the Company's argument that the proposal was excludable because it related to "lobbying activities related to [the company's] products."
- In Deere,<sup>17</sup> the proposal asked the company to "issue a public report, within a reasonable time, assessing the benefits and drawbacks of opposing Right to Repair regulation, as well as the financial and reputational risks associated with such opposition." The supporting statement focused exclusively on the risks of opposing right to repair legislation, which ensures that equipment manufacturers provide customers with the tools and information

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<sup>16</sup> Wells Fargo & Co. (Feb. 19, 2010)

<sup>17</sup> Deere & Company (Dec. 29, 2023)

needed for independent repair shops to repair their equipment. Like the 2009 BMS proposal, the proposal was silent regarding lobbying on other issues and Deere’s lobbying policies or expenditures. The Staff allowed exclusion, explaining that the proposal did not transcend ordinary business matters, but product-specific lobbying was not referenced in the determination.

A proposal BMS received in 2013 sought disclosure about the Company’s lobbying policies and procedures, the outcomes of the Company’s lobbying efforts, and a description of “how the outcomes affect the Company’s business, including the impact on its reputation.” All but three sentences of the supporting statement critiqued the Company’s support for the Affordable Care Act (“ACA”); in granting relief, the Staff stated, “In our view, the proposal and supporting statement, when read together, focus primarily on Bristol-Myers’ specific lobbying activities that relate to the operation of Bristol-Myers’ business and not on Bristol-Myers’ general political activities.”

Finally, the determination at Goldman Sachs<sup>18</sup> does not stand for the proposition BMS claims. The Goldman Sachs proposal did ask the company to adopt a policy on advocacy regarding laws and regulations relating to corporate governance and accountability, and Goldman Sachs argued that the proposal asked it to take a specific advocacy position. That argument was not the basis for the determination allowing exclusion, however; instead, the Staff explained that the proposal “relates to Goldman Sachs’ general adherence to ethical business practices.”

Unlike most of the proposals in the cited determinations, the Proposal does not direct or seek disclosure about BMS’s lobbying on specific measures or business-related issues. The Proposal is much more general than even the most general proposal involved in these determinations, the 2013 BMS proposal. In contrast to that proposal, the Proposal does not ask for reporting on lobbying outcomes and how they affect BMS’s business. As well, the Proposal’s supporting statement is much less focused on the specific issue of drug pricing than the 2013 BMS proposal’s was on the ACA. A full paragraph of the Proposal’s supporting statement addresses BMS’s lobbying expenditures, without reference to issues.

It is not accurate to assert that the trade associations and other groups mentioned in the Proposal’s supporting statement focus their lobbying primarily on drug pricing and/or access to medicines. Those groups work on many other issues:

- As of January 17, 2025, the home page of the Chamber’s website<sup>19</sup> does not mention drug pricing or any other pharmaceutical-related content, focusing on overregulation, free enterprise, small business, artificial intelligence, economic growth, and trade, among other topics.
- The Bay Area Council<sup>20</sup> is a membership organization of over 330 Bay Area employers with initiatives addressing a wide variety of issues, including public safety, homelessness, the environment, and the workforce.
- The Healthcare Institute of New Jersey’s advocacy priorities<sup>21</sup> include shifting to a “value-based—rather than volume-based—payment model for [the U.S.] health care system,”

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<sup>18</sup> The Goldman Sachs Group Inc. (Feb. 13, 2015)

<sup>19</sup> <https://www.uschamber.com/>

<sup>20</sup> <https://www.bayareacouncil.org/about-us/>

<sup>21</sup> <https://hinj.org/advocacy/>

demanding that other countries shoulder “their fair share” of research and development costs, and taking “a serious look at the need for a comprehensive benefit plan redesign that more accurately reflects the realities of our modernized health care system on matters such as coverage, deductibles and copays.”

- Key 2025 policy priorities for the Healthcare Distribution Alliance<sup>22</sup> are addressing drug shortages, supporting pharmacies, enabling traceability of drugs, improving cybersecurity, and preventing the repeal of the last in-first out accounting standard.
- Although MassBio identifies as priority state bills a bill “promoting healthcare access and affordability for patients,” which addresses copay assistance programs, pass-through of drug rebates to patients, and access to gene and cell therapies,<sup>23</sup> it also prioritizes bills on consumer deductibles and “strengthening Massachusetts’ economic leadership.”<sup>24</sup>
- The Caregiver Action Network says that it “advocates on dozens of public policy issues that affect family caregivers,” including not only issues affecting prescription drug costs but also access to hearing aids; Medicare coverage of treatments, diagnostic tools, and therapies; accelerated approval of drugs; regulation of home health agencies; and financial support for family caregivers.<sup>25</sup>

These varied policy agendas show the absurdity of BMS’s contention that by mentioning these groups in the supporting statement, the Proposal is advocating specifically on drug pricing. Given the neutrality of the resolved clause’s request for general lobbying disclosure, the failure of that argument is fatal for BMS’s claim that the Proposal is excludable because its subject is policy advocacy on drug pricing.

In sum, the Proposal addresses BMS’s direct and indirect lobbying, regardless of issue or specific intermediary organization, which is an aspect of BMS’s “general political activities.” Under both Commission guidance and longstanding Division practice, general political activities are considered to be a significant social policy issue that transcends ordinary business, making exclusion of the Proposal inappropriate.

### **Micromanagement**

BMS argues that the Proposal would micromanage the Company because it requests a “highly prescriptive report that requires extensive detail comprised of dozens of distinct pieces of information” and seeks to impose specific methods for implementing complex policies.

The Proponent acknowledges that the Division recently provided no-action relief on micromanagement grounds to Air Products and Chemicals, Inc. (“Air Products”) on a proposal substantially similar to the Proposal.<sup>26</sup> Given the escalating sums companies are spending on direct and indirect lobbying, this is an inopportune time to shut down shareholders’ ability to communicate their preferences about lobbying disclosure.

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<sup>22</sup> <https://hda.org/perspectives/2025/01/chip-davis-shares-hda%E2%80%99s-2025-policy-priorities-in-annual-chain-drug-review-column/>

<sup>23</sup> [https://www.massbio.org/wp-content/uploads/2023/08/2023-Patient\\_Access\\_Bill\\_Summary.pdf](https://www.massbio.org/wp-content/uploads/2023/08/2023-Patient_Access_Bill_Summary.pdf)

<sup>24</sup> <https://www.massbio.org/policy-advocacy/>

<sup>25</sup> <https://www.caregiveraction.org/legislation-and-public-policy/>

<sup>26</sup> See Air Products and Chemicals, Inc. (Nov. 29, 2024)

## The Previous Determinations

For over a decade before the Air Products determination, the Staff repeatedly rejected company requests to exclude lobbying disclosure proposals on micromanagement grounds. The first such challenges were brought in 2011, when IBM,<sup>27</sup> Bank of America,<sup>28</sup> and Raytheon<sup>29</sup> argued that lobbying disclosure proposals would micromanage them. The proposals submitted to the three companies sought even more detail than the Proposal: In addition to requesting disclosure of policies and procedures relevant to lobbying and of lobbying expenditures themselves, these proposals asked the companies to include, for each payment, “[i]dentification of the person or persons [in the company] who participated in making the decision” to make the expenditure.

IBM, Bank of America, and Raytheon unsuccessfully advanced many of the same micromanagement arguments BMS now makes (all emphases added)

- Like BMS does here,<sup>30</sup> Bank of America, IBM and Raytheon objected that the proposed report “require[d] a significant amount of detailed disclosure.”<sup>31</sup> Or as IBM put it, “In order for the Company to provide the instant Proponent with the ‘complete picture’ it desires, a great degree of additional detail would be required to complete the report.”<sup>32</sup>
- IBM, like BMS, argued that the methodology and format required by the proposal were too prescriptive, requiring IBM to use the proponent’s “own specific detailed methodology for the disclosures” and “to report on a host of lobbying activities in the format required by the Proponent.”<sup>33</sup>
- BMS’s complaint that the “the Proposal includes no limiting principle for its required disclosures”<sup>34</sup> as to size or relevance echoes Bank of America’s contention that the proposal micromanaged because “[t]here is no size or amount limitations in the Proposal.”
- Bank of America claimed that the disclosure proposal aimed to change the company’s behavior around lobbying: “The Proposal inappropriately seeks to intervene in the Corporation’s routine management of this basic area of its business in order to limit or stop the Corporation from engaging in certain political or legislative objectives.” BMS, likewise, urges that the Proposal seeks to indirectly influence management’s decisions and assessments of how best to support the execution of the Company’s mission and strategy.”<sup>35</sup>

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<sup>27</sup> International Business Machines Corporation (Jan. 24, 2011)

<sup>28</sup> Bank of America Corporation (Mar. 7, 2011)

<sup>29</sup> Raytheon Company (Mar. 29, 2011)

<sup>30</sup> See No-Action Request, at 9

<sup>31</sup> Bank of America Corporation (Mar. 7, 2011)

<sup>32</sup> International Business Machines Corporation (Jan. 24, 2011)

<sup>33</sup> International Business Machines Corporation (Jan. 24, 2011)

<sup>34</sup> No-Action Request, at 10

<sup>35</sup> No-Action Request, at 10

- Bank of America, IBM, and Raytheon invoked the language from the 1998 Release, arguing that the proposals addressed matters of a complex nature unsuited to shareholder oversight, as BMS does.<sup>36</sup>

The Staff found Bank of America, IBM, and Raytheon’s micromanagement arguments unconvincing. The determinations stated: “In our view, the proposal focuses primarily on [company’s] general political activities and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate.”

The following season, Devon Energy<sup>37</sup> returned to these themes. The proposal submitted to Devon had an identical resolved clause to the Proposal, abandoning the request for employee identities found in the Bank of America, IBM, and Raytheon proposals. Devon argued that the proposal sought to micromanage the company by requesting “detailed disclosure” about the activities of its trade associations, which “prob[ed] too deeply into matter of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The Staff did not grant relief.

In 2015, FirstEnergy<sup>38</sup> fell short yet again on a similar challenge to a lobbying disclosure proposal whose resolved clause mirrored the Proposal’s. FirstEnergy asserted that, as a regulated utility, it “often finds it necessary or advisable to participate in the political process, especially regarding those legislative initiatives or public policy debates that may have a direct impact on its core business.” The company claimed that “[i]njecting shareholders’ judgment into these activities would subject the Company to micro-management” and characterized the requested report as “burdensome.” The Staff did not concur with FirstEnergy’s view that the proposal would micromanage the company.

#### Allowing Exclusion of Lobbying Disclosure Proposals on Micromanagement Grounds is at Odds with Commission and Division Guidance

The Division’s prior practice of denying requests to exclude lobbying disclosure proposals like the Proposal on micromanagement grounds is more consistent with the policy and other considerations articulated in the Commission’s and Division’s interpretive guidance. In the determinations prior to Air Products, the Staff rejected requests from companies seeking to omit lobbying disclosure proposals on micromanagement grounds based on arguments that those proposals requested too much detail, were too prescriptive, aimed to interfere with companies’ lobbying activities, and would produce disclosure that was too complex for shareholders to understand. BMS’s request for relief should likewise be denied.

#### *The Proposal Requests a Reasonable Amount of Detail Necessary for Shareholders to Assess BMS’s Oversight of Lobbying and Risks Associated With Lobbying Activities*

The amount of detail requested by the Proposal is reasonable. In the language of SLB 14L, it is “consistent with that needed to enable investors to assess an issuer’s impacts, . . . risks or other strategic matters appropriate for shareholder input.” The disclosure the Proposal seeks enables

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<sup>36</sup> No-Action Request, at 8

<sup>37</sup> Devon Energy Corp. (Mar. 27, 2012)

<sup>38</sup> FirstEnergy Corp. (Feb. 19, 2015)

shareholders to assess the robustness of BMS’s governance of lobbying activities, which is key to managing risks. Shareholders can evaluate the nature and extent of those risks from the disclosure on expenditures and memberships in groups that engage in lobbying. Without both of those components, the Proposal would fall short of giving shareholders the information they need.

The Proposal does not request disclosure of intricate detail. Air Products and BMS both submitted tables in their no-action requests breaking down the disclosure sought by the proposals to make it seem more complicated and burdensome than it actually is—the “dozens of discrete pieces of information,” as BMS puts it.<sup>39</sup> But the Proposal does not ask BMS to classify the disclosure into these artificial categories, so BMS would not need to collect, maintain, or report data using the scheme. This seeming complexity is a creation of BMS’s imagination.

The Proposal does not, and would not, request the granular disclosure BMS contrives because those narrow categories do not correspond to real-world company practice. To take one example, BMS’s table breaks down the Proposal’s first request, for disclosure of policies and procedures governing lobbying, into 15 separate items. BMS asserts that separate policies and procedures disclosures would be required for federal, state and local lobbying carried out through each method: directly, through trade associations, through social welfare organizations, through other organizations, and via grassroots lobbying.<sup>40</sup>

Companies’ policies on lobbying do not differentiate in this way however. For example, Southern Company, a regulated utility that would be expected to engage in significant lobbying at both the state and federal level, has a single two-page policy.<sup>41</sup> Rather than 15 items, it addresses two matters: policies governing its own direct lobbying and participation in “trade associations and industry coalitions” that engage in “government relations activities,” in each case with no distinction regarding the level of government at which lobbying occurs.

The policies and procedures followed by Boeing, a company whose business is significantly affected by policymakers’ decisions, use a similar breakdown. Those policies and procedures, which are included in its Advocacy Report,<sup>42</sup> apply to both “direct and indirect” lobbying. Boeing describes its approach to membership in third party organizations, which applies to trade associations and social welfare organizations that may lobby indirectly for Boeing. None of these policies varies depending on whether lobbying is occurring at the federal, state, or local level.

Likewise, “management’s decision-making process and the Board’s oversight” of lobbying expenditures, which BMS’s table represents as involving an incredible 30 separate items, do not generally differ depending on the level of government or type of lobbying, nor do they require extensive disclosure. ExxonMobil’s two-paragraph disclosure, which describes a single set of management and board processes applicable to all lobbying activities, is typical:

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<sup>39</sup> No-Action Request, at 9

<sup>40</sup> No-Action Request, at 9

<sup>41</sup> See

[https://www.southerncompany.com/content/dam/southerncompany/pdfs/about/governance/Overview\\_of\\_Policies\\_and\\_Practices\\_for\\_Lobbying-Related\\_Activities\\_PDF11.pdf](https://www.southerncompany.com/content/dam/southerncompany/pdfs/about/governance/Overview_of_Policies_and_Practices_for_Lobbying-Related_Activities_PDF11.pdf)

<sup>42</sup>

[https://www.boeing.com/content/dam/boeing/boeingdotcom/company/key\\_orgs/pdf/Boeing\\_Advocacy\\_Report.pdf](https://www.boeing.com/content/dam/boeing/boeingdotcom/company/key_orgs/pdf/Boeing_Advocacy_Report.pdf), at 3-4, 7-10.

ExxonMobil has a rigorous process to determine which public policy issues are of most importance to the Corporation. This process includes soliciting input from internal businesses, such as low carbon solutions, product solutions, and upstream, as well as corporate departments including human resources, tax, and public and government affairs. We also engage with a wide range of third parties – both individuals and organizations – to ensure external perspectives are fully considered and taken into account. ExxonMobil’s Vice President for Public and Government Affairs, who reports directly to the Chief Executive Officer, is responsible for the stewardship of identified key public policy issues which guide the company’s lobbying efforts and political contributions.

Lobbying and political engagement are included as part of the Board of Director’s stewardship of the company’s enterprise-risk framework. Each year, the Vice President for Public and Government Affairs presents the company’s political contributions, lobbying activities and lobbying expenditures to the full Board, along with the Board’s Environment, Safety and Public Policy Committee [formerly the Public Issues and Contributions Committee (PICC)], which is comprised entirely of independent directors. The directors review the efforts, associated expenditures, and consistency with company positions. In addition, in-depth reviews of the company’s priority issues are conducted by the Management Committee throughout the year.<sup>43</sup>

Many companies would have nothing to report for certain items on which disclosure is requested. The nature of a company’s business might mean that lobbying at the state or local level, for example, is not useful. A company might have a policy against certain kinds of lobbying. Or a company may simply not be engaging in a particular activity at the moment. Accenture, for example, states in its lobbying report, “Accenture does not currently make direct expenditures towards U.S. federal or state grassroots lobbying communications to the general public.”<sup>44</sup> BMS makes such statements in the election-related political spending context, stating on its website that it “does not engage in direct independent expenditures on behalf of candidates running for public office” and “makes no political contributions outside of the U.S.”<sup>45</sup>

The proposals in Delta<sup>46</sup> and Paramount Global,<sup>47</sup> cited by BMS, requested disclosure that was far more detailed, and potentially open-ended, than the disclosure sought in the Proposal. The proposal to Delta asked it to disclose “union suppression expenditures,” which were defined as internal expenditures and amounts paid to outside entities, including the entity name, fees, hours worked, remits, work performed, other kinds of work performed for the company, board oversight of the entity, and adherence to company policies. Delta urged that the broad definition of union suppression expenditures—“expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions”—could be read to require the company to disclose expenditures associated with a large number of activities and communications with its

<sup>43</sup> <https://corporate.exxonmobil.com/who-we-are/policy/lobbying/report-on-lobbying-activities>

<sup>44</sup> <https://www.accenture.com/us-en/about/governance/political-contributions-policy>; see also [https://aecom.com/wp-content/uploads/documents/disclosures/2023/AECOM-PEP\\_CY2023\\_Data-Exhibit\\_1\\_Lobbying.pdf](https://aecom.com/wp-content/uploads/documents/disclosures/2023/AECOM-PEP_CY2023_Data-Exhibit_1_Lobbying.pdf) (Aecom: “In 2023, Aecom did not engage in or make payments for any grassroots lobbying communications.”)

<sup>45</sup> <https://www.bms.com/about-us/responsibility/transparency/policy-and-advocacy-engagement-and-political-contributions.html>

<sup>46</sup> Delta Air Lines, Inc. (Apr. 24, 2024)

<sup>47</sup> Paramount Global (Apr. 19, 2024)(NCPFR)

workforce that do not mention unions but could qualify as “intended to dissuade” union support. These could include pizza parties, profit-sharing, and pay raises.

The Paramount Global proposal also sought intricate detail. It asked the company to disclose the amount and recipient of all charitable contributions of \$5000 or more, including contributions made in non-cash forms. Paramount Global pointed out that in 2023, it made more than 770 contributions, 70% of which were \$5000 or more, to 550 organizations. Paramount Global argued that the disclosure sought by the Proposal was too granular, pointing out that the \$5000 threshold was “a relatively low amount relative to the usual size of the Company’s contributions.”

The Proposal requests much less detail than the Delta and Paramount Global proposals. It does not ask for any information to be presented using BMS’s invented categories, and implementing the Proposal would not require BMS to collect or maintain data using this scheme. Unlike the Proposals in Bank of America, IBM, and Raytheon—which were deemed not excludable on micromanagement grounds—the Proposal does not ask BMS to disclose information regarding the identity of everyone who participated in the decision to make each lobbying expenditure. The element of the Proposal addressing tax-exempt organizations that write and support model legislation can be satisfied concisely: UPS discloses its support of ALEC in a single line in its Political Engagement Policy Report reporting a range of dues paid.<sup>48</sup> This argument by BMS for exclusion of the Proposal thus misses the mark.

*The Proposal Does not Seek to Impose Specific Methods for Implementing Complex Policies or to Inappropriately Limit the Board’s and Management’s Discretion*

Nor does the Proposal seek to impose specific methods for implementing complex policies. As an initial matter, in contrast to the “intricate detail” standard, this factor is not well suited to a proposal that focuses only on disclosure. “Specific methods for implementing complex policies” implies that a proposal is directing the company to take particular actions to achieve a goal, like setting a target for net zero greenhouse gas emissions or eliminating child labor from the supply chain, and is leaving no latitude for management or the board to tailor the actions to accommodate company-specific circumstances. A disclosure policy, by contrast, is not implementing a “complex policy” unless the disclosure itself is the complex policy, which is circular.

This distinction finds support in the Commission’s proposing release for the 1998 ordinary business interpretive changes (the “1997 Release”).<sup>49</sup> Both of the determinations cited in the 1997 Release as seeking to impose specific time-frames or methods for implementing complex policies<sup>50</sup> involved proposals that would require the companies to take specific actions rather than make specific disclosures.<sup>51</sup> The first was a proposal asking Templeton Dragon Fund/Newgate Management Associates<sup>52</sup> to establish a particular interval between repurchases and the amount of

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<sup>48</sup>

[https://investors.ups.com/\\_assets/\\_14695e1b2c974f42435fb8075aa916dd/ups/db/1140/10850/file/Political+Engagement+Report+-+Feb+2024.pdf](https://investors.ups.com/_assets/_14695e1b2c974f42435fb8075aa916dd/ups/db/1140/10850/file/Political+Engagement+Report+-+Feb+2024.pdf), at 2

<sup>49</sup> Exch. Act Rel. No. 39093 (Sept. 18, 1997)

<sup>50</sup> The 1998 Release made clear that the third determination cited in the footnote, Capital Cities/ABC, Inc. (Apr. 4, 1991), was included to provide an example of a proposal that “intrude[s] unduly on a company’s ‘ordinary business’ operations by virtue of the level of detail” it seeks.

<sup>51</sup> See Exch. Act Rel. No. 39093, fn. 79 (Sept. 18, 1997)

<sup>52</sup> Templeton Dragon Fund/Newgate Management Associates (June 11, 1997)

the initial repurchase offer for a fund's repurchase program, illustrating an effort to impose a specific time frame. The second determination addressed a proposal submitted to Burlington Northern Santa Fe Corp.<sup>53</sup> directing the company to develop new technology for railroad braking systems, an unambiguous example of a proposal seeking to impose a specific method for implementing a complex policy.

Even assuming the “complex standard” policy applies equally to disclosure proposals, lobbying disclosure is less complex than the subjects of other proposals that the Staff has not allowed companies to exclude on micromanagement grounds.

For example, pharmaceutical pricing disclosure is technical and involves many variables, yet Celgene<sup>54</sup> and Gilead<sup>55</sup> were not permitted to exclude proposals asking them to report on four different elements of risk related to public pressure to contain high specialty drug prices. Those elements included price disparities between the U.S. and other countries; the possibility that payers will increasingly rely on pharmaco-economics techniques to make reimbursement decisions; price sensitivity of prescribers, payers and patients; and the relationship between the company's specialty drug prices, on the one hand, and clinical benefit, patient access, the efficacy and price of alternative therapies, drug development costs and the proportion of those costs borne by academic institutions and/or the government, on the other. Celgene and Gilead unsuccessfully argued that the proposals micromanaged because the elements probed too deeply into complex marketing and public relations activities and because shareholders could not be expected to make an informed judgment about the technical and complex matters addressed in the elements.

The Proposal does not inappropriately limit the discretion of management and the board, the standard articulated in SLB 14L. It does not attempt to control the format in which information is disclosed; there is no requirement that the requested report would have to be “subdivided into four sections,”<sup>56</sup> as BMS claims. Contrary to BMS's assertion, the Proposal would not “indirectly influence management's decisions and assessments of how best to support the execution of the Company's mission and strategy,”<sup>57</sup> as it only addresses disclosure. The “three-pronged test” for grassroots lobbying communication to which BMS objects aligns with the legal standard for such communications, which would make it easier for BMS to implement the Proposal. It was included in the Proposal because the Staff previously allowed companies to exclude lobbying disclosure proposals that did not define that term.<sup>58</sup>

BMS makes much of the fact that disclosing amounts paid to trade associations and other organizations that are used for political purposes would require BMS to “collect and report a substantial amount of information from third parties.”<sup>59</sup> This is something that other companies--

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<sup>53</sup> Burlington Northern Santa Fe Corp. (Jan. 22, 1997)

<sup>54</sup> Celgene Corporation (Mar. 19, 2015)

<sup>55</sup> Gilead Sciences Inc. (Feb. 23, 2015)

<sup>56</sup> No-Action Request, at 9

<sup>57</sup> No-Action Request, at 10

<sup>58</sup> See, e.g., JPMorgan Chase & Co. (Mar. 5, 2010)

<sup>59</sup> No-Action Request, at 9

Accenture,<sup>60</sup> American Express,<sup>61</sup> Cardinal Health,<sup>62</sup> and ExxonMobil,<sup>63</sup> to name a few--seem to be able to do without excessive difficulty. And among its peers, most provide the amounts of their trade association payments used for lobbying, including AbbVie,<sup>64</sup> Amgen,<sup>65</sup> Biogen,<sup>66</sup> Gilead Sciences,<sup>67</sup> Johnson & Johnson,<sup>68</sup> Merck<sup>69</sup> and Pfizer.<sup>70</sup> BMS also provides the amounts of their trade association payments used for lobbying,<sup>71</sup> belying its insistence that what is being requested by the Proposal is “much more detailed than the disclosures provided by the Company’s peers and other public companies.”<sup>72</sup> Moreover, Pfizer also discloses its payments to social welfare groups used for lobbying, including the Alliance for Regenerative Medicine, while Biogen discloses the full amount of its payments to social welfare organizations, including its payments to the Alliance for Patient Access. BMS could ask for this information and, if it was not provided, note that fact in its

<sup>60</sup> <https://www.accenture.com/us-en/about/governance/political-contributions-policy> (“The company asks these trade associations what portion of the company’s payments were used for non-deductible lobbying expenditures under Section 162(e) of the Internal Revenue Code.”)

<sup>61</sup> <https://ir.americanexpress.com/governance-and-corporate-responsibility/policy-engagement-and-political-activity/default.aspx> (“For any such organization that receives in excess of \$50,000 for dues during the calendar year from the Company, American Express requests that the organization identify the portion of American Express’ payments used, if any, in connection with participation or intervention in a political campaign on behalf of (or in opposition to) any ballot initiative or candidate for public office, as defined under Subsection 162(e)(1)(B) of the Code.”)

<sup>62</sup> <https://www.cardinalhealth.com/content/dam/corp/web/documents/Report/cardinal-health-2023-political-activities-policy.pdf> (“Trade associations are required to report to Cardinal Health what portion of the company’s annual dues are not deductible under federal tax laws because they were used for lobbying activities or to influence legislation.”)

<sup>63</sup> <https://corporate.exxonmobil.com/-/media/global/files/policy/lobbying/exxonmobil-2022-lobbying-report.pdf>, at 3, 16-25.

<sup>64</sup> <https://www.abbvie.com/who-we-are/policies-disclosures.html#:~:text=AbbVie's%20public%20policy%20engagement%20is,access%20to%20new%20medical%20advances>, (“Below is a list of the major U.S. trade associations where AbbVie paid \$25,000 or more in annual membership dues and which lobby in the U.S. at the federal level. Also provided below for each U.S. trade association is the percentage of dues utilized by that organization for lobbying.”)

<sup>65</sup> <https://www.amgen.com/about/how-we-operate/policies-practices-and-disclosures/transparency-disclosures/political-contributions>, (“A table that identifies each U.S. trade association that received at least \$50,000 in dues payments from Amgen during 2023 and the portion of those payments identified by the trade association as being used for lobbying expenditures is listed below.”)

<sup>66</sup> <https://biogen.gcs-web.com/governance/political-contributions-disclosures>, (“Trade associations listed are those to which we paid \$25,000 or more in annual dues in 2024. Amounts attributed to lobbying have been identified by those organizations as non-deductible under Section 162(e) (1).”)

<sup>67</sup> <https://www.gilead.com/company/us-public-policy-engagement#:~:text=Examples%20of%20trade%20associations%20of,and%20California%20Life%20Sciences%20Associatio>n, (“a list of trade organizations to which Gilead pays more than \$25,000 in membership dues or other payments, and to the extent available to us, the portion of those payments that were used for activities that are not deductible under Chapter 162(e) of the Internal Revenue Code.”)

<sup>68</sup> <https://www.investor.jnj.com/governance/political-engagement/default.aspx>, (“Below is a list of U.S. trade associations to which one or more members of the Johnson & Johnson Family of Companies paid dues of \$50,000 or more in 2023, and which lobby in the U.S. at the federal level. Also provided below for each trade association is the percentage of the 2023 dues utilized by that organization for federal lobbying.”)

<sup>69</sup> <https://www.merck.com/company-overview/sustainability/transparency-disclosures/>, (“Trade Association Dues Used for Lobbying, Includes associations where dues are > \$25,000”).

<sup>70</sup> <https://www.pfizer.com/about/programs-policies/political-partnerships>, (“we request that trade associations that receive total payments of \$25,000 or more from Pfizer annually provide us with the portion of our dues or payments used for expenditures or contributions that, if made directly by Pfizer, would not be deductible under section 162(e)(1)(B) of the Internal Revenue Code.”)

<sup>71</sup> <https://www.bms.com/about-us/responsibility/transparency/policy-and-advocacy-engagement-and-political-contributions.html>, (“each U.S. trade association that received at least \$50,000 in dues or other payments from Bristol Myers Squibb during January 1, 2023 through June 30, 2023, the portion of such payments that has been identified by such trade association as being used for non-deductible lobbying expenditure.”)

<sup>72</sup> No-Action Request, at 9

disclosure. In any event, choosing to remain unaware of the extent to which trade associations, social welfare organizations, and other politically active groups to which BMS contributes engage in lobbying deprives BMS's board and management of information they need to manage the risks to the Company associated with such activity.

*Shareholders Can Make an Informed Judgment About the Proposal's Subject*

SLB 14L provided guidance on assessing whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment, stating that the Staff could consider “the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” These factors undercut BMS's arguments for exclusion.

High levels of support for many proposals seeking lobbying disclosure and shareholder interest in the topic provide strong evidence that shareholders are sophisticated about lobbying disclosure and believe that corporate lobbying can affect the value of their investments. Data maintained by ICCR indicates that between 2011 and 2024, 13 lobbying disclosure proposals achieved majority shareholder support. Many others have received support from 30-50% of shares voted, a significant proportion that can prompt changes in company behavior.<sup>73</sup>

A wide variety of shareholders favor robust lobbying disclosure. Alliance Bernstein's Proxy Voting and Governance Policy<sup>74</sup> states, “We generally vote in favor of proposals requesting increased disclosure of political contributions and lobbying expenses, including those paid to trade organizations and political action committees, whether at the federal, state, or local level.” Northern Trust's Proxy Voting Policies, Procedures and Guidelines<sup>75</sup> state: “Northern Trust will generally vote for proposals to publish a company's political or lobbying contributions, taking into consideration recent, significant controversies, fines or litigation regarding the company's political contributions or trade association spending.”

Robeco's Stewardship Approach and Guidelines<sup>76</sup> provide:

Corporate transparency is key in understanding potential legal, reputational and subsequent investment risks which can arise from opaque lobbying practices and political donations. These expenses must be consistent with the company's sustainability strategy and should be aligned with the long-term interests of investors and other relevant stakeholders. Robeco generally supports sound shareholder proposals requesting companies to review their political spending and lobbying activities.

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<sup>73</sup> See, e.g., <https://www.governance-intelligence.com/shareholders-activism/lobbying-disclosure-proposal-garners-support-morgan-stanley-agm>; <https://clsbluesky.law.columbia.edu/2022/06/28/iss-discusses-shareholder-resolutions-on-lobbying/>; <https://www.governance-intelligence.com/shareholders-activism/lobbying-proposal-gains-traction-goldman-sachs-agm>

<sup>74</sup> <https://www.alliancebernstein.com/content/dam/corporate/corporate-pdfs/AB-Proxy-Voting-and-Governance-Policy.pdf>, at 13

<sup>75</sup> [https://cdn.northerntrust.com/pws/nt/documents/fact-sheets/mutual-funds/institutional/nt\\_proxypolicy.pdf](https://cdn.northerntrust.com/pws/nt/documents/fact-sheets/mutual-funds/institutional/nt_proxypolicy.pdf), at 20

<sup>76</sup> <https://www.robeco.com/files/docm/docu-stewardship-approach-and-guidelines.pdf>, at 21

The New York State Common Retirement Fund’s Environmental, Social & Governance Principles and Proxy Voting Guidelines<sup>77</sup> identify lobbying as a key ESG factor and state, “The Fund will support proposals asking companies to disclose their political and lobbying expenditures.”

Wespath Institutional Investors’ Proxy Voting Guidelines<sup>78</sup> provide:

WII generally supports proposals calling for board oversight of political spending and for the publication of reports on the amounts and destination of funds exceeding \$10,000. A company’s political contributions, lobbying activities and membership in trade associations or interest groups may conflict with company policy statements and may be at odds with the long-term interests of the company and its investors.

Trillium Asset Management’s Proxy Voting Guidelines state that it will “Vote **for** proposals requesting information on a company’s lobbying (including direct, indirect, and grassroots lobbying) activities, policies, or procedures.” (emphasis in original) And the AFL-CIO Proxy Voting Guidelines<sup>79</sup> provide that funds following them should “should support proposals that seek disclosure and board level oversight of corporate political contributions and lobbying expenditures. . . Publicly available data on corporate political contributions and lobbying expenditures do not provide a complete picture of these activities. Investors need complete disclosure to be able to evaluate the use of corporate assets for political contributions and lobbying expenditures.”

The fact that such a broad range of investors--investment managers, public pension funds, religious investors, labor funds, and socially responsible investment firms--have policies of supporting proposals like the Proposal show that shareholders believe that lobbying disclosure is useful to them in assessing risks and oversight at the companies in which they invest. The significant voting support many lobbying disclosure proposals have garnered bolsters that conclusion.

There is also an ongoing robust public debate on the issue of corporate lobbying. Although corporate lobbying has been widely covered and discussed for years, major newspaper articles addressing federal and state lobbying in the past year have included:

- Kenneth P. Vogel and Kate Kelly, “Lobbyists With Ties to Trump Collect on a Spike in Demand, and Fees,” The New York Times, Nov. 9, 2024
- Eric D. Lawrence, “Auto Lobby Group Sees ‘Incredibly Active’ Time,” Detroit Free Press, Jan. 16, 2025
- Brody Mullins and Luke Mullins, “Big Tech Has a New Favorite Lobbyist: You,” The Wall Street Journal, Mar. 30, 2024 (grassroots lobbying)
- Andrew Duehren, “At ‘Tax Prom,’ Washington Prepares For a Lobbying Frenzy Over Cuts,” The New York Times, Dec. 13, 2024
- Jeremy Gorner et al., “Hemp Regulation Bill Stalls After Lobbying Battle Between Mayor Brandon Johnson and Gov. JB Pritzker,” Chicago Tribune, Jan. 6, 2025

<sup>77</sup> <https://www.osc.ny.gov/files/common-retirement-fund/corporate-governance/pdf/proxy-voting-guidelines-2024.pdf>, at 1, 35

<sup>78</sup> <https://www.wespath.com/assets/1/7/5306A.pdf>, at 24

<sup>79</sup> [https://aflcio.org/sites/default/files/2017-03/proxy\\_voting\\_2012.pdf](https://aflcio.org/sites/default/files/2017-03/proxy_voting_2012.pdf), at 22

- Haley Brown, “Airbnb’s Rental ‘Control’ \$1M Lobbying Effort for NYC Return,” New York Post, Jan. 13, 2025
- Kurt Erickson, “Missouri Lawmaker Challenges Revolving-Door Lobbying Ban,” St. Louis Post-Dispatch, Nov. 26, 2024
- Kate Kelly and Kenneth P. Vogel, “Inside Trump Chief of Staff’s Lobbying Career,” The New York Times, Nov. 24, 2024
- Kayla Dwyer, “Legal Future? With Republican-Backed Marijuana Lobbying Group, Change is Possible,” Indianapolis Star, Jan. 15, 2025
- Cecila Kang, “Lobbying Group Seeks Broader Reach for First Amendment,” The New York Times, Oct. 9, 2024

Shareholders have voted on lobbying disclosure proposals like the Proposal for nearly 15 years, after the Staff rejected micromanagement arguments like those BMS makes here. All applicable factors—the reasonable level of detail sought, the significant discretion retained by BMS, and the ability of shareholders to make an informed judgment regarding lobbying disclosure—weigh against concluding that the Proposal would micromanage BMS. BMS has thus failed to meet its burden of showing that the Proposal is excludable pursuant to Rule 14a-8(i)(7).

\* \* \*

The Proponent appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Beth M. Young". The signature is written in a cursive, flowing style.

Beth M. Young

cc: John B. Beckman  
john.beckman@hoganlovells.com