



DIVISION OF
CORPORATION FINANCE

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

February 28, 2024

Lori Zyskowski
Gibson, Dunn & Crutcher LLP

Re: Welltower Inc. (the "Company")
Incoming letter dated February 27, 2024

Dear Lori Zyskowski:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Central Laborers' Pension Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 19, 2024, request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Maureen O'Brien
Segal Marco Advisors

January 19, 2024

VIA INTERNET SUBMISSION

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

Re: *Welltower Inc.*
Shareholder Proposal of Central Laborers' Pension Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Welltower Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”), a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from Central Laborers’ Pension Fund (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

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THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders of Welltower Inc. (“Welltower” or the “Company”) request that the Board of Directors commission an independent third-party audit on the impact of the company’s policies and practices on the health and safety of workers, including the health of safety of workers on Company properties. A report on the audit, prepared at reasonable cost and omitting proprietary information, should be made available on the company’s website.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations.

BACKGROUND

The Company is a real estate investment trust, focusing on real estate in the health care industry. The Company owns the real estate of seniors housing facilities, post-acute communities, and outpatient medical properties. For the Company’s seniors housing facilities, while the Company owns the buildings, it enters into agreements with third parties to operate the facilities, which operations include everything from leasing to providing care services, meals, assistance with activities for daily living, and entertainment for residents, as well as ensuring the buildings are properly maintained. As part of its ownership, the Company funds capital budgets and ordinary capital expenditures for such facilities. For the Company’s outpatient medical facilities, the Company has an internal property management function and facilities department that is responsible for maintaining and repairing, and overseeing the maintenance, of all of the Company’s outpatient medical properties. As part of this business, the Company establishes safety protocols and here too for these outpatient medical properties, approves and funds capital budgets and ordinary capital expenditures. The vast majority of the Company’s properties serve people who enter the Company’s buildings seeking care, and providing a safe environment for workers at these properties is a cornerstone of providing a safe environment for the residents and/or patients at these properties.

When the Company invests in a property for development purposes, on the other hand, the Company partners with an experienced real estate developer to run the development project.

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The Company's agreements with third-party development partners typically provide the developer with full discretion to retain vendors, contractors, and others to provide services in connection with the developments and require that the third parties comply with all federal and state laws and regulations, including relating to the health and safety of workers. These agreements also typically provide that if the developer engages in misconduct or commits violations of law during the course of the project, the Company has the contractual right to terminate the developer.

The Company maintains a Vendor Code of Conduct (the "Vendor Code"),¹ which requires all Company vendors, including third parties that operate the Company's facilities and third party developers, to comply with all laws and regulations and to report any violations of the Vendor Code to the General Counsel or to the Company's hotline. Specifically, the Vendor Code provides that "[v]endors are expected to adhere to health and safety practices when relevant," including "precautions regarding . . . occupational safety and training," and vendors are also "expected to take appropriate measures to prevent danger . . . and injury in the workplace."

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations.

This Proposal requests that the Company's board of directors, (the "Board") commission a "third-party audit" and issue a report "on the impact of the [C]ompany's policies and practices on the health and safety of workers, including the health [and] safety of workers on Company properties." As discussed below, the Proposal may be omitted under Rule 14a-8(i)(7) as it relates to workplace safety and safety management as well as to the Company's supplier relationships and enforcement of its Vendor Code, and it does not focus on any significant social policy issue that transcends the Company's ordinary business operations.

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998

¹ Available at <https://welltower.com/vendor-code-of-conduct>.

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Release”). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. *Id.* As relevant here, one of these considerations is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* Examples of the tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” *Id.*

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues,” the latter of which are not excludable under Rule 14a-8(i)(7) because they “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (avail. Oct. 26, 1999).

B. The Proposal Is Excludable Because It Relates To Workplace Safety.

The Staff has routinely recognized that proposals relating to workplace safety are a matter of ordinary business and excludable under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc. (International Brotherhood of Teamsters General Fund)* (avail. Apr. 1, 2020, *recon. denied* Apr. 9, 2020) (“*Amazon 2020*”), the proposal requested a report on the company’s efforts to “reduce the risk of accidents” that “describe[s] the [b]oard’s oversight process of safety management, staffing levels, inspection and maintenance of facilities and equipment and those of the [c]ompany’s dedicated third-party contractors.” In concurring with exclusion under Rule 14a-8(i)(7), the Staff noted that “the [p]roposal focuses on workplace accident prevention, an ordinary business matter, and does not transcend the [c]ompany’s ordinary

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business operations.” Similarly, in *Pilgrim’s Pride Corp.* (avail. Feb. 25, 2016) (“*Pilgrim’s Pride*”), the proposal requested that the company publish a report describing the company’s policies, practices, performance, and improvement targets related to occupational health and safety. The supporting statement also referred to alleged occupational health and safety violations and stated that workers in that company’s industry suffer injury and illness at five times the national average. The supporting statement further claimed that the company “was recently named to OSHA’s Severe Violator Enforcement Program for repeated or willful occupational health and safety (“OHS”) violations, and has been fined more than \$300,000 in the last four years for OHS violations.” The company argued that workplace safety was at the core of its business operations, and that the broad report requested by the proposal “implicates every aspect of the [c]ompany’s workplace safety efforts” and therefore related to the Company’s ordinary business operations. The Staff concurred with exclusion of the proposal, noting that the proposal “relates to workplace safety.” See also *The GEO Group Inc.* (avail. Feb. 2, 2017) (concurring with the exclusion of a proposal requesting implementation of provisions relating to operational audits of its facilities examining issues such as workplace violence rates and disciplinary and grievance systems, as relating to the company’s ordinary business operations); *The Chemours Co.* (avail. Jan. 17, 2017) (concurring with the exclusion of a proposal requesting a report “on the steps the [c]ompany has taken to reduce the risk of accidents” with the supporting statement citing to a number of industrial accidents at the company’s facilities and significant regulatory fines that had been assessed against the company for various safety violations).

The Staff’s determinations in the foregoing precedent are consistent with decades-old precedent concurring with the exclusion of proposals addressing workplace safety issues as implicating a company’s ordinary business operations. See *CNF Transportation, Inc.* (avail. Jan. 26, 1998) (concurring with the exclusion of a proposal requesting that the board of directors develop and publish a safety policy accompanied by a report analyzing the long-term impact of the policy on the company’s competitiveness and shareholder value because “disclosing safety data and claims history” was a matter of the company’s ordinary business); *Chevron Corp.* (avail. Feb. 22, 1988) (concurring with the exclusion of a proposal as ordinary business because it related to the protection of the safety of company employees).

Here, as in *Amazon 2020*, *Pilgrim’s Pride* and the other above-cited precedent, the Proposal is concerned with safety management, seeking an audit and report on “the impact of the [C]ompany’s policies and practices on the health and safety of workers.” This is reiterated in the Supporting Statement, which references the Company’s statements and policies related to providing “a safe work environment” multiple times and raises concerns about a “safety incident” that occurred at one of the Company’s properties. The Supporting Statement also states that “[s]hareholders are concerned with the Company’s oversight of workplace health and safety” and notes that the Company “maintains policies that purport to foster a safe work environment and has assigned the . . . ESG Steering Committee responsibility for health and

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safety,” which is overseen by the Board’s Nominating/Corporate Governance Committee (the “NCGC”).

As with the proposals in *Amazon 2020* and *Pilgrim’s Pride*, the Proposal seeks information on a broad array of workplace safety matters. The Company’s “policies and practices on the health and safety of workers, including the health [and] safety of workers on Company properties” involve a number of complex considerations, which may include processes related to laws and regulations applicable to the Company or its vendors, safety of workers and residents at Company facilities, property maintenance and repair, relationships with vendors, developers and other contractors, and contract negotiations with development partners and third parties that operate the Company’s facilities. Processes designed to ensure the safety of the Company’s properties are routine elements of the Company’s business. Thus, as in the precedent discussed above, the Proposal may properly be excluded under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

C. The Proposal Is Excludable Because It Relates to Decisions Regarding The Company’s Supplier Relationships And Enforcement Of Its Existing Vendor Code.

The Proposal requests disclosure of “policies and practices on the health and safety of workers, including the health [and] safety of workers on Company properties.” As noted in the Supporting Statement, the Proponent is “concerned with the Company’s oversight of workplace health and safety at [Company] facilities, including its oversight of external operators and vendors.” Notably, the Proposal does not seek to alter the Company’s existing policies pertaining to its partners or vendors or modify its Vendor Code. Rather, the Supporting Statement states that these concerns are “related to the use of operators and other third parties that may violate the [C]ompany’s Vendor Code of Conduct.” Thus, as demonstrated in the Proposal and Supporting Statement, the Proposal focuses on the issue of the Company’s existing policies and practices with respect to the Vendor Code and how it monitors and verifies compliance with the Vendor Code. For example, the Supporting Statement seeks a report on the “effectiveness of [the Company’s] policies and practices, including “whether [the Company’s] vendors stand in violation of [the Company’s] Vendor Code of Conduct, to what extent [the Company] conducts diligence on vendor compliance, and what actions [the Company] takes when violations or potential violations occur.”

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to ordinary business aspects of a company’s supplier relationships. For example, in *Foot Locker, Inc.* (avail. Mar. 3, 2017), the proposal requested a report “outlin[ing] the steps that the company is taking, or can take, to monitor the use of subcontractors by the company’s overseas apparel suppliers.” The proposal specifically requested information relating to: “[t]he extent to which company codes of conduct are applied to apparel suppliers

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and sub-contractors”; “[p]rocess and procedures for monitoring compliance with corporate codes of conduct by apparel suppliers and sub-contractors”; and “[p]rocess and procedures that the company has in place for dealing with code non-compliance by apparel suppliers and sub-contractors.” The company argued that the proposal sought to “influence the manner in which the [c]ompany monitors the conduct of its suppliers and their subcontractors” and that “[t]he extent to which a company applies and enforces its code of conduct on suppliers and their subcontractors” was an ordinary business matter. In concurring with exclusion, the Staff noted “the proposal relates broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors.” *See also The TJX Companies, Inc. (NorthStar Asset Management, Inc. Funded Pension Plan)* (avail. Apr. 9, 2021) (concurring with the exclusion of a proposal requesting a report “evaluating whether the company is supporting systemic racism through undetected supply chain prison labor” where the proposal’s supporting statements requested, among other things, “metrics regarding the number of supplier audits completed by the [c]ompany or third party auditors that evaluated the extent to which prison labor is present in the supply chain” and an “assessment of the effectiveness of current company policies and practices in preventing the utilization of prison labor in the company’s supply chain” and the company argued that the proposal was excludable as ordinary business because, among other reasons, it related to decisions regarding the company’s suppliers and enforcement of its existing standards of supplier conduct); *The Home Depot, Inc.* (avail. Mar. 20, 2020) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on prison labor “summarizing the extent of known usage of prison labor in the company’s supply chain”) (“*Home Depot 2020*”); *Walmart Inc.* (avail. Mar. 8, 2018) (concurring with the exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability as relating to the company’s ordinary business matters); *Kraft Foods Inc.* (avail. Feb. 23, 2012) (concurring with the exclusion of a proposal requesting a report detailing the ways the company would assess and mitigate water risk to its agricultural supply chain as “relat[ing] to decisions relating to supplier relationships”); *Alaska Air Group, Inc.* (avail. Mar. 8, 2010) (concurring with the exclusion of a proposal requesting a report discussing the maintenance and security standards used by the company’s aircraft contract repair stations and the company’s procedures for overseeing maintenance performed by the contract repair stations as “relat[ing] to . . . standards used by the company’s vendors”).

As in *Foot Locker* and the other precedent cited above, the Proposal focuses on ordinary business aspects of the Company’s supplier relationships, including policies, practices, and standards relating thereto. The Proposal requests an audit and report “on the impact of the [C]ompany’s policies and practices on the health and safety of workers, including the health [and] safety of workers on Company properties” and the Supporting Statement clarifies that the Proponent is concerned about “oversight of external operators and vendors” including “concerns related to the use of operators and other third parties that may violate the [C]ompany’s Vendor Code of Conduct” and “what actions [the Company] takes when

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violations or potential violations occur.” In this regard, the Proposal focuses on the same issues that were the focus of the proposal in *Foot Locker*, including concerns about supplier compliance with the relevant code of conduct and processes and procedures that the Company has in place to monitor and correct areas of noncompliance.

Similarly, the Staff has consistently concurred with the exclusion of shareholder proposals, like the Proposal, that relate to a company’s adherence to ethical business practices and policies. For example, in *PayPal Holdings, Inc.* (avail. Apr. 7, 2022), the proposal requested that the company’s “board of directors compare the [company’s code of business conduct and ethics] with the actual operations of the company.” The proposal’s supporting statements cited portions of the company’s code of conduct and expressed concerns that the “high ideals” cited “are not currently being practiced by [the company].” The Staff concurred with exclusion of the proposal as relating to the company’s ordinary business operations. Likewise, *Mattel, Inc.* (avail. Feb. 10, 2012) involved a proposal that requested the company require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries (“ICTI”) Code of Business Practices. The proposal addressed several concerns relating to the company’s suppliers’ plants in China, including “underage workers during the summer, excessive overtime, concerns about chemicals and poor ventilation” and alleged that “reviewers of the audit firms of the ICTI” were “seeking bribes.” Consequently, the proposal sought “proven and transparent compliance with [the ICTI Code of Business Practice] at [the company’s] suppliers’ plants” in order to “avoid strikes, negative media coverage and loud complaints from consumers.” The Staff concurred with exclusion of the proposal in *Mattel* as relating to the company’s ordinary business operations, noting that “the proposal calls for [the company] to require that its suppliers publish a report about their compliance with the ICTI Code of Business Practices” and specifically noted “[the company’s] view that the ICTI Code ‘has a broad scope that covers several topics that relate to the [c]ompany’s ordinary business operations and are not significant policy issues.’” See also *The Walt Disney Co.* (avail. Dec. 12, 2011) (concurring with the exclusion of a proposal requesting a report on board compliance with the company’s code of business conduct and ethics for directors, stating that “[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under [R]ule 14a-8(i)(7)”; *Verizon Communications, Inc.* (avail. Jan. 10, 2011) (concurring with the exclusion of a proposal directing the board to form a Corporate Responsibility Committee charged with monitoring the company’s commitment to integrity, trustworthiness, and reliability—and the extent to which it lived up to its Code of Business Conduct, as “relating to [the company’s] ordinary business operations” and concerning “general adherence to ethical business practices”); *NYNEX Corp.* (avail. Feb. 1, 1989) (concurring with the exclusion of a proposal related to the formation of a special committee of the company’s board of directors to revise the existing code of corporate conduct because it related “to the [c]ompany’s ordinary business operations (*i.e.* the particular topics to be addressed in the company’s code of conduct”)).

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In this regard, the Proposal requests a review of the Company's existing standards of ethical behavior applicable to its suppliers (*i.e.*, the Vendor Code) by seeking an audit and report on "the impact of the company's policies and practices on the . . . health [and] safety of workers on Company properties" and seeks additional detail as to the Company's approach to monitoring and enforcing its Vendor Code by requesting disclosure of the "effectiveness of [the Company's] policies and practices" including "whether [the Company's] vendors stand in violation of [the Company's] Vendor Code of Conduct, to what extent [the Company] conducts diligence on vendor compliance, and what actions [the Company] takes when violations or potential violations occur." Developing and maintaining relationships with suppliers and determining how best to manage those relationships, including how the Company decides to encourage its suppliers to pursue or address the topics covered in the Vendor Code, are important management responsibilities. As described in the "Background" section above, the Company already requires its suppliers to comply with the business and ethical standards described in the Vendor Code, including applicable laws and regulations and health and safety practices. Thus, similar to *PayPal* and *Mattel*, by seeking to require the Company to report on "the impact of the [C]ompany's policies and practices," including, as the Supporting Statement notes, the Company's "oversight of external operators and vendors" and "the use of operators and other third parties that may violate the company's Vendor Code of Conduct," the Proposal delves into the terms of the Company's relationships with its suppliers and compliance with its existing policies such that it is properly excludable under Rule 14a-8(i)(7).

The extent to which a company oversees, applies, and enforces compliance with its supplier code of conduct (such as the Vendor Code) involves decisions that are fundamental to the company's day-to-day operations and entails a variety of ordinary business considerations. The underlying subject matter of the Proposal addresses standards set forth in the Vendor Code, which involve the Company's oversight of its suppliers and their business practices. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight. As such, consistent with *Foot Locker*, *PayPal*, *Mattel* and the other well-established precedent discussed above, the Proposal is properly excludable under Rule 14a-8(i)(7) because it seeks disclosure concerning adherence to the Company's existing ethical business practices and policies applicable to its suppliers (*i.e.*, the Vendor Code), which relate to the Company's ordinary business operations.

D. The Proposal Does Not Focus On Any Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations.

The well-established precedent set forth above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). While the 1998 Release indicated that proposals that "focus on" significant social policy issues may not be excludable under Rule 14a-8(i)(7), in contrast, proposals with passing

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references touching upon topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7).

The Proposal does not raise issues that transcend the Company’s ordinary business. The fact that the Supporting Statement cites “[a]n alarming safety incident” that “occurred at a [Company] facility” does not make workplace safety unique or transcendent to the Company, as the supporting statements in both *The Chemours Co.* and *Pilgrim’s Pride* cited unfortunate workplace incidents that occurred at those companies. To the contrary, the Supporting Statement acknowledges that the Company maintains policies and practices regarding the safety of vendors’ workers at Company properties—i.e. the Vendor Code—and has assigned oversight of safety to a Board committee through the NCGC’s oversight of the ESG Steering Committee. The Company acknowledges that workplace accidents can be very serious and agrees that workplace safety issues are important. However, nothing about the Proposal, which refers broadly to “the impact of the [C]ompany’s policies and practices on the health and safety of workers,” and addresses safety concerns with the workers employed by the Company’s vendors, raises it beyond the day-to-day safety management issues that are incident to the Company’s ordinary business operations.

Consistent with long-established Staff precedent, merely referencing topics in passing that might raise significant social policy issues, but which have only tangential implications for the issues that constitute the central focus of a proposal, do not transform an otherwise ordinary business proposal into one that transcends ordinary business. To this end, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant social policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, the proposal in *Union Pacific Corp.* (avail. Feb. 25, 2008) addressed safety concerns in the course of the company’s operations and requested disclosures of the company’s efforts to safeguard the company’s operations from terrorist attacks and “other homeland security incidents.” The company argued that the proposal was excludable because the proposal related to the company’s day-to-day efforts to safeguard its operations—including not only terrorist attacks, but also earthquakes, floods, and other routine operating risks that were overseen by the Department of Homeland Security but were incident to the company’s ordinary business operations. The Staff’s response noted that the proposal was excludable because it “include[d] matters relating to [the company’s] ordinary business operations,” despite the fact that safeguarding against terrorist attacks might be viewed as not part of the company’s ordinary business. *See also Walmart Inc.* (avail. Apr. 8, 2019) (“*Walmart 2019*”) (concurring with the exclusion of a proposal requesting that the board prepare a report evaluating the risk of discrimination that may result from the company’s policies and practices for hourly workers taking absences from work for personal or family illness because it related to the company’s ordinary business operations, i.e., the

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company's management of its workforce, and "[did] not focus on an issue that transcends ordinary business matters"); *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019) ("*Amazon 2019*") (concurring with the exclusion of a proposal requesting a report on the company's "analysis of the community impacts of [the company's] operations" where although the proposal might have touched on significant inequality concerns, the proposal was so broadly worded that the Staff concurred that the proposal did not focus on any single issue that transcended the company's ordinary business); *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) (concurring with the exclusion of a proposal requesting "enhance[d] fiduciary oversight of matters relating to customer service and satisfaction" where the proponent argued that it implicated significant policy issues related to board oversight and accountability and mismanagement of consumer relations and the supporting statement contained references to "insurance abuse," "social harm[s]," and "disregard for lawful conduct"); *Amazon.com, Inc.* (avail. Mar. 1, 2017) ("*Amazon 2017*") (concurring with the exclusion of a proposal that requested adoption and publication of principles for minimum wage reform); *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal requesting that the board require suppliers to certify that they had not violated animal cruelty-related laws, finding that while animal cruelty is a significant social policy issue, the scope of laws covered by the proposals was too broad); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that "some of the principles relate to [the company's] ordinary business operations").

Here, the Proposal's broad application to the "the impact of the [C]ompany's policies and practices on the health and safety of workers, including the health [and] safety of workers on Company properties" encompasses matters incident to the Company's (and many other businesses') ordinary business operations, ranging from injury and illness (including matters of simple first-aid) to processes to hire, vet, negotiate with, and terminate contracts with suppliers and compliance with various laws, regulations, and industry standards. Thus, the Proposal's broad scope renders the Proposal excludable because the report requested by the Proposal implicates the Company's ordinary business. As with the proposal in *Union Pacific Corp.*, even if certain aspects of the Company's safety policies and practices were deemed to implicate significant policy issues (which the Company does not believe is the case), the Proposal's broad request does not transcend the day-to-day safety management issues that are incident to the Company's ordinary business operations, and as such, the Proposal is properly excludable under Rule 14a-8(i)(7).

The Company is aware that the Staff has been unable to concur with the exclusion of workforce safety proposals under Rule 14a-8(i)(7) where the proposal related to impacts of company policies on workforce safety. For example, in *Amazon.com Inc.* (avail. Apr. 6, 2022) ("*Amazon 2022*"), the proposal requested that the company commission an audit and

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report on “working conditions and treatment that [company] warehouse workers face, including the impact of its policies, management, performance metrics, and targets” and in *Dollar General Corp.* (avail. Mar. 31, 2023) (“*Dollar General 2023*”), the proposal requested that the Company commission an audit on “the impact of the company’s policies and practices on the safety and well-being of workers.” In *Dollar General 2023*, the Staff noted that the proposal “transcend[ed] ordinary business matters because it raises human capital management issues with a broad societal impact.” In both *Amazon 2022* and *Dollar General 2023*, the applicable proposal raised concerns about the company’s role in creating unsafe working conditions and specific company practices that led to violations of OSHA standards. Specifically, in *Amazon 2022*, the proposal raised concerns about company injury rates higher than those in the company’s industry and specific policies and practices that prioritized quotas and led to safety violations, and the proposal in *Dollar General 2023* raised concerns about a violent environment plagued by gun violence and company practices that prioritized profit over employee safety. Here, the Proposal is distinguishable from these precedents because the Proposal focuses on “the health [and] safety of workers on Company properties,” rather than the health and safety of Company employees, and the Proposal does not contain any allegations that the Company has violated any laws or regulations or that the Company’s policies or practices have caused safety violations or created an unsafe environment for the Company’s employees. Specifically, the Supporting Statement clarifies that the Proposal is “concerned with the Company’s oversight of workplace health and safety at [Company] facilities, including its oversight of external operators and vendors” and the singular safety incident cited by the Supporting Statement involved an employee hired by a contractor of the Company’s third-party development partner. Unlike in *Amazon 2022* and *Dollar General 2023*, the Proposal does not raise human capital management issues with a broad societal impact, because the focus of the Proposal is on the safety of employees of third-party vendors and therefore relates to the Company’s oversight of third-party compliance with the Company’s Vendor Code as it applies to health and safety as well as to relationships between the Company and its suppliers.

The Company is also aware that the Staff has been unable to concur with the exclusion of proposals related to company policies involving suppliers or ethical business practices under Rule 14a-8(i)(7) where the proposals requested review of specific topics that transcend ordinary business matters. For example, in *The Walt Disney Co. (National Legal and Policy Center)* (avail. Jan. 19, 2022), the proposal requested a “report on the process of due diligence, if any, that the Company undertakes in evaluating the *human rights impacts* of its business and associations with foreign entities, including foreign governments, their agencies, and private sector intermediaries” and the Company argued that the proposal related to the company’s “adherence to ethical business practices and policies” (emphasis added). Similarly, in *Pilgrim’s Pride Corp.* (avail. Mar. 19, 2021), the proposal requested a “report assessing if and how the company plans to increase the scale, pace, and rigor of its efforts to reduce *water pollution* from its supply chain” including “plans to verify suppliers’

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compliance with [the company’s] policies” and the company argued that the proposal related to supply chain management and supervision of supplier conduct (emphasis added). Here, the Proposal is distinguishable because, rather than focusing specifically on a particular policy that the Staff has indicated transcends ordinary business operations, such as human rights impacts or water pollution, the Proposal focuses on the Company’s policies and practices related to supplier relationships and workforce safety, two matters that the Staff has consistently viewed as ordinary business matters. In this regard, the Proposal is similar to the proposal in *Home Depot 2020*, which the Staff concurred as excludable under Rule 14a-8(i)(7) notwithstanding references to forced prison labor. Like in *Home Depot 2020*, the Proposal is concerned with the manner in which the Company monitors its suppliers’ conduct, including what practices the Company encourages its suppliers to pursue or address, and is thus properly excludable under Rule 14a-8(i)(7).

In Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff stated that it “will realign its approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in [the 1976 Release] . . . and which the Commission subsequently reaffirmed in the 1998 Release.” As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has “a broad societal impact, such that [it] transcend[s] the ordinary business of the company.” The Staff noted further that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company” (citing to the 1998 Release and *Dollar General Corp.* (avail. Mar. 6, 2020) (“*Dollar General 2020*”) and providing “significant discrimination matters” as an example of an issue that transcends ordinary business matters). This guidance does not affect the excludability of the Proposal because, unlike *Dollar General 2020*, the Proposal does not raise significant discrimination matters or board oversight of human capital issues, and does not focus on any other issue “with a broad societal impact” such that it transcends ordinary business matters. Instead, as discussed above, the Proposal focuses on general workforce safety and supplier relationship concerns that the Staff has consistently determined over the years do not transcend ordinary business.

Accordingly, consistent with the precedent cited above, because the Proposal relates to ordinary business matters—workplace safety—and does not focus on a significant social policy issue, the Proposal may be excluded under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(7).

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We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 351-2309.

Sincerely,



Lori Zyskowski

Enclosures

cc: Matthew McQueen, Welltower Inc.
Maureen O'Brien, Segal Marco Advisors
Kenton Day, Central Laborers' Pension Fund

EXHIBIT A



Central Laborers' Pension Fund

<http://www.central-laborers.com>

December 13, 2023

Via regular mail and email: [REDACTED]

Matthew G. McQueen
EVP, General Counsel & Corporate Secretary
Welltower Inc.
4500 Dorr Street
Toledo, Ohio 43615

RE: Shareholder Proposal Submission for 2024 Stockholder's Meeting

Dear Mr. McQueen,

In my capacity as Executive Director of the Central Laborers Pension Fund (the "Fund"), I write to give notice that pursuant to the 2023 proxy statement of Welltower Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2024 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting. Please note that the Central Laborers Pension Fund is the lead filer on this proposal.

A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock is being sent separately. The Fund also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally.

Fund representatives are available to meet with the Company in person or via teleconference on January 8, 2024, or January 9, 2024, at 11:00 a.m. EST.

Representation – Important Notice

Please be advised that we will hereafter be using a representative regarding the management of this proposal. Please send a copy of any correspondence regarding this proposal including deficiency notices, no-action requests or engagement scheduling to Maureen O'Brien,

[REDACTED] I authorize the representative to speak on my behalf, negotiate withdrawal of the proposal and engage with the company and its representatives.

Sincerely,

A handwritten signature in cursive script that reads "Kenton W. Day".

Kenton Day
Executive Director

RESOLVED: Shareholders of Welltower Inc. (“Welltower” or the “Company”) request that the Board of Directors commission an independent third-party audit on the impact of the company’s policies and practices on the health and safety of workers, including the health of safety of workers on Company properties. A report on the audit, prepared at reasonable cost and omitting proprietary information, should be made available on the company’s website.

SUPPORTING STATEMENT

Ensuring the safety of Welltower’s business operations is not only a legal and regulatory responsibility, but also a vital component of maintaining the financial health and reputation of the Company. As Welltower reaffirms, “By providing a safe work environment, we not only protect our employees, tenants and visitors, we protect our bottom line.”¹

Shareholders are concerned with the Company’s oversight of workplace health and safety at Welltower facilities, including its oversight of external operators and vendors. There are heightened concerns related to the use of operators and other third parties that may violate the company’s Vendor Code of Conduct² and operate in conflict with Welltower’s commitment to provide a safe work environment, which could present financial, legal, regulatory and reputational risks to the Company and shareholders.

An alarming safety incident occurred at a Welltower facility, operated by The Bernstein Companies, located at 500 East 8th Street, Kansas City, Missouri.³ On July 17, 2023, Jose Garcia Sanchez, an employee performing work for a contractor of The Bernstein Companies, New Horizons Enterprises LLC, fell to his death from the building’s 14th floor.⁴ Since the incident, the Occupational Safety and Health Administration (OSHA) has opened investigations into The Bernstein Companies, New Horizons, and Infinity Resources Enterprises, LLC, the temp agency that employed Mr. Sanchez for New Horizons. Reports also indicate that New Horizons has been the subject of numerous OSHA safety investigations, ten of which were categorized as “serious” violations.⁵

This has implications for Welltower and shareholders. As the Company reiterates in its 2022 10-k, “Our operators’ or tenants’ failure to comply with [OSHA] laws, regulations, or standards could result in loss of accreditation, denial of reimbursement, imposition of fines, suspension, decertification or exclusion from federal and state health care programs, civil liability, and in certain limited instances, criminal penalties, material restrictions on or loss of license, closure of the facility and/or the incurrence of considerable costs arising from an investigation or regulatory action.”⁶

¹ https://welltower.com/wp-content/uploads/2020/09/Welltower_CSRreport_GRI_2018.pdf

² <https://welltower.com/vendor-code-of-conduct>

³ <https://welltower.com/wp-content/uploads/2022/05/1Q22-Welltower-Facility-Address-List.xlsx>

⁴ <https://www.kansascity.com/news/local/article278272853.html>

⁵ <https://www.kansascity.com/news/local/article278272853.html>

⁶ <https://www.sec.gov/ix?doc=/Archives/edgar/data/766704/000076670423000010/well-20221231.htm>

This incident raises questions as to whether Welltower's vendors stand in violation of Welltower's Vendor Code of Conduct, to what extent Welltower conducts diligence on vendor compliance, and what actions Welltower takes when violations or potential violations occur.

Welltower maintains policies⁷ that purport to foster a safe work environment and has assigned the Board's ESG Steering Committee responsibility for health and safety, yet Mr. Sanchez's death and other workplace practices suggest further investigation is warranted.

Shareholders would benefit from independent reporting on the effectiveness of Welltower's policies and practices.

⁷ <https://welltower.com/vendor-code-of-conduct>; <https://welltower.com/human-rights-statement>

February 27, 2024

VIA INTERNET SUBMISSION

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

Re: *Welltower Inc.*
Shareholder Proposal of Central Laborers' Pension Fund
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

In a letter dated January 19, 2024 (the "No-Action Request"), we requested that the staff of the Division of Corporation Finance concur that our client, Welltower Inc., could exclude from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders a shareholder proposal and statement in support thereof (the "Proposal") received from Central Laborers' Pension Fund (the "Proponent"). Enclosed as Exhibit A is a letter from the Proponent, dated February 27, 2024, withdrawing the Proposal. In reliance thereon, we hereby withdraw the No-Action Request.

Please do not hesitate to call me at (212) 351-2309 if you have any questions.

Sincerely,



Lori Zyskowski

Enclosure

cc: Matthew McQueen, Welltower Inc.
Maureen O'Brien, Segal Marco Advisors
Kenton Day, Central Laborers' Pension Fund

EXHIBIT A



Central Laborers' Pension Fund

P.O. Box 1267 • Jacksonville, Illinois 62651 • Phone 217/243-8521 • Fax 217/245-1293

<http://www.central-laborers.com>

February 27, 2024

Via email: mmcqueen@welltower.com; smakowsky@welltower.com

Matthew G. McQueen
EVP, General Counsel & Corporate Secretary
Welltower Inc.
4500 Dorr Street
Toledo, Ohio 43615

RE: Shareholder Proposal Submission for 2024 Stockholder's Meeting

Dear Mr. McQueen,

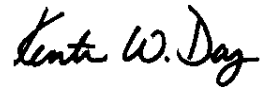
In my capacity as Executive Director of the Central Laborers' Pension Fund (the "Fund"), I write to give notice that the Fund is withdrawing its shareholder proposal that it intended to present at the 2024 annual meeting of shareholders of Welltower Inc. (the "Company") in response to the following actions taken by the Company:

1. The Company provided notice to applicable business partners requesting that they do not engage New Horizons Enterprises, LLC, for a Welltower project; and
2. The Company committed to propose changes to the Company's Vendor Code of Conduct for approval by the Board of Directors, intended to be implemented no later than the Company's 2024 annual meeting of shareholders, to:
 - a. Explicitly identify indirect vendors as parties the Company expects to comply with the Vendor Code of Conduct, including that any reference to "vendors" in the code of conduct applies equally to "indirect vendors";
 - b. Expand the "Compliance with Laws and Regulations" section to include laws and regulations pertaining to employment rights and workplace health and safety;
 - c. Modify language in the "Health and Safety" section to obligate vendors (e.g., use of "shall") to follow all applicable laws, regulations and other governmental directives to promote a safe and healthy workplace, and add new language that encourages vendors to implement recognized workplace systems, procedures and controls for health and safety that are in compliance with national standards;
 - d. Modify language in the "Human Rights and Labor Practices" section to add that vendors are required to comply with applicable wage and hour laws and regulations including related to minimum wages, overtime hours, permitting adequate rest and providing legally mandated benefits;

- e. Require vendors to maintain policies, procedures and controls that support and align with the Vendor Code of Conduct; and
- f. Include that the Company may require removal of any vendor that is not in compliance with our code.

We appreciate your willingness to collaborate as well as the steps the Company has taken in response to the shareholder proposal.

Sincerely,

A handwritten signature in black ink that reads "Kenton W. Day". The signature is written in a cursive, flowing style.

Kenton Day
Executive Director