



DIVISION OF  
CORPORATION FINANCE

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

March 6, 2023

Elizabeth A. Ising  
Gibson, Dunn & Crutcher LLP

Re: Elevance Health, Inc. (the "Company")  
Incoming letter dated December 21, 2022

Dear Elizabeth A. Ising:

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

The Proposal asks the Company to adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from the Company agree to report to the Company, at least annually, the organization's expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on the Company's website.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(6). In our view, the Company would not lack the power or authority to implement the Proposal.

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

Sincerely,

Rule 14a-8 Review Team

cc: Laura Campos  
Nathan Cummings Foundation

December 21, 2022

**VIA E-MAIL**

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

Re: *Elevance Health, Inc.*  
*Shareholder Proposal of the Nathan Cummings Foundation*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Elevance Health, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from the Nathan Cummings Foundation (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 2023 Proxy Materials with the Commission; and
- concurrently sent a copy 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 (including correspondence regarding the status of any negotiations with the Company), a copy of that 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:** The shareholders of Elevance Health, Inc. (“Elevance” or “Company”) ask the Company to adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Elevance agree to report to Elevance, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Elevance’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i).

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, are 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 2023 Proxy Materials pursuant to Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal in the manner that the Proposal requests.

## ANALYSIS

### **The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because The Company Lacks The Power Or Authority To Implement The Proposal In The Manner That The Proposal Requests**

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal “[i]f the company would lack the power or authority to implement the proposal.” Notably, the Commission has stated that exclusion under Rule 14a-8(i)(6) “may be justified where *implementing the proposal would require intervening actions by independent third parties.*” Exchange Act Release No. 40018 at n.20 (May 21, 1998) (emphasis added).

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The Proposal requests that the Company “adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from [the Company] agree to report to [the Company], at least annually, the organization’s expenditures for political activities,” which the Company would then be required to post publicly on its website (such policy, the “Requested Policy”). It is clear, based on its express terms, that the Requested Policy requires and depends upon action by independent third parties (*i.e.*, certain organizations agreeing to provide, and actually providing, the Company details pertaining to their political expenditures and consenting to the Company’s public posting of such details), and it is not within the Company’s power or authority to guarantee that “any” such organizations would comply with such a policy or request by the Company.

If the broadly-worded Requested Policy were implemented, it would be triggered any time a third-party covered organization “seeks financial support from [the Company],” would apply to any kind of request to the Company for financial support (whether or not related to political expenditures) and would require the third-party covered organization to report the requested information. Thus, implementation of the Proposal is wholly dependent on the willingness of third-party organizations to comply with the Requested Policy, and the Company’s dependence on those third parties renders the Requested Policy impossible to enforce. Said differently, the Company cannot compel third parties that only seek financial support from it, over which the Company exercises no control, to provide the Company with potentially confidential and proprietary information related to such third parties’ political expenditures.

Moreover, because the Requested Policy broadly applies to organizations that merely *seek* financial support from the Company (as opposed to those organizations that actually receive financial support), the Company would be required to both request and then compel disclosure from third parties to whom it may choose not to contribute and with whom it may not have any relationship whatsoever, as the Company does not provide financial support to every organization that seeks financial support. In addition, the Requested Policy would apply even to organizations with whom the Company has a relationship that is unrelated to the Company’s political activity (and where the Company’s form of financial support is not political in nature). For example, if the Company provides financial support to a community organization or an individual customer, the Requested Policy would require the Company to condition such support on detailed political expenditure reports by such organization or individual. The foregoing is not only impractical and inappropriate, but also beyond the Company’s power to enforce. The Proposal, therefore, involves the very kind of situation envisioned by the Commission when it stated that exclusion would be appropriate, because implementing and applying the Requested Policy would require intervening actions by independent third parties.

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The Staff has consistently concurred with the exclusion of proposals where it was not within the power of a company to guarantee compliance with the terms requested by the proposal. For example, in *The Goldman Sachs Group, Inc.* (avail. Jan. 28, 2015) (“*Goldman 2015*”), a shareholder proposal requested that the company adopt a policy that its chairman be an independent director. The company argued that the proposal did not provide an opportunity or mechanism to cure a situation where the chairman failed to maintain his or her independence, and that it could not guarantee that an independent director would “(1) be elected to the [b]oard by the [c]ompany’s shareholders, (2) be elected as Chairman by the members of the board, (3) be willing to serve as Chairman, and (4) remain independent at all times while serving as Chairman.” The Staff concurred with exclusion pursuant to Rule 14a-8(i)(6), noting that “it appears that the proposal is beyond the power of the board to implement” because “it does not appear to be within the power of the board of directors to ensure that its chairman retains his or her independence at all times.” See also *The Goldman Sachs Group, Inc.* (avail. Mar. 25, 2010) (concurring with the exclusion of a proposal under Rule 14a-8(i)(6) because it did not “appear to be within the power of the board of directors to ensure that each member of the compensation committee meets the requested criteria at all times”); *Allegheny Technologies Incorporated* (avail. Mar. 1, 2010) (same); *Time Warner, Inc.* (avail. Feb. 22, 2010) (same); *Honeywell International Inc.* (avail. Feb. 18, 2010) (same). As in *Goldman 2015*, where the Staff concurred with the exclusion of a proposal because the company could not ensure compliance with the terms of the requested policy (*i.e.*, that the chairman would always be independent), the Company likewise lacks the power to implement the Proposal because the Company cannot guarantee compliance with the Requested Policy. The detailed disclosure required under the Requested Policy, which must include each third-party covered organization’s “expenditures for political activities, including the amount spent and the recipient,” can only be provided by third-party organizations. However, the Company has no control to compel action from such third-party organizations before the Company establishes a business relationship with such organizations and has no means of oversight to ensure that such organizations would provide complete and accurate disclosure. The Proposal, therefore, is excludable pursuant to Rule 14a-8(i)(6).

The Staff has also concurred with the exclusion of proposals requiring action by an entity over which the company to whom the proposal was submitted has no control. For example, in *eBay Inc.* (avail. Mar. 26, 2008), the Staff concurred that a proposal requesting that the company enact a policy prohibiting the sale of dogs and cats on the website of a joint venture owned by a wholly owned subsidiary of the company and TOM Online Inc. (an independent online portal and wireless internet company headquartered in China), in which the company had no role in day-to-day operations and over which it had no operating control, was excludable pursuant to Rule 14a-8(i)(6). The company argued that because of the nature of its joint venture-relationship, it lacked the power or authority to take the action that would be required by the proposal, and the Staff concurred that relief was merited. Similarly, the Staff concurred with

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exclusion of a proposal in *Beckman Coulter, Inc.* (avail. Dec. 23, 2008) requesting that the company implement a set of executive compensation reforms at The Bank of New York Mellon, an unaffiliated bank which served as a trustee for the company under an indenture agreement. The company argued that it was impossible for it to implement the reforms requested by the proposal because it did “not directly or indirectly control” the bank nor did it “have any direct or indirect interest” in the bank. The company further argued that while the bank served as a trustee for the company under an indenture, “this contractual relationship [did] not give the [c]ompany the power or the authority to implement or influence the executive compensation reforms raised in the [p]roposal,” and the Staff concurred that relief was merited pursuant to Rule 14a-8(i)(6). See also *Catellus Development Corp.* (avail. Mar. 3, 2005) (concurring with the exclusion under Rule 14a-8(i)(6) of a proposal requesting that the company take certain actions related to property it managed but no longer owned); *Ford Motor Co.* (avail. Mar. 9, 1990) (concurring with the exclusion of a proposal under the predecessor to Rule 14a-8(i)(6) because the proposal “relate[d] to the activities of companies other than the [c]ompany [to whom the proposal was submitted] and over whom the [c]ompany ha[d] no control”); *Harsco Corp.* (avail. Feb. 16, 1988) (concurring with the exclusion under the predecessor to Rule 14a-8(i)(6) of a proposal requesting that the board of directors sign and implement a statement of principles relating to employment in South Africa where the company’s only involvement with employees in South Africa was its ownership of 50% of the stock of a South African entity, and the owner of the remaining 50% interest had the right to appoint the entity’s chairman, who was empowered to cast the deciding vote in the event of a tie).

Similar to *eBay* and *Beckman Coulter*, the Company does not have the power or authority to unilaterally compel political expenditure disclosure from third-party organizations as would be required by the Requested Policy, let alone compel such disclosure annually or with the level of detail prescribed by the Proposal. The Company has no control over third-party organizations that merely seek its financial support nor is it involved in their day-to-day operations. Furthermore, the relationship between the Company and third-party organizations seeking its financial support appears to be even more attenuated than the relationships found in *eBay* and *Beckman Coulter*. Because the proposal covers any covered organization merely seeking financial support from the Company, there would not necessarily exist contractual agreements of any sort between the entities such as the joint venture in *eBay* or the indenture in *Beckman Coulter*. In fact, where the Company’s financial support is solicited but not given, the Company may not have any business relationship with the third-party organization. Any such disclosure would have to be voluntarily produced by the organizations seeking financial support, and the Company lacks any power or authority to compel such action.

Additionally, the decision to publicly report on the information requested by the Proposal is a matter under the purview and control of the third-party organizations seeking financial support from the Company, not the Company itself. The Company has no power to direct or mandate

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that organizations seeking financial support agree, simply as a condition of their request for financial support (which may be completely unsolicited by the Company), to provide annual disclosures to the Company that will subsequently be publicly disclosed by the Company.

Accordingly, for the reasons set forth above and consistent with the aforementioned precedents, the Proposal is excludable under Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

### CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2023 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Kathleen S. Kiefer, Elevance Health, Inc.  
Laura Campos, The Nathan Cummings Foundation

**EXHIBIT A**



November 4, 2022

Corporate Secretary  
Elevance Health, Inc.  
220 Virginia Avenue  
Mail No. IN0204-A381  
Indianapolis, Indiana 46204

Re: Shareholder proposal submitted by the Nathan Cummings Foundation

To Whom It May Concern:

I write concerning a shareholder proposal (the "Proposal") submitted to Elevance Health, Inc. (the "Company") by the Nathan Cummings Foundation. The Nathan Cummings Foundation is an endowed institution with approximately \$450 million of investments. As an institutional investor, the Foundation believes that the way in which a company approaches environmental, social, and governance issues has important implications for long-term shareholder value.

It is with these considerations in mind that the Nathan Cummings Foundation is submitting the attached Proposal pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of Elevance Health, Inc. The Nathan Cummings Foundation is the lead filer of the Proposal.

As of November 4, 2022, the Nathan Cummings Foundation beneficially owned, and had beneficially owned continuously for at least three years, shares of the Company's common stock worth at least \$2,000 (the "Shares"). Verification of this ownership, provided by our custodian, Amalgamated Bank, is included herewith. Amalgamated Bank has acted as record holder of the Shares and is a DTC participant. The Nathan Cummings Foundation intends to continue to hold the Shares through the date of the Company's 2023 annual meeting of shareholders.

I am available to meet to discuss the proposal via teleconference on November 21<sup>st</sup> between 11:00 a.m. and 3:00 p.m. Eastern or on November 22<sup>nd</sup> between noon and 2:00 p.m. Eastern. Please contact me at [REDACTED]@nathancummings.org if you would like to arrange a time to speak.

Sincerely,



Laura Campos  
Director, Corporate & Political Accountability

**Resolved:** The shareholders of Elevance Health, Inc. (“Elevance” or “Company”) ask the Company to adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Elevance agree to report to Elevance, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Elevance’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i).

### **Supporting Statement**

As long-term Elevance shareholders we support transparency and accountability in corporate electoral spending, including the indirect political spending that is the subject of this proposal. Misaligned or non-transparent funding creates reputational risk that can harm shareholder value. It can also place a company in legal jeopardy. Unless a company knows which candidates and political causes its funds ultimately support, it cannot assure shareholders, employees, or other stakeholders that its spending aligns with core values, business objectives, and policy positions. Without the information requested by this resolution, none of the board, senior management, or shareowners can assess the risks associated with political spending.

The risks are especially serious when giving to trade associations, Super PACs, 527 committees, and “social welfare” organizations – groups that routinely pass money to or spend on behalf of candidates and political causes that a company might not otherwise wish to support. The Conference Board’s 2021 “Under a Microscope” report<sup>1</sup> details these risks, discusses how to effectively manage them, and recommends the process suggested in this proposal.

Media coverage has amplified the risk a company’s blind spending can pose. Corporate spending has been tied to attacks on voting rights and efforts to deny climate change – associations many companies wish to avoid. Contributions to third-party groups can also embroil companies in scandal. For instance, FirstEnergy Corp was tainted when it contributed to a political advocacy organization that later pled guilty to the state’s largest bribery scheme. FirstEnergy’s stock price dropped, and the scandal led to the resignation of several top officers.

Public records show that the corporation currently known as Elevance has contributed at least \$12.7 million in corporate funds to third-party groups since 2010. It is unclear whether Elevance and its board received sufficient information from these groups to assess (a) the potential risks for the Company and stockholders, and (b) whether the groups’ expenditures aligned with Elevance’s core values, business objectives, and policy positions.

Mandating reports from third-party groups receiving Elevance’s political money would demonstrate the Company’s commitment to robust risk management and responsible civic engagement.

We urge a vote FOR the commonsense risk management measures contained in this proposal.

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<sup>1</sup> <https://www.conference-board.org/topics/corporate-political-activity/Under-a-Microscope-A-New-Era-of-Scrutiny-for-Corporate-Political-Activity>

January 19, 2023

Via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Request by Elevance Health Inc. to omit proposal submitted by the Nathan Cummings Foundation

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the Nathan Cummings Foundation (the “Proponent”) submitted a shareholder proposal (the “Proposal”) to Elevance Health Inc. (“Elevance” or the “Company”). The Proposal asks Elevance to adopt a policy (the “Policy”) requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Elevance agree to report to Elevance, at least annually, the organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Elevance’s website.

In a letter to the Division dated December 21, 2023 (the “No-Action Request”), Elevance stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company’s 2023 annual meeting of shareholders. Elevance argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(6), on the ground that the Company lacks the power or authority to implement the Proposal. As discussed more fully below, Elevance has not met its burden of proving its entitlement to exclude the Proposal on that basis, and the Proponent respectfully requests that the Company’s request for relief be denied.

### **The Proposal**

The Proposal states:

**Resolved:** The shareholders of Elevance Health, Inc. (“Elevance” or “Company”) ask the Company to adopt a policy requiring that any trade association, social welfare organization, or organization organized and operated primarily to engage in political activities that seeks financial support from Elevance agree to report to Elevance, at least annually, the

organization’s expenditures for political activities, including the amount spent and the recipient, and that each such report be posted on Elevance’s website.

For purposes of this proposal, “political activities” are (i) influencing or attempting to influence the selection, nomination, election, or appointment of any individual to a public office; or (ii) supporting a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures to engage in the activities described in (i).

### **The Proposal is Not Beyond the Company’s Power or Authority to Implement**

Rule 14a-8(i)(6) allows exclusion of a proposal that the company lacks the power or authority to implement. According to Elevance, it lacks the power or authority to implement the Proposal because doing so would require organizations not under Elevance’s control to take action. That argument reflects a misconception regarding how the Proposal is intended to work and the organizations to which it would apply.

#### *Background*

For the past decade and a half, shareholders have submitted proposals addressing corporate political spending, motivated by concern about the risks such spending can create for companies. In the main, these proposals have sought additional disclosure regarding companies’ contributions—both direct and indirect through trade associations and other intermediaries—decision making processes, and board oversight, to help shareholders evaluate risk as well as alignment between contributions and company values and public positions. Proposals on political spending have spurred beneficial changes in disclosure practices.

Risks are heightened when political spending occurs through intermediaries, because organizations may use corporate contributions in ways that generate controversy or are contrary to companies’ public positions and expressed values. For example, in 2016 North Carolina prohibited local governments from adopting LGBTQ protections, after the City of Charlotte expanded its antidiscrimination law to cover gender identity.<sup>1</sup> Companies that had donated to the Republican State Leadership Committee (“RSLC”), which helped Republicans take control of North Carolina’s legislature, or to trade associations and other organizations that in turn donated to the RSLC, came under scrutiny. More than 30 companies whose funds ended up in the RSLC signed a letter to North Carolina’s governor opposing the law, with several publicly stating that the law conflicted with their own corporate policies and values.<sup>2</sup> The North Carolina example

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<sup>1</sup> <https://www.npr.org/sections/thetwo-way/2016/03/24/471700323/north-carolina-passes-law-blocking-measures-to-protect-lgbt-people>

<sup>2</sup> [https://www.huffpost.com/entry/corporations-lgbt-north-carolina\\_n\\_5720f5f4e4b0b49df6a9d76d](https://www.huffpost.com/entry/corporations-lgbt-north-carolina_n_5720f5f4e4b0b49df6a9d76d); for additional examples, see <https://www.politicalaccountability.net/wp-content/uploads/2021/08/Conflicted-Consequences.pdf>, at 5.

illustrates the additional risks and complexity associated with involvement of multiple intermediaries.

When asked to disclose spending through intermediaries or when challenged about an intermediary’s funding choices, some companies respond that they are unaware of the ultimate recipient(s) because the intermediaries do not provide that information. The Proposal is intended to rectify that situation, by imposing a condition for trade associations and other politically-oriented organizations (collectively, “Political Entities”) seeking funding from Elevance. Under the Proposal, Political Entities would need to agree to report to Elevance, at least annually, on the Political Entities’ political activities, including amounts donated and recipients. If a Political Entity declines to do so, funding will not occur, per the Policy.

*The Proposal is not Beyond Elevance’s Power or Authority to Implement*

Elevance depicts the Proposal as imposing an overly burdensome process in which the Company would be put in the impossible position of demanding information from every person and organization that sought funding from it and risking being out of compliance with the Policy if an organization refused. But that account overlooks the fact that the information request would function as a screen for Political Entities seeking funding; if they declined to provide the requested data, Elevance could simply elect not to fund them and no further action would be required from Elevance.

The Proponent intentionally drafted the Proposal in a way that avoids requiring information from a Political Entity to which Elevance has already provided funding—in other words, applying retroactively--for exactly the reason Elevance describes in the No-Action Request. Instead, the Policy suggested in the Proposal would require action only on Elevance’s part—requesting information from a Political Entity when it asks for funds—whether for the first time or as a renewal of an existing arrangement. Providing the requested information would be a condition of funding, and if a Political Entity decided against agreeing to furnish it, the Policy would not be violated. Thus, it is not true that “the Company cannot guarantee compliance with the Requested Policy,” as Elevance asserts.<sup>3</sup> Rather, the Policy would be complied with when Elevance made the request, regardless of outcome. No other person or entity’s action would be necessary to implement the Proposal.

That only Elevance would need to take action pursuant to the Policy sets the Proposal apart from the proposals in the determinations Elevance cites. Several of those determinations involved proposals urging boards to adopt policies requiring that the board chair or members of the board’s compensation committee be independent. In each case, the company argued that because shareholders elect directors, not the board, the board was not capable of ensuring compliance with an independence policy and the Staff concurred.

Specifically, the Staff remarked when granting relief on the compensation committee independence proposals that they did not give the board an opportunity or mechanism to cure non-compliance—for example, excusing non-compliance if a sufficient number of independent

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<sup>3</sup> No-Action Request, at 4.

directors were not available and/or willing to serve on the committee. Thus, compliance with the proposed policies depended on shareholders electing directors satisfying the policy criteria. That is not the case here. It is worth noting that proposals providing a carveout in situations where compliance was impossible have survived challenges urging exclusion pursuant to Rule 14a-8(i)(6).<sup>4</sup>

The proposal in eBay,<sup>5</sup> on which Elevance also relies, asked the company to stop selling dogs and cats on an internet-based marketplace website owned by a joint venture between a subsidiary of the company and a Chinese firm. eBay argued that the proposal was excludable as beyond its power or authority to implement because the Chinese firm had control of the joint venture, owning 51% of it, while the eBay subsidiary owned 49%. Accordingly, the Chinese firm's cooperation would have been required to adopt the requested policy. Lack of control or ownership also supported exclusion pursuant to Rule 14a-8(i)(6) in the Beckman Coulter,<sup>6</sup> Catellus Development,<sup>7</sup> Ford,<sup>8</sup> and Harsco<sup>9</sup> determinations cited by Elevance. Because the Policy would require action only by Elevance, those determinations are inapposite.

Elevance also urges that the Policy would have very broad applicability, stating that it "would apply to any kind of request to the Company for financial support (whether or not related to political expenditures). . . . For example, if the Company provides financial support to a community organization or an individual customer, the Requested Policy would require the Company to condition such support on detailed political expenditure reports by such organization or individual."<sup>10</sup> That statement is flatly inconsistent with the clear language of the Proposal.

The Proposal clearly enumerates the Political Entities Elevance would need to ask to provide information on political activities pursuant to the Policy: (1) trade associations, (2) social welfare organizations, and (3) other organizations organized and operated primarily to engage in political activities. Social welfare organizations are non-profit groups that are exempt from taxation under section 501(c)(4) of the Internal Revenue Code and, unlike more common non-profits whose tax exemption stems from Section 501(c)(3),<sup>11</sup> are permitted to engage in unlimited lobbying.<sup>12</sup> Elevance does not appear to disclose its trade association memberships, but it is reasonable to believe they are not numerous. Finally, other organizations only qualify as Political Entities if engaging in politics is their primary purpose. Community groups and individuals, then, would not be asked to provide information on political activities as a condition of seeking funding from Elevance.

<sup>4</sup> See, e.g., General Electric Company (Jan. 10, 2006); The Gap, Inc. (Mar. 18, 2002).

<sup>5</sup> eBay Inc. (Mar. 26, 2008).

<sup>6</sup> Beckman Coulter Inc. (Dec. 23, 2008).

<sup>7</sup> Catellus Development Corp. (Mar. 3, 2005).

<sup>8</sup> Ford Motor Company (Mar. 9, 1990).

<sup>9</sup> Harsco Corp. (Feb. 16, 1988).

<sup>10</sup> No-Action Request, at 3.

<sup>11</sup> <https://www.boardeffect.com/blog/501c3-vs-501c4-vs-501c6/>

<sup>12</sup> <https://charitylawyerblog.com/2010/09/29/social-welfare-organization/>

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For the reasons set forth above, Elevance has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8 (i)(6). The Proponent thus respectfully requests that Elevance's request for relief be denied.

We appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (212) 787-7300 extension 7006.

Sincerely,



Laura Campos

Director, Corporate & Political Accountability

cc: Elizabeth Ising  
Eising@gibsondunn.com