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BY EMAIL (shareholderproposals@sec.gov)

December 23, 2022

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

RE: AbbVie Inc. – 2023 Annual Meeting
Omission of Shareholder Proposal of
Friends Fiduciary Corporation and co-filers¹

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, AbbVie Inc., a Delaware corporation (“AbbVie”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with AbbVie’s view that, for the reasons stated below, it may

¹ The following shareholders have co-filed the Proposal: Benedictine Sisters of Virginia; Bon Secours Mercy Health, Inc.; CommonSpirit Health; Congregation of Divine Providence; Mercy Investment Services, Inc.; Missionary Oblates of Mary Immaculate–United States Province; Northwest & Ethical Investments L.P. (NEI Investments); Northwest Women Religious Investment Trust; Providence St. Joseph Health; the Sisters of Charity of Saint Elizabeth; the Sisters of Charity of the Blessed Virgin Mary; the Sisters of St. Francis of Philadelphia; Stichting Bewaarder Achmea Beleggingspools; and Trinity Health. The co-filers’ submissions and related correspondence are not relevant to this no-action request and have been omitted from the exhibits hereto but may be supplementally provided upon the Staff’s request.

exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Friends Fiduciary Corporation (“Friends Fiduciary”) and co-filers from the proxy materials to be distributed by AbbVie in connection with its 2023 annual meeting of stockholders (the “2023 proxy materials”). Friends Fiduciary and the co-filers are sometimes collectively referred to as the “Proponents.”

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents as notice of AbbVie’s intent to omit the Proposal from the 2023 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponents that if the Proponents submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to AbbVie.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

RESOLVED, that shareholders of AbbVie Inc. (“AbbVie”) ask the Board of Directors to establish and report on a process by which the impact of extended patent exclusivities on product access would be considered in deciding whether to apply for secondary and tertiary patents. Secondary and tertiary patents are patents applied for after the main active ingredient/molecule patent(s) and which relate to the product. The report on the process should be prepared at reasonable cost, omitting confidential and proprietary information, and published on AbbVie’s website.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur with AbbVie’s view that the Proposal may be excluded from the 2023 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to AbbVie’s ordinary business operations.

III. Background

AbbVie received the Proposal via email on November 14, 2022, accompanied by a cover letter from Friends Fiduciary, dated November 14, 2022,

and a letter from US Bank NA, dated November 14, 2022, verifying Friends Fiduciary's continuous ownership of at least the requisite amount of stock for at least the requisite period preceding and including the date of submission of the Proposal. Copies of the Proposal and cover letter are attached hereto as Exhibit A.

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to AbbVie's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As demonstrated below, the Proposal implicates both of these two central considerations.

A. The Proposal relates to AbbVie's ordinary business matters.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."); *see also Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to the products and services offered for sale by a company. *See, e.g., Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report discussing the adequacy of the company's policies in

addressing the social and financial impacts of its direct deposit advance lending service as relating to the ordinary business matter of “products and services offered for sale by the company,” stating in particular that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”; *Pfizer Inc.* (Mar. 1, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing the steps the company has taken to prevent the sale of its medicines to prisons for the purpose of aiding executions, noting that the proposal “relates to the sale or distribution of [the company’s] products”); *The Walt Disney Co.* (Nov. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company’s board of directors approve the release of a specific film on Blu-ray, noting that the proposal “relates to the products and services offered for sale by the company”); *FMC Corp.* (Feb. 25, 2011, *recon. denied* Mar. 16, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking, among other things, an immediate moratorium on sales and a withdrawal from the market of a specific pesticide, as well as other certain pesticides, noting that the proposal “relates to the products offered for sale by the company”); *JPMorgan Chase & Co.* (Mar. 16, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board implement a policy mandating that the company cease its current practice of issuing refund anticipation loans, noting that the proposal related to the company’s “decision to issue refund anticipation loans” and that “[p]roposals concerning the sale of particular services are generally excludable under rule 14a-8(i)(7)”).

More specifically, under those same policy considerations underlying the ordinary business exclusion, the Staff has recognized that decisions regarding intellectual property matters are fundamental to a company’s day-to-day operations and cannot, as a practical matter, be subject to direct shareholder oversight. In *International Business Machines Corporation* (Jan. 22, 2009), for example, the proposal requested that the company take steps to further the advancement of open source software, which the company noted allows recipients to “freely copy, modify and distribute the program source code without paying a royalty fee.” In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal related to the company’s “ordinary business operations (i.e., the design, development and licensing of [the company’s] software products).”

In this instance, the Proposal focuses primarily on how AbbVie decides to safeguard and protect the investments in its innovative medicines via patent rights, which is an ordinary business matter. Specifically, the Proposal’s resolved clause asks AbbVie’s board of directors (the “Board”) to establish and report on a process by which AbbVie would consider the impact of extended patent exclusivities on one particular factor—product access—in deciding whether to apply for secondary and tertiary patents. The Proposal’s supporting statement then goes into detail on aspects of AbbVie’s intellectual property strategy, including the quantity of patents the company has acquired. Read together, the Proposal’s resolved clause and supporting

statement clearly articulate a concern with the ordinary business matter of how AbbVie decides to pursue specific patents associated with the products that it develops and sells.

AbbVie has approximately 75 pipeline programs in mid- and late-stage development, more than 220 research partnerships and a research and development footprint in approximately 20 countries. Decisions with respect to whether, how and when AbbVie applies for patent protection across this broad spectrum of patient-focused scientific discovery are so fundamental to its day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight. These decisions involve numerous scientific considerations, along with the balancing of complex legal factors such as: whether patents meet the recognized standards of novelty, inventive step and utility; laws and regulations relating to effective and fair competition in the many jurisdictions in which AbbVie applies for patent rights; and economic incentives to continue to innovate and develop new treatments, cures and vaccines. In determining whether to apply for a patent and what types of patents to pursue, AbbVie also must consider the timeframe, since obtaining a patent often takes several years and requires passing through a robust and thorough process that involves extensive review by patent examiners and substantive responses by the patent applicant. Balancing these numerous and complex factors is plainly within the ambit of management's operations of AbbVie's ordinary business. Moreover, these decisions are inherently based on confidential, competitively sensitive and proprietary information, underscoring that these decisions are fundamental to management's ability to run the company on a day-to-day basis. Therefore, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to AbbVie's ordinary business operations.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *PetSmart, Inc.* (Mar. 24, 2011), the proposal requested that the company's board require suppliers to certify that they had not violated certain laws regulating the treatment of animals. Those laws affected a wide array of matters dealing with the company's ordinary business operations beyond the humane treatment of animals, which the Staff has recognized as a significant policy issue. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted the company's view that "the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of

administrative matters such as record keeping.” *See also, e.g., CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked the company to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, even if the Proposal were to touch on a potential significant policy issue, the Proposal’s overwhelming concern with how AbbVie decides to apply for a specific category of patents to protect investments in its innovative medicines demonstrates that the Proposal’s focus is on ordinary business matters. In particular, the Proposal’s supporting statement demonstrates this focus by highlighting specific decisions made by AbbVie related to its product development and associated intellectual property decisions. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

B. The Proposal seeks to micromanage AbbVie.

The Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See 1998 Release; see also, e.g., The Coca-Cola Co.* (Feb. 16, 2022); *Deere & Co.* (Jan. 3, 2022); *JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *RH* (May 11, 2018); *Amazon.com, Inc.* (Jan. 18, 2018). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *See 1998 Release.* Recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff explained that a proposal can be excluded on the basis of micromanagement based “on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.”

In this instance, the Proposal seeks to micromanage AbbVie by dictating that AbbVie establish a process by which the impact of specific types of patents on one particular factor—product access—would be considered, and reported on, in deciding whether to file patent applications. The Proposal thus seeks to direct how AbbVie decides whether to protect its investments in innovative new medicines.

As described above, decisions concerning whether, when and how AbbVie applies for patents require complex business judgments by AbbVie’s management

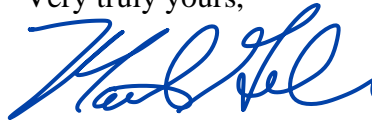
that must account for myriad factors—and these decisions are made countless times in relation to the robust number of assets in AbbVie’s pipeline. In making such decisions, AbbVie’s management must consider and balance these factors, including the science, innovation, legal and regulatory factors, among other matters, and take into consideration confidential, competitively sensitive and proprietary information in doing so. By seeking to impose a specific process on AbbVie’s management of its patents, the Proposal attempts to micromanage AbbVie by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

Accordingly, the Proposal should be excluded from AbbVie’s 2023 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

V. Conclusion

Based upon the foregoing analysis, AbbVie respectfully requests that the Staff concur that it will take no action if AbbVie excludes the Proposal from its 2023 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of AbbVie’s position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff’s response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Perry C. Siatis
Executive Vice President, General Counsel and Secretary
AbbVie Inc.

Amy Carr
Shareholder Advocate
Friends Fiduciary Corporation

Frank Wagemans, on behalf of Stichting Bewaarder Achmea
Beleggingspools
Senior Engagement Specialist
Achmea Investment Management

Andrea Westkamp, OSB
Subprioress and Treasurer
Benedictine Sisters of Virginia

Patricia Regan, CDP
General Treasurer
Congregation of Divine Providence

Lydia Kuykendal, on behalf of Bon Secours Mercy Health, Inc.,
CommonSpirit Health and Mercy Investment Services, Inc.
Director of Shareholder Advocacy
Mercy Investment Services, Inc.

Seamus P. Finn, OMI
Missionary Oblates of Mary Immaculate–United States Province

Judy Byron, OP, on behalf of Providence St. Joseph Health
Northwest Coalition for Responsible Investment

Michela Gregory
Director, ESG Services, NEI Investments
Northwest & Ethical Investments L.P. (NEI Investments)

Alexis Fleming
Northwest Women Religious Investment Trust

Christina Dorett, on behalf of the Sisters of
Charity of the Blessed Virgin Mary
Seventh Generation Interfaith Inc.

Barbara Aires, SC
Coordinator of Corporate Responsibility
The Sisters of Charity of Saint Elizabeth

Tom McCaney
Director, Corporate Social Responsibility
The Sisters of St. Francis of Philadelphia

Catherine Rowan
Director, Socially Responsible Investments
Trinity Health

EXHIBIT A

(see attached)

Friends Fiduciary

ADDING VALUES TO STRONG PERFORMANCE.

November 14, 2022

VIA EXPRESS DELIVERY

Perry C. Siatis
Executive Vice President, General Counsel and Secretary
AbbVie Inc.
1 North Waukegan Road
North Chicago, IL 60064

Dear Mr. Siatis:

Friends Fiduciary Corporation (“Friends Fiduciary”) is submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of AbbVie Inc. (the “Company”) for its 2023 annual meeting of shareholders. Friends Fiduciary is the lead filer for the Proposal and may be joined by other shareholders as co-filers.

Friends Fiduciary serves more than 430 Quaker meetings, churches, and organizations through our socially responsible investment services. Our investment philosophy is grounded in the beliefs of the Religious Society of Friends (Quakers), including peace, simplicity, integrity, and justice. We are long term investors and engage portfolio companies to witness to Quaker values and to protect and enhance the long-term value of our investments. We are increasingly concerned with the reputational and regulatory risks related to high drug prices and regulators’ perceptions regarding abusive patenting practices.

Friends Fiduciary is available to meet with the Company via teleconference on: December 9, 2022, between 9:00am and 5:00pm Eastern or December 6, 2022, between 9:00am and 5:00pm Eastern. Any co-filers will authorize Friends Fiduciary to conduct the initial engagement meeting but may participate subject to their availability.

A representative of the filers will attend the shareholder meeting to move the resolution. We look forward to meaningful dialogue with your company on the issues raised in this proposal. Please note that the contact person for this proposal is Amy Carr at Friends Fiduciary (██████████).

Friends Fiduciary has continuously beneficially owned, for at least one year as of the date hereof, greater than \$25,000 worth of the Company’s common stock. Verification of this ownership is attached. Friends Fiduciary intends to continue to hold such shares through the date of the Company’s 2023 annual meeting of shareholders.

Sincerely,


Jeffery W. Perkins
Executive Director

Enclosures

RESOLVED, that shareholders of AbbVie Inc. (“AbbVie”) ask the Board of Directors to establish and report on a process by which the impact of extended patent exclusivities on product access would be considered in deciding whether to apply for secondary and tertiary patents. Secondary and tertiary patents are patents applied for after the main active ingredient/molecule patent(s) and which relate to the product. The report on the process should be prepared at reasonable cost, omitting confidential and proprietary information, and published on AbbVie’s website.

Supporting Statement

Access to medicines, especially costly specialty drugs, is the subject of consistent and widespread public debate in the U.S. A 2021 Rand Corporation analysis concluded that U.S. prices for branded drugs were nearly 3.5 times higher than prices in 32 OECD member countries.¹ The Kaiser Family Foundation has “consistently found prescription drug costs to be an important health policy area of public interest and public concern.”²

This high level of concern has driven policy responses. The Inflation Reduction Act empowers the federal government to negotiate some drug prices.³ State measures, including drug price transparency legislation and copay caps, have been adopted.⁴ The House Committee on Oversight and Reform (the “Committee”) launched a far-reaching investigation into drug pricing in 2019.⁵

Intellectual property protections on branded drugs play an important role in maintaining high prices and impeding access. When patent protection on a drug ends, generic manufacturers can enter the market, reducing prices. But branded drug manufacturers may try to delay generic competition by extending their exclusivity periods.

Such periods can be extended if secondary patents are granted. The Committee’s December 2021 report described construction of a “patent thicket,” which consists of many “secondary patents covering the formulations, dosing, or methods of using, administering, or manufacturing a drug” granted after the drug’s primary patent, covering its main active ingredient or molecule, has been granted.⁶ In June 2022, citing the impact of patent thickets on drug prices, a bipartisan group of Senators urged the U.S. Patent and Trademark Office to “take regulatory steps to . . . eliminate large collections of patents on a single invention.”

¹ <https://www.rand.org/news/press/2021/01/28.html>

² <https://www.kff.org/health-costs/poll-finding/public-opinion-on-prescription-drugs-and-their-prices/>

³ <https://www.kff.org/medicare/issue-brief/explaining-the-prescription-drug-provisions-in-the-inflation-reduction-act/>

⁴ <https://www.americanprogress.org/article/state-policies-to-address-prescription-drug-affordability-across-the-supply-chain/>

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<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WIT%20APPENDIX%20v3.pdf>, at i.

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<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WIT%20APPENDIX%20v3.pdf>, at 79.

AbbVie has raised the price of Humira, its top-selling drug, 27 times since its launch. One hundred and thirty patents, most of them secondary patents, have been granted on Humira, extending its exclusivity period by 19 years.⁷ AbbVie touted to investors in a 2015 presentation that challenging any of Humira's patents in litigation would take four to five years.⁸

In our view, a process that considers the impact of extended exclusivity periods on patient access would ensure that AbbVie considers not only whether it can apply for secondary and tertiary patents but also whether it should do so. AbbVie's current approach subjects the company to reputational risks and to further regulatory blowback resulting from high drug prices and perceptions regarding abusive patenting practices.

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<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf>, at ix, 17.

⁸ <https://investors.abbvie.com/static-files/af79ccf2-5901-4b62-9354-982d2d95404c>, slide 16.