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

DIVISION OF
CORPORATION FINANCE

March 12, 2025

James J. Killerlane III
American Express Company

Re: American Express Company (the "Company")
Incoming letter dated December 20, 2024

Dear James J. Killerlane III:

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

The Proposal requests the Company's board of directors conduct an evaluation and issue a report evaluating how it oversees risks related to discrimination against customers based on their religion, including religious views.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to the Company's ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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

Sincerely,

Rule 14a-8 Review Team

cc: Brandon Pizzurro
GuideStone Capital Management, LLC

December 20, 2024

Via Online Shareholder Proposal Form

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

Re: Shareholder Proposal Submitted by GuideStone Capital Management, LLC on behalf of GuideStone Funds Equity Index Fund

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), American Express Company, a New York corporation (the "Company"), hereby gives notice of the Company's intention to exclude from its proxy statement for its 2025 annual meeting of shareholders (the "2025 Proxy Statement") a shareholder proposal (the "Proposal") submitted by GuideStone Funds Equity Index Fund (the "Proponent"). A copy of the Proposal, together with the supporting statement included in the Proposal, is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action if the Company excludes the Proposal from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with matters relating to the Company's ordinary business operations and seeks to micromanage the Company and Rule 14a-8(i)(3) under the Exchange Act because the Proposal is impermissibly vague and indefinite.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2025 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008) and related Staff guidance, we have submitted this letter and its attachments to the Commission electronically through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal from the 2025 Proxy Statement to be proper.

The Company intends to file its definitive 2025 proxy materials on March 14, 2025, and print shortly thereafter.

THE PROPOSAL

The proposed resolution included in the Proposal provides as follows:

> **Resolved:** Shareholders request the Board of Directors of American Express conduct an evaluation and issue a report within the next

> year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how it oversees risks related to discrimination against customers based on their religion, including religious views.

BASIS FOR EXCLUSION

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the 2025 Proxy Statement for the following reasons:

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

B. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) under the Exchange Act, because the Proposal is impermissibly vague and indefinite.

ANALYSIS

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

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

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's prior guidance, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." *See* Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). 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* Section D.2 of *Staff Legal Bulletin No. 14C* (Jun. 28, 2005).

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

judgment."

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

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

2) *The Proposal may be excluded because it involves issues within the Company's ordinary business operations.*

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 is within the 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 Rite Aid Corp.* (May 2, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the Company's customer service ranking within the drugstore industry); *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").

Further, framing a proposal as a request for an evaluation of risk, or as a request for a report on risk assessment, does not change the nature of the proposal. When evaluating a proposal that relates to a company's assessment of risk, the Staff has focused on the subject matter to which the risk pertains, or that gives rise to the risk, to determine whether the proposal relates to the company's ordinary business. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009); *see also Fox Corp.* (Jul. 2, 2024) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on

the negative social impact and risks to the company from continuing to inadequately distinguish between the company's on-air news content and its opinion content, and the viability and benefits of providing public differentiation between its news and the entertainment-based nature of its non-news shows); *McDonald's Corp.* (Mar. 22, 2019) (finding that a proposal requesting that the company disclose the economic risks resulting from campaigns targeting the company over concerns about cruelty to chickens focused primarily on matters relating to the company's ordinary business operations); *Ford Motor Co.* (Feb. 2, 2017) (finding that a proposal requesting a report on the company's assessment of political activity resulting from its advertising and its exposure to risk resulting therefrom related to the company's ordinary business practices); *Exxon Mobil Corp.* (Jan. 23, 2012) (finding that a proposal requesting a report discussing possible short and long term risks to the company's finances and operations posed by the environmental, social and economic challenges associated with oil sands related to the company's ordinary business operations); and *Pfizer Inc.* (Feb. 16, 2011) (finding that a proposal requesting an annual assessment of risks created by actions taken by the company to avoid or minimize U.S. federal, state and local taxes related to the company's ordinary business operations).

The Company is a globally integrated payments company with card-issuing, merchant-acquiring and card network businesses that offer products and services to a broad range of customers, including consumers, small businesses, mid-sized companies and large corporations around the world. The Company's success as a globally integrated payments company depends on its ability to establish and maintain relationships with its customers and handle customer accounts on terms and conditions that, from the perspective of management, are in the Company's best interests. This requires the Company to make risk-based decisions that take into account all relevant facts and circumstances, which sometimes result in the denial or termination of the Company's services to customers. For instance, the Company must manage the consequences of rising delinquencies and rising rates of bankruptcy among its customers, which are often precursors of future write-offs and may require the Company to increase its reserve for credit losses. Everyday decisions regarding customer relationships, including restriction of services and termination of accounts, involve the consideration of these and myriad other business concerns in the context of the Company's strategic business goals, as well as legal, regulatory and operational considerations that are so fundamental to the Company's day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. As a result, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

In this instance, the Proposal requests that the Board issue a report concerning how it "oversees risks related to discrimination against customers based on their religion, including religious views." The Proposal's supporting statement indicates a particular concern with an alleged "rising trend of financial institutions politicizing their services, whether through colluding with federal law enforcement to profile religious Americans as domestic terrorist threats, or outright denying service to certain industries, political groups, or religious groups" by financial institutions at large and the grounds on which the Company may deny service pursuant to its [terms of service], which the Proponent alleges are "vague and subjective" because the Company may restrict payments to businesses that, "in [its] sole discretion . . . pose any risk to [its] business." When read together, the Proposal's resolved clause and supporting statement demonstrate that the subject matter of the Proposal is the ordinary business matter of the Company's relationships with its customers, including the terms upon which the Company provides its services and may

terminate or restrict access to its services.

The Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of proposals relating to a company's relationships with its customers. *See, e.g., JPMorgan Chase & Co.* (Mar. 29, 2024) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "publish a review of whether and to what extent the [c]ompany requested that [its] clients deny their products or services to certain customers or categories of customers, or has demanded such restrictions as a condition of the [c]ompany's continuing to do business with said clients," because the proposal related to ordinary business matters in response to the company's arguments that the proposal focused primarily on the Company's handling of customer accounts) (hereinafter, "*JPMorgan 2024*"); *Bank of America Corp.* (Feb. 29, 2024) (concurring with the exclusion under Rule 14a-8(i)(7) of a near-identical proposal) (hereinafter, "*Bank of America 2024*"); *AT&T Inc.* (Feb. 5, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested, among other matters, that the company issue a report clarifying the company's policies regarding providing information to law enforcement and intelligence agencies, noting that "the proposal relates to procedures for protecting customer information and does not focus on a significant policy issue"); *AT&T Inc.* (Jan. 30, 2017) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "report on the consistency between the company's policies on privacy and civil rights and the company's actions with respect to U.S. law enforcement investigations," because the proposal relates to procedures for protecting customer information, and thus to the company's ordinary business operations); *TD Ameritrade Holding Corp.* (Nov. 20, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's shareholders have the right to be clients of the company, noting that "the [p]roposal relates to the [c]ompany's policies and procedures for opening and maintaining customer accounts").

In addition, the Staff has consistently concurred that decisions regarding the terms on which products and services are offered to customers are ordinary business matters, even when such matters are asserted to have an adverse effect on certain customers. *See PayPal Holdings, Inc.* (Apr. 10, 2023) (concurring with the exclusion of a proposal requesting "that the board revise the [c]ompany's transparency reports to provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services" on the grounds that the proposal "relates to, and does not transcend, ordinary business matters") (hereinafter, "*PayPal 2023*"). Moreover, the Staff has concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting that the boards of directors of financial services companies complete reports evaluating the company's customer deposit account policies and practices and the impacts those have on its clients. *See Bank of America Corp.* (Feb. 21, 2019); *JPMorgan Chase & Co.* (Feb. 21, 2019). In each case, the proposal raised concerns that overdraft fees allegedly impacted certain clients more than others and that the provision of such services exposed the companies to increased litigation and reputational risks. The Staff nonetheless concurred that the proposals related to "ordinary business operations," and specifically, "the products and services offered for sale" by those companies. *See also*, *JPMorgan Chase & Co.* (Mar. 16, 2010) (concurring with the exclusion of a proposal regarding the company's decision to issue refund anticipation loans to clients, noting that "proposals concerning the sale of particular services are generally excludable under Rule 14a-8(i)(7)"); *Bank of America Corp.* (Jan. 6, 2010) (concurring with the exclusion of a proposal requiring the company to stop accepting matricula consular cards as a form of identification, which

effectively sought "to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants," because the proposal sought to control the company's "customer relations or the sale of particular services"); *JPMorgan Chase & Co.* (Feb. 26, 2007) (concurring with the exclusion of a proposal requesting a report about company policies to safeguard against the provision of financial services to clients that enabled capital flight and resulted in tax avoidance as relating to the "sale of particular services"); *Banc One Corp.* (Feb. 25, 1993) (concurring with the exclusion of a proposal requesting that the corporation publish "a report reviewing the [c]ompany's lending practices" as they pertained to specifically identified groups of people, noting that the proposal involved "a description of special technical assistance and advertising programs[,] lending strategies and data collection procedures").

The terms and conditions upon which a company offers its services necessarily include the terms on which a company can restrict or deny access to those services. As such, the Staff has permitted the exclusion under Rule 14a-8(i)(7) of proposals that deal with the terms on which a company may deny access to its services to prospective or current customers. *See JPMorgan Chase & Co.* (Mar. 21, 2023, recon. denied Apr. 3, 2023) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company report on risks "created by [c]ompany business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue client relationships," where the proposal's supporting statement alleged that the company had a "history of cancelling the accounts of those who hold opinions and political views that deviate from hard-left political orthodoxy" and that such alleged practices place the company "at great reputational, financial, and legislative and related risk," because the proposal related to, and did not transcend, ordinary business matters) (hereinafter, "*JPMorgan 2023*"); *Comcast Corp.* (Apr. 13, 2022) (concurring with exclusion under Rule 14a-8(i)(7) because "the [p]roposal relates to, and does not transcend, ordinary business matters," where the proposal requested that the company notify a customer in advance of any termination, suspension or cancellation of service to the customer, and the company argued, in part, that the proposal related to ordinary business matters because how the company "handles its customer accounts and customer relations implicates routine management decisions encompassing legal, regulatory, operational, and financial considerations, among others.") (hereinafter, "*Comcast 2022*").

The conclusion that a proposal may be excluded under Rule 14a-8(i)(7) does not change simply because a group among the company's customer base may be disproportionately affected. *See, e.g., PayPal 2023* (concurring with exclusion under Rule 14a-8(i)(7) despite the fact that the proposal's supporting statement alleged that restricting payment services to legal sex workers "disproportionately harms Black, Brown and trans communities"); *see also Amazon.com, Inc.* (Mar. 23, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal concerning the company's placement of "material on its online sites that . . . expresses hatred or intolerance for people" on several bases, including religious affiliation).

Here, like the policies, practices and procedures at issue in *JPMorgan 2023* and *Comcast* 2022, the Proposal is squarely focused on matters related to the Company's ordinary business operations because it relates to the Company's policies and procedures with respect to customer relationships and the terms upon which the Company offers its products and services to customers. Such considerations involve complex determinations that relate to ordinary business

matters that implicate routine management decisions. Balancing such considerations is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." *See* 1998 Release. The two most recent precedents cited in this request, *JPMorgan 2024* and *Bank of America 2024*, illustrate that the Staff will concur with the exclusion under Rule 14a-8(i)(7) of proposals that, although facially requesting that the company issue a risk assessment report, concern themselves too closely with the company's ordinary business matters, and specifically the handling of customer accounts.

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

The Proposal may also be excluded under Rule 14a-8(i)(7) because it seeks to micromanage the Company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* 1998 Release. In SLB No. 14L, the Staff clarified that in evaluating companies' micromanagement arguments, it will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff noted that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters." In assessing whether a proposal seeks to micromanage a company's ordinary business operations, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company's activities and management discretion. *See Deere & Co.* (Jan. 3, 2022) (concurring with exclusion of a proposal that "micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices"); *The Coca-Cola Company* (Feb. 16, 2022) (permitting exclusion of a proposal because it micromanaged the company by requiring it to submit any proposed political statement to the next shareholder meeting for approval) (hereinafter, "*Coca-Cola 2022*").

Moreover, "granularity" is only one factor evaluated by the Staff. As clarified in SLB No. 14L, the Staff's assessment of micromanagement is also based on whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgement. The Staff has consistently granted no-action relief for shareholder proposals that probe matters too complex for shareholders. *See, e.g.*, *Verizon Communications Inc.* (Mar. 17, 2023) (concurring with exclusion of a proposal requesting that the board commission a workplace non-discrimination audit analyzing the company's impacts, including the impacts arising from company-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company's business); *American Express Company* (Mar. 11, 2022) (concurring with exclusion of a proposal requesting that the company annually publish the written and oral content of employee-training materials offered to the company's employees by the company or with its consent, as well as any such materials that were sponsored by the company in whole or part); and *JPMorgan Chase & Co.* (Mar. 13, 2019) (concurring with exclusion of a proposal requesting that the board institute transparent procedures to avoid holding or recommending investments in companies that substantially contribute to genocide or crimes against humanity).

The Proposal calls for an evaluation of the risks associated with the ordinary business decisions of when to terminate or restrict the provision of services which would improperly micromanage the Company. As explained above, the Proposal attempts to direct the Company's customer relationships in a manner that would supplant management's assessment of its strategic business goals as well as legal, regulatory and operational considerations with the Proponent's on an issue that is squarely within management's responsibility. The Staff has permitted the exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the expertise and experience of shareholders. *See, e.g., American Express Company* (Mar. 9, 2023) (permitting exclusion of a proposal because it micromanaged the company by requiring it to issue a report about "the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms"); *see also Coca-Cola 2022*.

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

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not be excludable, because the proposals would "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." This approach allows shareholders to have the "opportunity to express their views . . . [on] proposals that raise sufficiently significant social policy issues." *See* the 1998 Release. The Staff reiterated this guidance in November 2021 and retracted prior guidance with respect to the "nexus requirement," stating that the "[S]taff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." Section B.2. of SLB No. 14L. As described above, the Proposal and supporting statement cite alleged discrimination against customers based on their religion and religious views. However, the Staff has made clear that the mere mention of an issue with a broad societal impact, or the mere fact that an ordinary business issue might tangentially impact society more broadly, is insufficient to transform a proposal that is otherwise about ordinary business issues into one that pertains to "high-level direction on large strategic corporate matters" that the Staff recently confirmed in SLB No. 14L as deserving shareholder oversight and vote. 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. *See JPMorgan 2024* and *Bank of America 2024*; *PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) after concluding that, although the proposal addressed the potential significant policy issue of the humane treatment of animals, it also covered a broad scope of laws within the company's ordinary business functions ranging "from serious violations such as animal abuse to violations of administrative matters such as record keeping"); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) after concluding that, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter).

In this instance, even if the Proposal raises a policy issue like religious discrimination, the Proposal's overarching concern is with the Company's ordinary business decisions with respect to customer relationships and the provision of services. The Staff has previously permitted exclusion of analogous proposals that facially pertained to discrimination, including religious discrimination against customers, while primarily focusing on the company's ordinary business matters. *See, e.g., PayPal 2023* (permitting exclusion under Rule 14a-8(i)(7) of a proposal asking that the board "revise the Company's transparency reports to provide clear explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services", because the proposal "relates to, and does not transcend, ordinary business matters"); *Amazon.com, Inc.* (Mar. 23, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal concerning the company's placement of "promotional or other marketing material on its online sites that produce and disseminate content that expresses hatred or intolerance for people" on several bases, including religious affiliation, because the proposal relates to the company's ordinary business operations). Accordingly, consistent with the Staff's longstanding practice, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

B. Under Rule 14a-8(i)(3), the Proposal may be excluded because it is impermissibly vague and indefinite.

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). The Staff has recognized that exclusion is permitted pursuant to Rule 14a-8(i)(3) if "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See* SLB 14B; *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.").

In accordance with SLB 14B, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(3) as impermissibly vague and indefinite where the proposal contained an essential term or phrase that, in applying the particular proposal to the company, was unclear, such that neither the company nor shareholders would be able to determine with any reasonable certainty what actions or measures the proposal requires. *See, e.g., Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); *Pfizer Inc.* (Dec. 22, 2014, recon. denied Mar. 10, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy that "the Chair of the Board of Directors shall be an

independent director who is not a current or former employee of the company, and whose only nontrivial professional, familial or financial connection to the company or its CEO is the directorship," where it was unclear whether the proposal intended to restrict or not restrict stock ownership of directors and any action taken by the company to implement the proposal, such as prohibiting directors from owning nontrivial amounts of company stock, could be significantly different from the actions envisioned by shareholders); *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company's policies and procedures relating to "directors' moral, ethical and legal fiduciary duties and opportunities" to ensure the protection of privacy rights, where it was unclear how the essential term "moral, ethical and legal fiduciary" applied to the directors' duties and opportunities); *General Dynamics Corp.* (Jan. 10, 2013) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting a policy that, in the event of a change of control, there would be no acceleration in the vesting of future equity pay to senior executives, "provided that any unvested award may vest on a pro rata basis," where it was unclear how the essential term "pro rata" applied to the company's unvested awards); *The Boeing Co.* (Jan. 28, 2011, recon. granted Mar. 2, 2011) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that senior executives relinquish preexisting "executive pay rights," where it was unclear how to apply the essential term "executive pay rights").

The Proposal asks that the Company issue a report that "oversees risks related to discrimination against customers based on their religion, including religious views." Two essential terms in this request—"discrimination" and "religious views"—are vague and indefinite, such that neither the Company nor shareholders would be able to determine with any reasonable certainty what actions or measures the Proposal requires, including which policies, practices or procedures should be implemented to ensure that the Company does not engage in "discrimination" on the basis of "religious views." In this regard, the language from the supporting statement suggesting that financial institutions (as a whole) "restrict service for arbitrary and discriminatory reasons" does not help define the scope of the applicable activity to be covered by the requested report, at least in part because the Proposal provides no indication as to the criteria for what constitutes a "religious view," as opposed to a risk-based ground on which the Company may wish to restrict certain payments. Therefore, the complexity, depth and breadth of the requested report would vary drastically depending on how the report itself defines "discrimination" and "religious views," as the Proposal provides no guidance to the Company on how to define them.

Moreover, because Company does not have a policy to discriminate among customers based on their religion or religious views, it remains unclear which risks or activities the Proposal is seeking to address. Neither the Proposal nor its supporting statement articulate how the Company has engaged in religious discrimination, although the Proponent mentions accusations made against other financial institutions in this regard. Because the Proposal does not make clear why the Company's ability to terminate or restrict certain services at its discretion has resulted in alleged "discrimination against customers based on their religion, including religious views", neither the Company nor its shareholders can determine with any reasonable certainty what actions or measures the Proposal would require.

For the foregoing reasons, the Proposal is impermissibly vague and indefinite, and may be excluded pursuant to Rule 14a-8(i)(3).

CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal from its 2025 Proxy Statement.

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

Sincerely,

James J. Killerlane III
Corporate Secretary and Chief Governance Officer

Enclosure

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

Exhibit A

The Proposal

See attached.

GuideStone®
Capital Management

November 14, 2024

Kristina V. Fink
Corporate Secretary and Chief Governance Officer
American Express Company
200 Vesey Street
New York, New York 10285

Authorization to File Shareholder Proposal and other Supplemental Information

Dear Ms. Fink,

In accordance with Securities and Exchange Commission Rule 14a-8 (17 CFR § 240.14a-8)

1. I, Brandon Pizzurro, on behalf of GuideStone Funds Equity Index Fund, hereby authorize GuideStone Capital Management, LLC ("Representative") to file a shareholder proposal on behalf of GuideStone Funds Equity Index Fund ("Proponent") with American Express Company ("the Company") for inclusion in the Company's 2025 proxy statement.

2. Proponent gives Representative authority to handle, on the Proponent's behalf, submitting the proposal and to otherwise act on Proponent's behalf for any and all aspects of the shareholder proposal, including drafting the proposal and handling any correspondence, meetings, or agreements with the Company. Proponent understands that the Proponent's name may appear on the Company's proxy statement as the filer of the aforementioned proposal, and that the media may mention the Proponent's name in relation to the proposal.

3. The proposal at issue relates to a Report on Risks of Politicized De-banking.

4. Proponent supports this proposal.

5. Proponent has continuously owned $25,000 worth of the Company's securities entitled to vote on the proposal, for at least 1 year up to and including the date of submission and intends to continue holding the requisite amount of securities through the date of the Company's 2025 annual meeting of shareholders.

6. I am able to meet with the Company via teleconference under the time frame set forth in Rule 14a-8. I initially propose the following times for a telephone conference to discuss this proposal:

   Meeting Time 1: December 3, 3pm-4pm EST
   Meeting Time 2: December 5, 2pm-3pm EST

If these times prove inconvenient, please suggest some other times to meet. Feel free to contact me at [redacted] so that we can determine the mode and method of communication.

Sincerely,

Brandon Pizzurro
President, GuideStone Funds
President, GuideStone Capital Management, LLC
Chief Investment Officer, GuideStone

GuideStone®
Capital Management

November 14, 2024

Kristina V. Fink
Corporate Secretary and Chief Governance Officer
American Express Company
200 Vesey Street
New York, New York 10285

Re: Proposal regarding Report on Risks of Politicized De-banking

Dear Ms. Fink,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the American Express Company (the "Company") 2025 proxy statement to be circulated to Company shareholders in conjunction with the Company's 2025 annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations (17 CFR § 240.14a-8). The proposal at issue relates to the subject described below.

Proponent:	GuideStone Funds Equity Index Fund
Company:	American Express Company
Subject:	Report on Risks of Politicized De-banking

I submit the Proposal on behalf of, and with the permission of, GuideStone Funds Equity Index Fund ("Proponent"), which has continuously held $25,000 worth of the Company's securities entitled to vote on the proposal, for at least 1 year up to and including the date of submission and intends to continue holding the requisite amount of securities through the date of the Company's 2025 annual meeting of shareholders.

Under SEC staff interpretations of Rule 14a-8, Proponent initially proposes the following times for a teleconference meeting to discuss this proposal:

Meeting Time 1: December 3, 3pm-4pm EST
Meeting Time 2: December 5, 2pm-3pm EST

If these times are inconvenient, please suggest some other times to speak. Feel free to contact me at corporate.engagement@guidestone.org so that we can determine the mode and method of that discussion.

A statement authorizing me to act on the Proponent's behalf and providing other supplemental information is attached. A proof of ownership letter attesting to the Proponent's ownership of the shares as of the date of this proposal's submission is forthcoming. Copies of correspondence or any request for a "no-action" letter may be sent to

Brandon Pizzurro at [redacted] or emailed to me at [redacted]

Sincerely,

Brandon Pizzurro
President, GuideStone Funds
President, GuideStone Capital Management, LLC
Chief Investment Officer, GuideStone

Report on Risks of Politicized De-banking

Supporting Statement:

Financial institutions control access to the marketplace. On account of their unique and pivotal role in America's economy, many federal and state laws already prohibit them from discriminating against customers. As shareholders of American Express Company ("American Express"), we believe it is essential for the company to provide financial services on an equal basis without regard to factors such as race, color, religion, sex, national origin, or social, political, or religious views.

We are concerned with the rising trend of financial institutions politicizing their services, whether through colluding with federal law enforcement to profile religious Americans as domestic terrorist threats,[1] or outright denying service to certain industries,[2] political groups, or religious groups.[3]

Numerous state attorneys general,[4] financial officers,[5] and agriculture commissioners[6] have warned major financial institutions about their conduct. Democrats and Republican Congress members are investigating.[7] The Supreme Court recently and unanimously sided with the NRA and ACLU to condemn any government officials who would coerce financial institutions to deny service to their political opponents.[8]

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[1] https://judiciary.house.gov/media/press-releases/new-report-exposes-massive-government-surveillance-americans-financial-data; https://www.warren.senate.gov/newsroom/press-releases/warren-omar-lawmakers_seek-information-from-big-banks-on-account-closure-practices-that-discriminate-against-muslim-americans

[2] https://www.nbcnews.com/news/us-news/bank-america-stops-financing-makers-military-style-rifles-n865106;

[3] https://www.viewpointdiversityscore.org/resources/instances-of-viewpoint-based-de-banking; https://www.warren.senate.gov/newsroom/press-releases/warren-omar-lawmakers_seek-information-from-big-banks-on-account-closure-practices-that-discriminate-against-muslim-americans.

[4] Daniel Cameron, et al., *Letter to Chase Bank,* (May 2, 2023), Kris Kobach, et al., *Letter to Bank of America,* (April 15, 2024); Tim Griffin, et al., *Letter to Wells Fargo* (Mar. 6, 2024).

[5] John Murante, et al., *Letter to Chase Bank,* (Mar. 23, 2023); J. Sorrell, et al., Letter to Bank of America, (April 18, 2024).

[6] https://www.foxbusiness.com/politics/dozen-state-gop-agriculture-commissioners-launch-probe-us-banks-esg-investing

[7] https://www.huffpost.com/entry/elizabeth-warren-banks-muslims-discrimination_n_65d76fbce4b0189a6a7d2bf3; https://judiciary.house.gov/media/press-releases/chairman-jordan-expands-financial-surveillance-investigation-other-major

[8] https://www.presstelegram.com/2024/06/06/aclu-and-nra-unite-to-defend-the-first-amendment/

Many states have also passed laws protecting state pension funds and contracts from politicized finance.[9] And Tennessee, Florida, and Texas have directly prohibited de-banking.[10]

But the 2024 edition of the Viewpoint Diversity Business Index[11] shows that 69% of the largest financial institutions include vague and subjective grounds to deny service like "reputational risk," "social risk," "misinformation," "hate speech" or "intolerance." This includes American Express, which can restrict payments to businesses that, "in our sole discretion . . . pose any potential risk to our business."[12]

These kinds of terms encourage financial institutions to deny or restrict service for arbitrary or discriminatory reasons. They also give fringe activists and governments a foothold to demand that private financial institutions deny service under the sweeping, unfettered discretion that such policies provide.

When companies engage in this kind of discrimination, they hinder the ability of Americans to access the marketplace and instead become *de facto* regulators and censors. This undermines the fundamental freedoms of our country and is an affront to the public trust.

American Express needs to increase transparency around these practices and provide assurances to customers that it does not discriminate based on a customer's religion or religious views.

Resolved: Shareholders request the Board of Directors of American Express conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how it oversees risks related to discrimination against customers based on their religion, including religious views.

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[9] https://drive.google.com/file/d/1VJ82mMNupoFSZPQ98nLcW7AtcyBQWB18/view

[10] https://www.hklaw.com/en/insights/publications/2023/06/new-florida-law-prohibits-use-of-esg-factors-in

[11] https://viewpointdiversityscore.org/business-index

[12] https://www.viewpointdiversityscore.org/company/american-express

ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE.

February 17, 2025

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

RE: Shareholder Proposal of GuideStone Funds Equity Index Fund at American Express Company under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing for GuideStone Funds Equity Index Fund ("Proponent" or "GuideStone") to defend its shareholder proposal ("Proposal") to American Express Company ("American Express" or the "Company"). The Proposal deals with the rising trend of large financial institutions politicizing their services and, at times, even denying service to customers for ostensibly discriminatory reasons. This has included denials of service to religious customers. The Proposal thus asks American Express to report on the "risks related to discrimination against customers based on their religion, including religious views." American Express has the burden of showing it can exclude the Proposal under Rule 14a-8(g). But it cannot bear this burden.

American Express argues that the Proposal is excludable under Rule 14a-8 for three reasons: (1) it relates to ordinary business operations under (i)(7), (2) it micromanages the Company under (i)(7), and (3) the terms "religion" and "discrimination" are impermissibly vague under (i)(3). Its arguments do not even get off the ground. First, discrimination is a quintessential significant social policy, which means it transcends the Company's ordinary business operations. And a nearly identical proposal was approved of by Staff over this same objection at JPMorgan Chase in 2023. Second, this is a typical risk report, which is as deferential as possible to the Company and far from micromanaging. And third, "religion" and "discrimination" are commonly understood. American Express would not tell the Equal Employment Opportunity Commission it doesn't understand these words, so it cannot say it here either.

44180 Riverside Parkway, Lansdowne, VA 20176 Phone: 571.707.4655 Fax: 571.707.4790 ADFlegal.org

The Proposal

The Proposal provides:

> **Resolved:** Shareholders request the Board of Directors of American Express conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how it oversees risks related to discrimination against customers based on their religion, including religious views.

The Supporting Statement explains that financial institutions occupy a "unique and pivotal role in America's economy" because they "control access to the marketplace." Because of this, they ought to "provide financial services on an equal basis without regard to . . . religion." And in recognition of this, many laws already prohibit discrimination in the provision of financial services.

Unfortunately, the Statement notes, there is a "rising trend of financial institutions politicizing their services" and even denying service to certain religious groups, under vague "reputational risk" and similar policies. This has caught the attention of "[n]umerous attorneys general, financial officers," both Democrat and Republican legislators of Congress, and even the Supreme Court in the recent case *NRA v. Vullo*, 602 U.S. 175 (2024). And it has led to several states to pass laws prohibiting denials of service by financial institutions based on religious or political viewpoints.

But 69% of some of the largest financial institutions still have vague and subjective terms of service that encourage this kind of discrimination, including American Express, which can restrict payments to businesses that "pose any potential risk to our business." Because of this and the prevalence of de-banking, the Supporting Statement says American Express needs to take proactive steps to "provide assurances to customers that it does not discriminate based on a customer's religion or religious views."

Discussion

The Proposal focuses on a core civil rights matter: the prevention of religious discrimination and the harm such discrimination can do to customers and society as a whole. It also relates to one of the longest-running and most controversial social matters in American history: the role of banks and other powerful financial institutions in shaping and perhaps even controlling society. While this issue is long standing, it has come to the fore recently, with concerns about "de-banking" and the weaponization of finance, including targeting customers because of the exercise of their religious beliefs, being raised across the political spectrum by everyone from politicians to podcasters and multiple pieces of legislation being introduced, and sometimes passed at the state and federal level. This is exactly the kind of proposal

that "transcend[s] the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Exchange Act Release No. 40018, 63 Fed. Reg. 29106, 29108 (May 21, 1998) (the "1998 Release").

A. The Proposal is Not Excludable Under Rule 14a-8(i)(7) Because, Under Staff Precedent and Guidance, the Proposal is Unambiguously Focused on a Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations.

A shareholder proposal may be excluded under Rule 14a-8(i)(7) if it "deals with a matter relating to the company's ordinary business operations." However, according to the Staff, proposals that "focus on sufficiently significant social policy issues" are not excludable because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." (the "1998 Release"). And this one does. It focuses on religious discrimination and its potential impact on society, which is clearly a significant social policy issue, and falls in line with a nearly identical proposal Staff approved of in 2023, *JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023). It thus transcends ordinary business matters and may not be excluded under Rule 14a-8(i)(7).

1. Proposals that focus on a significant social policy issue transcend a company'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 a matter relating to the company's ordinary business operations." These include "management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers," which are "tasks 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." 1998 Release at 29108. When assessing a proposal, the Commission looks at the underlying "subject matter" of the proposal, not whether it prescribes a particular policy, board action, or disclosures. Exchange Act Release No. 20091, 48 Fed. Reg. 38218-01, 38221 (Aug. 16, 1983).

Despite the above, proposals that "focus[] on sufficiently significant social policy issues" are not excludable under Rule 14a-8(i)(7) even if they relate to ordinary business operations. 1998 Release at 29108. This is because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* When determining whether a proposal focuses on a matter of significant social policy, Staff focus on "the significance in relation to the company," Division of Corporate Finance, Staff Legal Bulletin No. 14M (Feb. 12, 2025), and "presence of widespread public debate," Division of Corporation Finance, Staff Legal Bulletin No. 14A (July 12, 2002) ("SLB 14A).

American Express interprets the rule differently: "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." NAR at 8." This muddies the waters and treats the two as a binary. It is true that the standard does require that a proposal *focus* on, as opposed to *relate to*, an important policy issue to avail itself of the social policy exception. But whether a proposal relates to ordinary business operations is an entirely independent consideration.

American Express argues that "the Proposal's overarching concern[] with the Company's ordinary business decisions with respect to customer relationships and the provision of services" means it lacks a focus on any significant policy issue. NAR at 9. But Staff and the Commission have expressly rejected this interpretation and consistently explained that "significant social policy" operates as an exception to the "ordinary business" ground for exclusion.

Over 10 years ago, Staff prepared Bulletin 14H to correct the misunderstanding that a proposal must both focus on a "significant social policy" and be "divorced from how a company approaches the nitty-gritty of its core business." Division of Corporate Finance, Staff Legal Bulletin No. 14H (Oct. 22, 2015) ("SLB 14H"). This is also how the Commission explained it in 1998:

> [P]roposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, *because* the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.

1998 Release at 29108 (emphasis added). Thus, "a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the 'nitty-gritty of its core business.'" SLB 14H.

Based on this, Staff have approved a wide variety of proposals that touch on discrete and varying aspects of a company's operations. *See, e.g.*, *American Express Co.* (Mar. 13, 2024) (report on company's decision-making regarding use of a merchant category code for standalone gun and ammunition stores); *Johnson & Johnson* (Mar. 3, 2022) (recommending that company "discontinue global sales of its talc-based Baby Powder" in light of public health risks to customers); *Alphabet, Inc. (Mims Trust)* (Apr. 12, 2022) (report on how company is "address[ing] the human rights impacts of its content management policies to address misinformation and disinformation across its platforms"); *Caesars Entertainment, Inc.* (Apr. 19, 2024) (report on "adoption of a smokefree policy for Company properties").

Were the rule otherwise, shareholders could never address virtually any discrete parts of a company's operations, from advertising to supply chain issues to workforce management. But that is not the case, which is why Staff have consistently approved

of proposals focusing on different parts, policies, or practices of the company, including customer relations and services.

2. The Proposal fits squarely in the Commission and Staff's precedent that discrimination in civil rights matters is a significant policy issue.

Staff have consistently held up discrimination issues as quintessential issues of significant social policy. This Proposal, which asks about religious discrimination against customers broadly and its related impacts, fits neatly into this understanding and is nearly identical to a proposal that dealt with broader types of discrimination in financial services in 2023, *JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023). As such, it cannot be excluded for relating to ordinary business operations.

As an initial matter, the Proposal here does not relate to ordinary business operations. American Express cites several precedents dealing with mundane issues like "non-pecuniary factors," "notify[ing] a customer in advance" of a termination, refund anticipation loans, overdraft fees, customer privacy, or dealing with payments to sex workers or firearms industries. NAR at 5–6. But the Proposal here is not concerned with the minutiae of these practices—though the latter two may themselves raise significant policy issues. It instead deals with religious discrimination against customers broadly, in whatever form it may take. While this of course would relate to any of American Express's particular policies on non-discrimination, discrimination can take many forms, such as vague reputational "risk" policies that the Supporting Statement observes is ubiquitous in financial institutions and present at American Express.

Judged by past Commission and Staff interpretations, discrimination in civil rights matters is the *paradigmatic* example of a "sufficiently significant social policy matter." The 1998 Release uses discrimination as the example of when an issue that might otherwise relate to a company's ordinary business matters transcends the mundane to become a legitimate topic of a shareholder proposal. 1998 Release *supra*.

Staff have consistently refused to grant no-action relief to companies seeking to exclude proposals relating to discrimination in civil rights matters. For example, in 2023 Staff refused to grant no-action relief to Chase Bank on a proposal similar to the one at issue here. *JPMorgan Chase Co. (Bahnsen Family Trust)* (March 21, 2023) (the "Bahnsen Proposal") the Bahnsen Proposal sought an evaluation and report from Chase's board on how Chase oversaw

> [R]isks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views, and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights.

(Bahnsen Proposal at 3). Chase argued that the proposal should be excluded because it dealt with matters relating to its ordinary business operations because it dealt with Chase's interactions with its customers, management of its workforce, and the products and services it offered. Bahnsen Proposal at 5-8. Chase also argued that the proposal was focused on "recent evidence of religious and political discrimination," that Staff had not recognized as a significant policy issue. Bahnsen Proposal at 9.

The proponent countered, arguing that the proposal clearly implicated a sufficiently significant social policy issue. The proponent noted that prior SEC decisions and precedents made clear that proposals relating to discrimination, especially on the basis of characteristics that are protected by law, qualify as related to a significant social policy issue. Bahnsen Proposal at 20. The proponent cited, inter alia, *Levi Strauss & Co.* (Feb. 10, 2022) (audit analyzing the company's impact on civil rights and non-discrimination); *McDonald's Corp.* (Apr. 5, 2022) (audit analyzing the "adverse impact" of the company's policies and practices on the civil rights of "company stakeholders"); *Amazon.com, Inc. (New York State Common Ret. Fund)* (Apr. 7, 2021). The proponent also noted that Staff have denied no-action relief on a diverse set of proposals targeting discrimination on the basis of race, *e.g.*, *Amazon.com, Inc.* (Mar. 14, 2017); sex *e.g.*, *CBRE Group, Inc.* (Mar. 6, 2019); sexual orientation *e.g.*, *The Proctor & Gamble Co.* (Aug. 16, 2016); as well as protected classes generally, *e.g.*, *Alphabet, Inc.* (Apr. 15, 2022). Bahnsen Proposal at 20.[1]

Focusing on religious discrimination, the proponent noted that protection against such discrimination has a long history in the United States, that such protection was enshrined in laws that the Company was presently subject to, and that the Staff has previously recognized it as a topic of sufficient social importance that a proposal implicating it could not be excluded. Bahnsen Proposal at 21-22 (citing *Toys "R" Us* (Apr. 8, 1999) (adopt resolution for religious non-discrimination in Ireland) and *General Electric Co.* (Feb. 10, 2015) (adopt "Holy Land" principles to prevent religious discrimination in workforce)).

Ultimately, the Staff appropriately rejected Chase's argument and declined to grant no-action relief. The Staff should come to the same conclusion in the instant case for the same reasons. As in the Bahnsen Proposal, the current Proposal relates to a significant social policy issue: religious discrimination. The importance of this topic to society transcends the day-to-day operations of a business.

American Express's arguments to the contrary are unavailing. In arguing that the Proposal does not transcend ordinary company business they cite several past Staff decisions, but none are as directly applicable to the present Proposal as the Bahnsen

[1] Page numbers refer to the pdf page number of the no-action packet available on the SEC's website at https://www.sec.gov/rules-regulations/shareholder-proposals?.

Proposal discussed above, which is conspicuously not cited or distinguished by American Express.

For example, American Express cites *Bank of America Corp. (NCPPR)* (February 29, 2024) and *JPMorgan Chase & Co. (NCPPR)* (March 29, 2024), where Staff granted no-action relief on the basis of Rule 14a-8(i)(7), for the proposition that proposals that deal with the relationship between a company and its customers can be ordinary business matters, even if the proposal cites a significant social policy issue. The two decisions dealt with functionally identical proposals from the same Proponent that sought to have the companies publish reports providing information on whether the company requested or pressured its own clients to deny products or services to "certain customers or categories of customers."

Unlike the present Proposal, which is exclusively concerned with religious discrimination, the Proposals and Supporting Statements at issue in *Bank of America* (Feb. 2024) at 15 and *JPMorgan Chase* (March 2024) at 12 dealt primarily with indirect discrimination against gun manufacturers and sellers, not direct discrimination on religion or other protected characteristics. While instances of potential religious discrimination are mentioned, they are part of a broader milieu of possible grievances. *Bank of America* (Feb. 29 2024) at 15-16, *JPMorgan Chase* (Mar. 19 2024*)* at 12-13.

Further, while the instant proposal is overwhelmingly concerned with the impact that American Express's actions might have on broader society, the Bank of America February 2024 and Chase March 2024 proposals were primarily concerned with the impact of the firms' alleged conduct on the firms' financial stability. *Bank of America* (Feb. 29 2024) at 15-16, *JPMorgan Chase* (Mar. 29 2024) at 12-13. This distinction is important. While the impact the actions of a firm may have on that firm's financial prospects may reasonably be considered the stuff of day-to-day business, the impact of the firm on society as a whole, especially with regard to something as invidious as religious discrimination, clearly transcends the ordinary and becomes a legitimate subject for shareholder inquiry.

American Express also cites *PayPal Holdings, Inc. (Tulipshare)* (Apr. 10, 2023), where Staff granted no-action relief for a proposal that would have PayPal amend its transparency reports to include "explanations of the number and categories of account suspensions and closures that may reasonably be expected to limit freedom of expression or access to information or financial services." *Id.* at 3. This proposal's accompanying documentation was directed at concerns that PayPal was cutting off customers for a variety of reasons, including but not necessarily limited to being engaged in sex work, providing bail to protestors, the use of anonymous communication software, and targeting certain media accounts. *Id.* at 13. However, its supporting statement only detailed certain criteria that should be included in the report. Id. at *14.*

Unlike the proposal in *PayPal*, the present Proposal relates squarely and exclusively to religious discrimination, a paradigmatic significant social issue. While the *PayPal* proposal referenced issues like freedom of expression, its focus was far more diffuse, touching on various issues of debatable Constitutional and social significance. Further, the proponent in *PayPal* sought to dictate what factors the requested report should contain, whereas the present Proposal provides clear and intelligible guidance but avoids micromanagement.

American Express's citation of the *PayPal* proposal is ironic because on the same day, Staff denied no-action relief to PayPal on another, and far more similar proposal. In *PayPal Holdings, Inc. (NCPPR)* (Apr. 10, 2023) staff refused to grant no-action relief for a proposal that sought a report on how PayPal oversaw "risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views, and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights." *Id.* at 3.

The proposal from NCPRR focused on the impact potential discrimination based on legally recognized protected classes could have on the ability of "American citizens to live freely and do business according to their deeply held convictions." *Id.* at 14-15. This language and focus are strongly similar to those of the instant Proposal. In both cases, the focus of the proposal is on well-established protected classes and the effect of a corporation's actions on society broadly rather than just the economic condition of the firm.

PayPal argued that the proposal dealt with ordinary business matters, including the products and services PayPal offered and the firm's relationship with its customers. *Id.* at 4-7. PayPal also argued that the proposal did not raise a significant policy issue, in part because even if the proposal touched on a significant policy issue, the proposal's "overwhelming concern with the Company's products and services offered to customers, customer relationships and workforce management" demonstrated that "the Proposal's focus is on ordinary business matters." *Id.* at 9.

NCPRR countered by noting that discrimination of the sort that was the subject of their (and the instant) proposal was consistently recognized by Staff as a significant social issue, citing a long line of previous decisions. *Id.* at 20-25 NCPRR also argued that the proposal did not relate to the Company's products, services, customer relationships, or workforce management. Instead, the proposal transcended all of those characteristics to focus on the societal impact of PayPal's conduct. *Id.* at 25-30

Staff appropriately denied PayPal's request to exclude the proposal because it related to a significant social issue and transcended ordinary business matters. Staff should do so again here for the same reasons.

3. The effect of how banks and other powerful financial firms use their power and privileged position on broader society is one of the longest-running and most significant issues in the country's history.

As discussed above, the instant Proposal is focused directly on religious discrimination, a paradigmatic significant social issue. For this reason alone, American Express, or any other firm, should be met with skepticism by Staff if they seek to exclude a shareholder proposal on the topic. However, in the present case another significant social issue is also implicated – the effect banks and other financial firms' actions have on broader society, especially if such actions may be intentionally done with an eye to influencing or controlling society.

Since the founding of this country, significant financial firms, like American Express, have been controversial. While proponents have argued they were necessary for economic development, critics have worried that the power such firms wielded, especially since the power was largely a product of government action through the granting of charters and other benefits, would give those firms and their leadership too much power over society.[2]

This debate has raged to the present day, where skeptics of the power of financial firms on both right and left have worried that such firms can exercise too much influence over society broadly by cutting off disfavored individuals and groups, while others view this possibility as a feature rather than a bug because it can allow for "necessary" social change without the limits and delays imposed by the Constitution and democratic process.[3]

Concerns about the misuse of financial firm's power has also resulted in multiple laws prohibiting discrimination, including on religious grounds. For example, in the 1970s concerns that customers were being discriminated against in credit decisions led to the amendment of the Equal Credit Opportunity Act (ECOA) to prohibit discrimination on the basis of religion, among other protected characteristics. In deciding whether to expand anti-discrimination protection some members of Congress explicitly pointed to the powers granted to banks by public policy as a justification to prevent discrimination. Other proponents pointed to the risk that the

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[2] *See, e.g.*, Mehrsa Baradaran, *Banking and the Social Contract*, 89 Notre Dame L. Rev. 1283, 1287–90, 1296-97 (2013); Howard Bodenhorn, *State Banking in Early America: A New Economic History* 78 (Oxford 2003).

[3] *See, e.g.*, Sylvan Lane, *Bernie Sanders Introduces Bill to Break Up Big Banks* (The Hill, Oct. 3, 2018) https://thehill.com/policy/finance/409785-bernie-sanders-introduces-bill-to-break-up-big-banks/; Andrew Ross Sorkin, *How Banks Could Control Gun Sales if Washington Won't* (N.Y. Times, Feb. 19, 2018 https://www.nytimes.com/2018/02/19/business/banks-gun-sales.html); *Governor Ron Desantis Signs Legislation to Protect Floridians' Financial Future & Economic Liberty* (Press Release May 2, 2023) https://www.flgov.com/eog/news/press/2023/governor-ron-desantis-signs-legislation-protect-floridians-financial-future.

financial system could be coopted as a political tool as a reason to prevent discrimination.[4]

More recently, several states have passed laws aimed at protecting individuals and industries from politicized de-banking on the basis of both traditionally recognized protected classes and new factors, such as being engaged in the fossil fuel industry.[5] These laws are unsurprisingly controversial and have accordingly generated intense public debate.[6] The Consumer Financial Protection Bureau has also noted the disturbing trend of de-banking in recent litigation[7] and just this January proposed a rule that would protect financial institutions from denying service based on a customer's speech.[8]

To be sure, not every proposal involving a financial firm would qualify as a significant social issue. However, when the proposal focuses on how the use of a financial firm's power affects society as a whole, especially if the question dovetails with other significant social issues like discrimination, it is hard to see how it would not qualify as a significant social issue and not be excludable. The instant Proposal is just such a case, and Staff should refuse to allow American Express to exclude it.

B. The Proposal is not excludable under Rule 14a-8(i)(7) because, under Staff precedent and guidance, the Proposal does not seek to "micromanage" the Company.

American Express also argues that the Proposal seeks to "micromanage" the company because it "calls for an evaluation of the risks associated with the ordinary business decisions of when to terminate or restrict the provision of services[,]" and is therefore excludable. This is not correct. All the Proposal seeks is a transparency report on how American Express oversees risks related to religious discrimination. Staff have consistently held this type of transparency report to not be micromanagement.

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[4] Brian Knight and Trace Mitchell, *Private Policies and Public Power: When Banks Act as Regulators Within a Regime of Privilege*, 13 N.Y.U. J. L. & Liberty 66, 133-136 (2020).

[5] *See, e.g.* Tenn. Code Ann. § 45-1-128 (2024); Fla. Stat. § 655.0323 (2024).

[6] *See, e.g.*, John Tammy, *Ron DeSantis Goes to Perilous Lengths to Politicize Banking In Florida* (Forbes, Jul. 15, 2024).

[7] Jon Hill, *CFPB Urges 5th Circ. To Revive Anti-Bias Exam Policy*, Law360 (Aug. 8, 2024), https://www.law360.com/articles/1867585.

[8] Press Release, *CFPB Proposes Rule to Ban Contract Clauses that Strip Away Fundamental Freedoms*, Consumer Financial Protection Bureau (Jan. 13, 2025), https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-ban-contract-clauses-that-strip-away-fundamental-freedoms.

1. Staff regularly find that transparency reports do not qualify as "micromanagement."

Proposals may not micromanage a company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." 1998 Release at 29108. This can occur "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies" *id.,* which would "supplant[] the judgment of management and the board," Division of Corporate Finance, Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K "). "Thus, a proposal framed as a request that the company consider, discuss the feasibility of, or evaluate the potential for a particular issue generally would not be viewed as micromanaging matters of a complex nature." *Id.*

As such, the Staff has regularly rejected arguments that proposals asking for transparency reports on products, safety features, policies, and other parts of the company business constitute micromanagement. For example, the Staff has rejected micromanagement arguments for reports on median gender pay gaps and associated risks, *Bank of America Corp. (Cassily)* (Feb. 21, 2019), a "Human Rights Impact Assessment examining the actual and potential impacts of one or more high risk products sold by Amazon or its subsidiaries," *Amazon.com, Inc. (Oxfam)* (Apr. 1, 2020),asking about smoke-free premises, *Boyd Gaming Corp.* (Mar. 18, 2024), *Caesars Entertainment, Inc.* (Apr. 19, 2024), reducing misinformation in targeted advertising, *Meta Platforms, Inc.* (Mar. 30, 2022), *Alphabet Inc.* (Apr. 12, 2022), the misuse of products in war-torn conflict-affected areas, *Texas Instruments Incorporated* (Mar. 4, 2024), and underwriting clients who contribute to new fossil fuel supplies, see, e.g., *Citigroup Inc.* (Mar. 7, 2022).

This is entirely reasonable, given that transparency reports do not seek to prescribe policy changes but rather seek information. Nor are they prescriptive requests for policy changes, unlike many proposal requests. Instead, they are general requests for the company to "consider, discuss the feasibility of, or evaluate the potential for a particular issue." SLB 14K.

It is true that a transparency report can seek such an intricate level of detail that it slips into micromanagement. In both *Deere & Co.* (Jan 3, 2022) and *Delta Air Lines, Inc.* (Apr. 24, 2024), the Staff found that a proposal seeking a transparency report could be excluded for micromanagement. However, in both cases, the proposals sought voluminous records and original data and indicated that the intent of the proposal was to question management rather than obtain reasonable transparency.

The instant Proposal is materially different from these examples because it only seeks a report, at a reasonable level of detail, to help inform shareholders about an issue that, as described above, is one of serious social import and current debate. There is no demand that raw data or original records be turned over. Instead, the

requirements are of a piece with the numerous reports that the Staff has consistently refused to exclude.

American Express points to several instances where the Staff has granted no-action relief for reports that were at least styled as transparency reports. However, they are all distinguishable from the current Proposal.

American Express cites *The Coca-Cola Co.* (Feb. 16, 2022) as an example of a proposal that sought to micromanage the company and was properly excluded. However, in that instance, the proposal sought to require the company to submit proposed political statements to the shareholders for approval. This is clearly and materially different from the transparency report that is the subject of the instant Proposal, where there is no requirement for any sort of shareholder approval or other minute interference with management's ability to run the business on a day-to-day basis.

American Express also cites to *Verizon Cmmc'ns Inc.* (Mar. 17, 2022) and *American Express Co. (NCPPR)* (Mar. 11, 2022), where Staff granted no-action relief for proposals that sought to require the company to publish the content of its training materials or, in the alternative, commission an audit on the impact of its training on the companies' business. The instant Proposal does not seek any sort of ongoing disclosure requirement. It is also, as discussed above, focused on the impact of the company on society broadly rather than on the internal effects of the company's actions.

American Express also cites to *JPMorgan Chase & Co.* (Mar. 13, 2019) where the Staff granted no-action relief for a proposal that would require the company to "institute transparent procedures to avoid holding or recommending investments in companies that, in management's judgment, substantially contribute to genocide or crimes against humanity[.]" *Id.* a 30. That proposal differs materially from the instant Proposal because it sought to impose ongoing procedural requirements on how the company did business rather than asking for an informational report, which is what the instant Proposal does.

2. The Proposal's requested transparency report seeks a reasonable level of detail on an issue readily understood by shareholders and therefore would not micromanage the company.

The instant Proposal seeks a reasonable amount of detail for investors to evaluate whether American Express's actions may implicate religious discrimination and what impact that may have on broader society. This is exactly the kind of general evaluation or risk assessment SLB 14K said "generally would not be viewed as micromanaging." It is also and is in line with Staff decisions that have consistently rejected micromanagement challenges to similar proposals.

As discussed above, religious discrimination is one of the paradigmatic examples of a significant social policy question. It is also a topic that is reasonably well understood by shareholders and subject to significant discussion and debate.

As the Staff has recognized, shareholders are presumed to be sophisticated enough to provide input on many human rights issues, including discrimination. *Alphabet (Trillium)* (Apr. 15, 2022). There is no reason to believe that shareholders would be unable to assess the impact of potential religious discrimination by American Express on broader society.

Further, as discussed above, both discrimination and the impact of financial institutions on broader society are the subject of widespread discussion and debate. The intersection of the two has resulted in significant legislation at the federal and state level, including recently. This shows that there is "robust[] public discussion and analysis on the topic" as well as "well-established national. . . frameworks" for assessing proposals related to transparency on these issues. SLB 14.

As such, there is no way that American Express can meet its burden to show that the type of report requested by the instant Proposal would be "'too complex' for shareholders, as a group, to make an informed judgment" about. SLB 14.

American Express cites to *American Express Company (NCPPR)* (Mar. 9, 2023), where the Staff granted no-action relief on a proposal seeking to require the company to provide a report on "if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information" regarding processing payments for firearms. *Id.* at 2–3. But there, the proposal asked American Express "how" it intended to reduce certain risks, not for its evaluation of risks. That is why, just last year, Staff approved of a similar proposal from the same proponent at American Express. In *American Express Co.* (Mar. 13, 2024), Staff rejected American Express's micromanagement challenge to a proposal asking for a public report "concerning its oversight of management's decision-making regarding the potential use of a merchant category code (MCC) for standalone gun and ammunition stores." *Id.* at 3. It asked the Company to "explain the justification for its position," as opposed to asking it to evaluate the proponent's own preferred action. *Id.*

The 2023 *American Express* proposal is also not far off of many of the above cites and shows the Staff's wide discretion to decide issues in this area. The proponent in the Bahnsen Proposal noted that this potential for unbridled discretion raises First Amendment issues of potential viewpoint discrimination.

The Proposal here also poses a question at a reasonable and intelligible level of generality and gives management reasonable discretion on how to answer that question.

C. The Proposal is not so vague and indefinite as to be excludable under Rule 14a-8(i)(3) because shareholders and the Company readily understand that it asks for a risk report on religious discrimination.

Somewhat perplexingly, immediately after complaining that the instant Proposal micromanages the company, American Express complains that the proposal is so vague that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B").

To meet the standard set by SLB 14B for impermissible vagueness, a proposal must be so devoid of guidance that there is no "reasonable certainty exactly what actions or measures the proposal requires." SLB 14B. American Express cannot meet this high bar because the proposal's request is readily intelligible by both American Express and the stockholders. Religious discrimination is pernicious, and American Express's shareholders deserve to know how the company is managing the risks related to it.

1. A proposal and supporting statement are impermissibly vague only if the proposal and supporting statement, when taken together, lack a basic level of clarity or fail to request a specific action.

Under Rule 14a-8(i)(3), a proposal and supporting statement may not make a materially false or "misleading statement." This includes statements that are "so vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." SLB 14B.

In assessing whether a term is too vague the Staff have consistently used the context provided by the supporting statement and applied common sense definitions that are readily understood by investors. This has led them to reject vagueness challenges for terms like "the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters," *Kohl's Corp.* (Mar. 14, 2024), "impacts on civil rights and non-discrimination" across all aspects of the company, *CVS Health Corp.* (Mar. 17, 2022), "viewpoint diverse board" regarding political bias, *DICK'S Sporting Goods, Inc.* (Apr. 22, 2024), "economic and humanitarian effects" of a climate transition policy, *JPMorgan Chase & Co. (NLPC)* (Mar. 29, 2024), "human rights impacts" associated with "high-risk products and services," *Northrop Grumman* (Mar. 26, 2021), and "risks" related to anti-competitive practices. *Alphabet Inc. (CtW)* (Apr. 16, 2021).

This stands in contrast to cases where the proposed action was unclear. See *eBay Inc.* (Apr. 10, 2019) ("reform the company's executive compensation committee");

Apple Inc. (Zhao) (Dec. 6, 2019) ("improve guiding principles of executive compensation"); *Cisco Systems, Inc.* (Oct. 7, 2016) ("not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification").

American Express does not claim that the action requested by the instant Proposal is too vague. As discussed above, transparency reports are common and well-understood. Instead, American Express argues that certain essential terms are not sufficiently defined and are, therefore, impermissibly vague.

Specifically, American Express claims that the terms "discrimination" and "religious views" are so vague that neither the company nor shareholders could determine what actions or measures would be required to ensure "that the Company does not engage in 'discrimination.'" But there can be no doubt that American Express's legal and compliance team, which is responsible for ensuring that American Express complies with the multiple state and federal laws that already prohibit discrimination on the basis of religion, has a clear understanding of what these terms mean. For example, as previously mentioned, the Equal Credit Opportunity Act, which American Express is subject to, prohibits discrimination on the basis of religion: "It shall be unlawful to *discriminate* against any applicant . . . on the basis of race, color, *religion*, national origin, sex or marital status, or age . . . ." 15 U.S.C. § 1691(a). One assumes that American Express would not tell the Department of Justice or the Equal Employment Opportunity Commission that they simply could not understand what the law required and, therefore, could not comply. There are, of course, additional regulations and caselaw bearing out some of these definitions.[9] But Proponent here has only 500 words. So even meeting the statutory standards of precision is more than adequate.

The proposal, supporting statement, and material cited by the statement provide ample information and context to help the company and the shareholders understand what the proposal is trying to achieve. It makes clear that the proposal is concerned that customers are being denied services based on their religious views or under circumstances strongly suggesting that this is the case and that the use of vague and easily manipulated terms in American Express's terms of service may be concealing or inadvertently enabling religious discrimination. Given the copious supporting documentation cited by the supporting statement and the news coverage of potential religious discrimination in financial services discussed in more detail above, the essential terms of the proposal easily satisfy the low bar of providing reasonable certainty to shareholders and the company.

[9] Neither Act defines "discrimination" and ECOA does not define "religion." But even Title VII's definition of religion is self-referential, defining "religion" just to provide expansive protection for religious exercise: "religion includes all aspects of religious observance and practice, as well as belief." So even that definition assumes a common understanding of the term "religion." 42 U.S.C. § 2000e(j).

American Express's other citations are unavailing because there, key phrases were subject to multiple reasonable interpretations, *AT&T Inc.* at 7–8 (Feb. 21, 2014) (confusion as to whether "moral, ethical and legal fiduciary" modifies "duties" only or "duties and opportunities"), *General Dynamics Corp.* (Jan. 10, 2013) (failing to define how awards "vest on a pro rata basis"), *The Boeing Co.* at 3 (Jan. 28, 2011, *recon. granted* Mar. 2, 2011) ("executive pay rights" could include salary, bonuses, stock options, or healthcare of insurance benefits), or were inconsistent with common or expected meanings, *Pfizer, Inc.* (Dec. 22, 2014, *recon. denied* Mar. 10, 2015) (defining "independent director" in proposal in ways inconstant with company's definition stock ownership guidelines). Here "religion" and "discrimination" are not abstruse corporate concepts, but common and commonly understood terms.

Still, if the company truly has no idea what these terms mean, the report requested by the proposal is even more important because American Express is in serious danger of significant legal sanction. However, this is unlikely to be the case since those terms are well understood by both financial firms and the general public. In fact, American Express argues that because the firm does not have a policy of discriminating against customers on the basis of religion, it is unclear what policies the instant Proposal is seeking to address. This argument is contradictory to the argument that the proposal and essential terms are too vague to be intelligible; otherwise, how would American Express know that they had a relevant policy?

American Express's argument also flips the burden of proof on its head by trying to make the shareholder prove the policy is acceptable. The proposal asks for a report on how American Express is managing risk. The shareholders may not know every specific policy that is relevant to the question of religious discrimination and the risks appurtenant to it. That isn't the point. Of course, the company is going to be in a superior position to assess exactly what is relevant to the question posed by the proposal, but that does not make the proposal impermissibly vague.

Of course, the instant Proposal does not actually request that American Express implement policies to ensure American Express refrains from religious discrimination. It merely seeks a report on how American Express manages the risks posed by potential religious discrimination.

Conclusion

For these reasons, we request that the Staff reject American Express' request for relief from Guidestone's Proposal. A copy of this correspondence has been timely provided to American Express. If we can provide additional materials to address any queries the Commission may have on this letter, please feel free to contact me.

Sincerely,

Brian Knight

Cc: James Killerlane III