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

DIVISION OF
CORPORATION FINANCE

March 18, 2025

Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP

Re: AbbVie Inc. (the "Company")
Incoming letter dated December 19, 2024

Dear Marc S. Gerber:

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

The Proposal requests the board of directors conduct an evaluation and issue a report assessing how the Company's advertisement and promotion of puberty blockers impacts its legal and reputational risks related to providing puberty-blocking drugs for non-FDA-approved purposes.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(5). 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)(5). In reaching this position, we have not found it necessary to address the alternative bases 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: Jerry Bowyer
Bowyer Research, Inc.

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VIA STAFF ONLINE FORM

December 19, 2024

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

RE: AbbVie Inc. – 2025 Annual Meeting
Omission of Shareholder Proposal of
Jean Hoysa

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we are writing on behalf of our client, AbbVie Inc., a Delaware corporation ("AbbVie"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with AbbVie's view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by Bowyer Research, Inc. ("Bowyer"), on behalf of Jean Hoysa (the "Proponent"), from the proxy materials to be distributed by AbbVie in connection with its 2025 annual meeting of stockholders (the "2025 proxy materials").

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to Bowyer, on behalf of the Proponent, as notice of AbbVie's intent to omit the Proposal from the 2025 proxy materials.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent, or Bowyer on the Proponent's behalf, submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to AbbVie.

I. The Proposal

The text of the Proposal (footnotes omitted) is set forth below:

> **Report on Risks of Non-FDA Approved Use of Puberty Blockers**
>
> **Whereas**: AbbVie is one of the most prominent biomedical companies in the world, employing more than 50,000 people. Because of its status as both an industry leader and a producer of critical medical resources, the Company ought to be carrying out its business practices in a manner primarily aimed at maximizing its service to customers and employees, as well as maximizing its return to shareholders in keeping with its fiduciary duty.
>
> And yet, AbbVie's actions regarding puberty blockers do not match its obligations. Puberty blockers are not approved by the FDA to treat gender dysphoria. Despite this, the Company has faced criticism over its alleged advertisement and promotion of puberty blockers to treat gender dysphoria. As per a 2023 letter from medical professionals and medical organizations sent to the FDA, "When given to children, puberty blockers may pose many additional risks that have not been adequately studied... because puberty blockers are not FDA-approved in children with gender dysphoria, there is no demonstrated benefit of the drugs to justify these risks."
>
> These risks only become more pronounced given the Company's corporate partnerships. Given AbbVie's perfect score on the HRC's Corporate Equality Index, an index that notably requires the provision of puberty blockers to youth as a prerequisite for a perfect score, AbbVie's actions regarding promotion of puberty blockers is highly concerning, indicating that such actions reflect the Company's broader corporate social stance.

> The over-politicized world of modern business, particularly in the realm of healthcare, is one in which companies owe it to their shareholders to resist letting activist demands guide corporate policy, particularly when such policies involve compliance with federal regulation. AbbVie should avoid needless political controversies and support fundamental freedoms that are of broad societal impact and benefit every American. One way to do this is through transparency regarding its promotion of puberty blockers, an issue which not only has broad societal impact on the families who make use of AbbVie's products, but which maintains the potential to create both legal and reputational risk for the Company.
>
> **Resolved**: Shareholders request the Board of Directors of AbbVie Inc. conduct an evaluation and issue a report within the next year, at reasonable cost and excluding confidential information, assessing how the Company's advertisement and promotion of puberty blockers impacts AbbVie's legal and reputational risks related to providing puberty-blocking drugs for non-FDA-approved uses.

II. Bases for Exclusion

We hereby respectfully request that the Staff concur with AbbVie's view that the Proposal may be excluded from the 2025 proxy materials pursuant to:

- Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9;
- Rule 14a-8(i)(5) because the Proposal relates to operations of AbbVie that account for less than 5% of AbbVie's total assets, net earnings and gross sales and is not otherwise significantly related to AbbVie's business; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to AbbVie's ordinary business operations.

III. Background

AbbVie received the Proposal via FedEx on November 13, 2024, accompanied by a cover letter from Bowyer, dated November 11, 2024, indicating that "[a] Proof of Ownership letter attesting to the [Proponent]'s ownership of AbbVie shares as of the date of this proposal's submission is forthcoming." On November 25, 2024, AbbVie received a letter from Charles Schwab verifying the Proponent's continuous ownership of at least the requisite amount of AbbVie stock

for at least the requisite period preceding and including the date of submission of the Proposal. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.[1]

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(3) Because the Proposal Is Materially False and Misleading in Violation of Rule 14a-9.

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").

Rule 14a-9(a) prohibits any statement that is "false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." The Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if "the company demonstrates objectively that a factual statement is materially false or misleading." SLB 14B. In accordance with SLB 14B, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(3) where such proposals were false or misleading under Rule 14a-9. *See, e.g.*, *Netgear Inc.* (Apr. 9, 2021, *recon. denied* Apr. 23, 2021)[*] (permitting exclusion under Rule 14a-8(i)(3) of a proposal that contained a materially false factual statement about the company's existing special meeting rights); *Ferro Corp.* (Mar. 17, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that mischaracterized certain facets of Ohio and Delaware corporate law, noting that the company had "demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading"); *AT&T Inc.* (Feb. 2, 2009) (permitting exclusion of a proposal requesting that the board adopt a bylaw to provide for an independent director where the proposal mischaracterized the independence definition set by the Council of Institutional Investors); *Jefferies Group, Inc.* (Feb. 11, 2008, *recon. denied* Feb. 25, 2008) (permitting exclusion of a proposal requesting a shareholder advisory vote at the annual meeting where the proposal claimed the advisory vote was to be "supported by company management"); *Entergy Corp.* (Feb. 14, 2007) (permitting exclusion of a proposal requesting that the board adopt a policy giving shareholders the opportunity to vote on an advisory management resolution to approve the compensation committee report where the

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[1] Exhibit A omits correspondence between AbbVie and Bowyer that is irrelevant to this request. *See* the Staff's "Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials" (Dec. 17, 2021), available at https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217.

[*] Citations marked with an asterisk indicate Staff decisions issued without a letter.

supporting statement made objectively false statements regarding executive compensation at the company, director committee membership and director stock ownership).

In this case, the Proposal is materially false and misleading in a manner that would materially impact shareholders' views of the Proposal. Specifically, AbbVie's drug, Lupron (leuprolide acetate), is a gonadotropin-releasing hormone (GnRH) agonist, which was first approved by the U.S. Food and Drug Administration ("FDA") in 1985 and is approved to treat: (i) endometriosis, (ii) uterine fibroids, (iii) advanced prostate cancer and (iv) central precocious puberty.[2] The entire theme and premise of the Proposal is that AbbVie advertises and promotes Lupron for non-FDA-approved uses, and specifically for the treatment of gender dysphoria. In this regard, the supporting statement refers to "AbbVie's actions regarding [Lupron]" as "not match[ing] its [fiduciary] obligations." and then asserts that AbbVie "has faced criticism over its alleged advertisement and promotion of [Lupron] to treat gender dysphoria." The supporting statement further claims that "AbbVie's actions regarding promotion of [Lupron to youth] is highly concerning, indicating that such actions reflect the Company's broader corporate social stance." The Proposal's resolved clause then requests that the board of directors of AbbVie issue a report "assessing how [AbbVie's] advertisement and promotion of [Lupron] impacts AbbVie's legal and reputational risks related to providing [Lupron] for non-FDA-approved uses." Taken together, the Proposal's resolution and supporting statement conveys the impression that AbbVie advertises and promotes Lupron for non-FDA-approved purposes, and specifically for the treatment of gender dysphoria. This erroneous impression is a central element of the Proposal and is materially false and misleading in violation of Rule 14a-9.

This assertion is materially false and misleading because AbbVie does not advertise or promote the use of any of its medicines for non-FDA-approved uses. Such promotion is prohibited by FDA's regulations and by AbbVie's own Code of Business Conduct.[3] More specifically, the company does not advertise or promote

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[2] *See Prescribing Information* at https://www.lupron.com/pi.html. AbbVie currently markets two forms of Lupron: LUPRON DEPOT (leuprolide acetate for depot suspension) and LUPRON DEPOT-PED (leuprolide acetate for depot suspension). For ease of reference, we refer to these products as "Lupron" throughout this letter.

[3] *See* AbbVie's Code of Business Conduct, https://www.abbvie.com/content/dam/abbvie-com2/pdfs/cobc/cobc_English.pdf ("We only promote our pharmaceutical products for uses that have been approved or authorized by appropriate government or regulatory agencies . . ."). FDA has long recognized, however, that healthcare professionals may prescribe approved medicines for unapproved uses. *See Understanding Unapproved Use of Approved Drugs "Off Label"*, available at https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label ("From the FDA perspective, once the FDA approves a drug, healthcare providers generally may prescribe the drug for an unapproved use when they judge that it is medically appropriate for their patient.").

Lupron for any non-FDA-approved purposes, including for the treatment of gender dysphoria. There are multiple versions of leuprolide acetate, manufactured by other companies, on the market today. AbbVie therefore engages in only limited advertisement and promotion of Lupron,[4] and all such advertisement and promotion is limited to only its approved uses. Thus, contrary to the core assertion that underlies the Proposal, AbbVie does not advertise or promote Lupron for the treatment of gender dysphoria or for any other non-FDA-approved uses.[5]

Notably, the Proposal does not cite a single instance of AbbVie advertising or promoting Lupron for any non-FDA-approved uses. The Proposal briefly references that AbbVie "has faced criticism over its alleged advertisement and promotion of [Lupron] to treat gender dysphoria." But the Proponent fails to identify any instance of Lupron being advertised or promoted for off-label uses. Even the document referenced in the footnote accompanying this sentence in the Proposal fails to identify any instance of Lupron being advertised or promoted for off-label uses.

Taken together, the Proposal's resolution and supporting statement is premised on, and conveys to shareholders, objectively false and misleading statements that would materially impact shareholders' views of the Proposal. Accordingly, the Proposal should be excluded pursuant to Rule 14a-8(i)(3) because it is materially false and misleading.

In the event that the Staff determines the Proposal cannot be excluded in its entirety, the Staff has recognized that a company may exclude specific statements contained in proposals when those specific statements are materially false and misleading. In SLB 14B, the Staff acknowledged that companies have relied on Rule 14a-8(i)(3) to exclude statements included in a supporting statement, even if the balance of the proposal and the supporting statement may not be excluded, and indicated that "reliance on [R]ule 14a-8(i)(3) to exclude or modify a statement may be appropriate where . . . the company demonstrates objectively that a factual statement is materially false or misleading."

Consistent with SLB 14B, the Staff has permitted companies to exclude one or more statements from a proposal's supporting statement under Rule 14a-8(i)(3) where those statements were materially false or misleading. *See, e.g., Rite Aid Corp.* (Mar. 13, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a sentence included in the supporting statement falsely claiming, among other things, that the SEC supported the proposal); *Bob Evans Farms, Inc.* (June 26, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the supporting statement

[4] For example, Lupron is not promoted through mass media, such as television advertisements.
[5] AbbVie's promotion of Lupron prominently states its approved indications. *See, e.g.*, https://lupron.com/.

falsely claiming that the proposal had received "tremendous shareholder support"); *Piper Jaffray Cos.* (Feb. 24, 2006) (permitting exclusion under Rule 14a-8(i)(3) of a paragraph included in the supporting statement falsely claiming that management had demonstrated a disregard for shareholders' interests).

In this instance, the third paragraph of the supporting statement is materially false and misleading. That paragraph claims that the Human Rights Campaign's Corporate Equality Index ("CEI") "requires the provision of puberty blockers to youth as a prerequisite for a perfect score" and that because AbbVie received a perfect score on the CEI "AbbVie's actions regarding promotion of [Lupron] is highly concerning." This assertion is objectively false and misleading because the CEI[6] is a rating system designed to measure and benchmark a company's workplace inclusion (including, in relevant part, benchmarking the healthcare coverage benefits employers provide to their employees), and not an analysis or measure of the products a company sells or a company's advertising practices. Nor does the CEI require "the provision" of any specific medicine by any biopharmaceutical company. The CEI survey does not ask which products a company offers for sale. Moreover, this paragraph of the Proposal suggests a "corporate partnership" that AbbVie has with the Human Rights Campaign (HRC), which is objectively false and misleading. AbbVie participates in the annual CEI survey (like over 1,300 companies did for the 2023-2024 survey[7]), but does not have a "corporate partnership" with HRC.[8] Therefore, the supporting statement's assertion relating to AbbVie's perfect score on the CEI as evidence of its promoting Lupron for non-FDA-approved purposes is objectively false and misleading and would materially impact shareholders' views of the Proposal.

Accordingly, even if the Proposal may not be excluded in its entirety, the third paragraph of the supporting statement relating to the CEI should be excluded from the Proposal pursuant to Rule 14a-8(i)(3) because it is materially false and misleading.

V. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(5) Because It Relates to Operations That Account for Less Than 5% of AbbVie's Total Assets, Net Earnings and Gross Sales and Is Not Otherwise Significantly Related to AbbVie's Business.

Rule 14a-8(i)(5) provides that a company may omit a shareholder proposal from its proxy materials "[i]f the proposal relates to operations which account for

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[6] *See e.g.*, HRC's "*Corporate Equality Index 2023-2024*" (November 2023); HRC's "*2023 Corporate Equality Index Criteria*" (November 2023).
[7] *See* https://www.hrc.org/resources/corporate-equality-index.
[8] AbbVie is not among the companies listed by HRC as "corporate partners." *See* https://www.hrc.org/about/corporate-partners.

less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." The purpose of this exclusion is to ensure that a company's proxy materials do not include shareholder proposals that lack a significant relationship to the company. *See* Exchange Act Release No. 34-19135 (Oct. 14, 1982) (the "1982 Release") (concerning Rule 14a-8(c)(5) – the predecessor to Rule 14a-8(i)(5)) and Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release") (renumbering the exclusion to Rule 14a-8(i)(5) and stating that by doing so, the Commission was "not making any substantive changes to the rule"). Consistent with Rule 14a-8(i)(5) and its underlying purpose, the Staff has concurred on a number of occasions with the exclusion of proposals that relate to operations that account for less than 5% of a company's total assets, net earnings and gross sales. *See, e.g.*, *Chubb Limited* (Mar. 26, 2021)[*]; *ResMed Inc.* (Jul. 17, 2020)[*]; *Reliance Steel & Aluminum Co.* (Apr. 2, 2019); *Dunkin' Brands Group, Inc.* (Feb. 22, 2018); *The Goldman Sachs Group, Inc.* (Feb. 19, 2013); *Arch Coal, Inc.* (Jan. 19, 2007); *Merck & Co., Inc.* (Jan. 27, 2004); *The Procter & Gamble Co.* (Aug. 11, 2003); *The Walt Disney Co.* (Nov. 29, 2002); *Eli Lilly & Co.* (Feb. 2, 2000).

In this instance, the Proposal lacks economic significance to AbbVie's business. In particular, the Proposal seeks a report assessing the risks related to AbbVie's advertisement and promotion of one specific drug. AbbVie is a manufacturer of approximately 90 compounds, devices or indications in development (including those products manufactured through collaboration and license agreements). AbbVie's broad array of products largely falls into the following strategic therapeutic areas: (i) immunology, (ii) oncology, (iii) aesthetics, (iv) neuroscience and (v) eye care. Some legacy products that do not fall within these strategically important areas are grouped as "other" products in AbbVie's financial reporting. Lupron falls into this "other" product category and accounted for less than 1% of total assets as of December 31, 2023 and less than 2% of net earnings and less than 2% of gross sales for the fiscal year ended December 31, 2023. Given that the Proposal relates to Lupron and AbbVie's total assets, net earnings and gross sales related to Lupron do not exceed the 5% thresholds set forth in Rule 14a-8(i)(5), the Proposal does not relate to operations that are economically significant to AbbVie.

Even if a proposal is not economically significant to a company, a proposal may not be excluded under Rule 14a-8(i)(5) if it is "otherwise significantly related to the company's business." As the Commission stated in the 1982 Release:

> Historically, the Commission staff has taken the position that certain proposals, while relating to only a small portion of the issuer's operations, raise policy issues of significance to the

> issuer's business. . . . For example, the proponent could provide information that indicates that while a particular corporate policy which involves an arguably economically insignificant portion of an issuer's business, the policy may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities.

As discussed above, the Proposal relates to a single class of pharmacological therapies of which AbbVie only produces Lupron. The manufacture and sale of Lupron does not have a significant impact on any other segments of AbbVie's business, nor does it subject AbbVie to significant contingent liabilities.

Further, even where a proposal raises a policy issue, the policy must be more than ethically or socially "significant in the abstract" and must have a "meaningful relationship to the business" of the company in question. *See Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554, 561 n.16 (D.D.C. 1985).[9] In this regard, the Staff has in many instances recognized that, although a proposal may relate to issues that are of social significance, those issues are not necessarily of concern to a company's shareholders because of the minimal impact those issues have on the company's business. For example, in *Hewlett-Packard Co.* (Jan. 7, 2003), the shareholder proposal requested that the company relocate or close its offices in Israel, divest itself of land owned in Israel and distribute a letter regarding Israel's violation of numerous U.N. resolutions and international human rights standards. The Staff permitted the company to exclude the proposal under Rule 14a-8(i)(5) and noted that "the amount of revenue, earnings, and assets attributable to [the company's] operations in Israel is less than five percent and the proposal is not otherwise significantly related to [the company's] business." *See also, e.g., Chubb Limited* (Mar. 26, 2021)* (permitting exclusion under Rule 14a-8(i)(5) of a proposal requesting a report on "current company policies, and options to change such policies, to help ensure [that the company's] insurance offerings reduce, and do not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights and liberties"); *Marriott International, Inc.* (Mar. 13, 2020) (permitting exclusion under Rule 14a-8(i)(5) of a proposal requesting that the company prohibit wild-animal displays at all of its hotels because the proposal was "not otherwise significantly related to" its business); *Dunkin' Brands Group, Inc.* (Feb. 22, 2018) (permitting exclusion under Rule 14a-8(i)(5) of a proposal requesting that the board "issue a report . . . assessing the environmental impacts of continuing to use K-Cup Pods brand packaging" because the proposal was not "otherwise significantly related to" its business); *American Stores Co.* (Mar. 25, 1994)

[9] In Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff stated that it was returning to its historic approach of interpreting Rule 14a-8(i)(5) in a manner consistent with Lovenheim v. Iroquois Brands, Ltd.

(permitting exclusion under Rule 14a-8(i)(5) of a proposal requesting that the company terminate its sale of tobacco products because the proposal was "not otherwise significantly related to" its business); *Kmart Corp.* (Mar. 11, 1994) (permitting exclusion under Rule 14a-8(i)(5) of a proposal concerning the sale of firearms in the company's stores, noting that those sales were "not otherwise significantly related to" the company's business).

As indicated above, the Proposal relates to the advertisement and promotion of a discrete product, Lupron, which represents only a very small percentage of AbbVie's overall business. Additionally, the Proposal fails to establish a correlation between any of the potential policy concerns addressed in the supporting statement and AbbVie's business. Instead, the supporting statement implies that such concerns "maintain the potential to create both legal and reputation risk for [AbbVie]." As such, any policy issue that might be raised by the Proposal with respect to gender dysphoria would only be significant in the abstract and would have minimal impact on AbbVie's business.

Accordingly, because the Proposal relates to less than 5% of AbbVie's total assets, net earnings and gross sales as of and for its most recent fiscal year and is not otherwise significantly related to AbbVie's business, the Proposal is excludable under Rule 14a-8(i)(5).

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

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In the 1998 Release, the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As demonstrated below, the Proposal implicates the first consideration.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release") ("[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).").

In addition, in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the "subject matter to which the risk pertains or that gives rise to the risk" in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. *See, e.g.*, *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report "describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians, and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making," noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff consistently has permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) when those proposals relate to the manner in which a company advertises its products. *See, e.g.*, *Tesla, Inc.* (Mar. 25, 2024) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that asked the company to "authorize and implement an educational, data driven, comprehensive advertising strategy for the [c]ompany's vehicles, and report to shareholders on the progress and results of such strategy"); *Ford Motor Company* (Feb. 2, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board of directors assess the political activity from its advertising and its resulting exposure to risk); *FedEx Corp.* (July 7, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report "describing legal steps [the company] has taken and/or could take to distance itself from the Washington D.C. NFL team name" controversy, noting that "the proposal relates to the manner in which [the company] advertises its products and services"); *FedEx Corp.* (July 11, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting, among other things, a report "addressing how [the company] can better respond to reputational damage from its association with the Washington D.C. NFL franchise team name controversy," noting that "the proposal relates to the manner in which [the company] advertises its products and services"); *PepsiCo, Inc.* (Jan. 10, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company issue a public statement indicating that a commercial for the company's product was presented in poor taste, noting that "the proposal relates to the manner in which [the company] advertises its products"); *PG&E Corp.* (Feb. 14, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal instructing the company to, among other things, "cease immediately its current advertising campaign promoting solar or wind as desirable

sources of energy for conversion to electricity," noting that the proposal relates to the company's "ordinary business operations (*i.e.*, the manner in which a company advertises its products)").

The Staff also consistently has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to the products and services offered for sale by a company. For example, in *Pfizer Inc.* (Mar. 1, 2016), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing the steps the company has taken to prevent the sale of its medicines to prisons for the purpose of aiding executions, noting that the proposal "relates to the sale or distribution of [the company's] products." *See also, e.g.*, *JPMorgan Chase & Co.* (Mar. 26, 2021)[*] (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a study on the costs created by the company in underwriting multi-class equity offerings); *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report discussing the adequacy of the company's policies in addressing the social and financial impacts of its direct deposit advance lending service as relating to the ordinary business matter of "products and services offered for sale by the company," stating in particular that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *The Walt Disney Co.* (Nov. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board of directors approve the release of a specific film on Blu-ray, noting that the proposal "relates to the products and services offered for sale by the company"); *FMC Corp.* (Feb. 25, 2011, *recon. denied* Mar. 16, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking, among other things, an immediate moratorium on sales and a withdrawal from the market of a specific pesticide, as well as other certain pesticides, noting that the proposal "relates to the products offered for sale by the company"); *JPMorgan Chase & Co.* (Mar. 16, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board implement a policy mandating that the company cease its current practice of issuing refund anticipation loans, noting that the proposal related to the company's "decision to issue refund anticipation loans" and that "[p]roposals concerning the sale of particular services are generally excludable under rule 14a-8(i)(7)").

In this instance, the Proposal focuses primarily on how AbbVie decides to sell a particular pharmaceutical product, as well as how it allegedly advertises and promotes that product, which are ordinary business matters. Specifically, the Proposal's resolved clause asks AbbVie's board of directors to issue a report assessing how AbbVie's advertisement and promotion of Lupron impacts AbbVie's legal and reputational risks related to providing Lupron for non-FDA-approved uses (which it does not do). Much of the supporting statement focuses on AbbVie's alleged advertisement and promotion of Lupron, including assertations that AbbVie "has faced criticism over its alleged advertisement and promotion of [Lupron] to

treat gender dysphoria" and that AbbVie should provide more "transparency regarding its promotion of [Lupron]." Read together, the Proposal's resolved clause and supporting statement demonstrate a clear concern with the ordinary business matter of how AbbVie decides to sell a particular pharmaceutical product, as well as how it allegedly advertises and promotes that specific product, namely, Lupron.

Decisions with respect to how AbbVie decides to sell a particular pharmaceutical product, as well as decision regarding advertising and promoting pharmaceutical products are at the heart of AbbVie's business as a global, diversified research-based biopharmaceutical company and are so fundamental to its day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight. As a company engaged in the research and development, manufacturing, commercialization and sale of innovative medicines and therapies, AbbVie devotes significant time, energy and resources to deciding its product offerings and advertising and promotion strategies. These decisions involve numerous business, scientific and legal considerations, along with the balancing of complex factors such as: market and business uncertainty; licensing, acquisitions and other arrangements; third party agreements for process development, product distribution, analytical services and manufacturing of products; sources and availability of raw materials; intellectual property protection and regulatory exclusivity; and laws and regulations relating to the development, manufacturing and commercialization of pharmaceutical products. Balancing the numerous and complex factors is plainly within the ambit of management's operations of AbbVie's ordinary business. Therefore, the Proposal should be excluded under Rule 14a-8(i)(7) as relating to AbbVie's ordinary business operations.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; SLB 14E. The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *American Airlines Group Inc.* (Apr. 1, 2024), the excluded proposal requested that the company ensure that all in-flight special meals are free of common allergens and meet the needs of people seeking gluten-free, vegan, lactose-free and other diet options. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the [p]roposal relates to ordinary business matters," even though the proposal's supporting statement suggested that streamlining the company's meal service would support the company's goals of reducing greenhouse gas emissions, which the Staff has recognized as a significant social policy issue. *See also, e.g., PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the

proposal addressed the potential significant policy issue of the humane treatment of animals, the proposal covered a broad scope of laws 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) when, 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); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

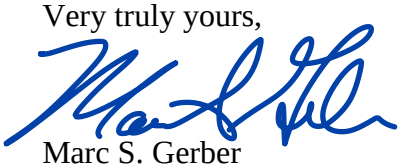
The Proposal's overwhelming concern with how AbbVie decides to sell a particular pharmaceutical product, as well as how it allegedly advertises and promotes that product, demonstrates that the Proposal's focus is on ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

Accordingly, the Proposal should be excluded from AbbVie's 2025 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

VII. Conclusion

Based upon the foregoing analysis, AbbVie respectfully requests that the Staff concur that it will take no action if AbbVie excludes the Proposal from its 2025 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of AbbVie's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

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

Jerry Bowyer
Bowyer Research, Inc.

EXHIBIT A

(see attached)

Bowyer Research

November 11, 2024

AbbVie Inc.
1 North Waukegan Road, AP34
North Chicago, Illinois 60064
Attention: Corporate Secretary

Re: Report on Risks of Non-FDA Approved Use of Puberty Blockers

Dear Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in AbbVie's (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. The resolution at issue relates to the subject described below.

Proponent: Jean Hoysa
Company: AbbVie Inc.
Subject: Report on Risks of Non-FDA Approved Use of Puberty Blockers

I submit the Proposal on behalf of, and with the permission of, Jean Hoysa, who has continuously owned more than $4,000 worth of AbbVie securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. A letter from Jean Hoysa authorizing us to submit this proposal on her behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder'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 Jerry Bowyer, Bowyer Research, [redacted] or emailed to me at [redacted], copying [redacted].

Sincerely,

Jerry Bowyer
Bowyer Research
Enclosures (2)

[redacted]

11/8/2024

AbbVie Inc., 1 North Waukegan Road
AP34, North Chicago, Illinois 60064
Attention: Corporate Secretary

Re: Report on Risks of Non-FDA Approved Use of Puberty Blockers

Dear Secretary,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned ("Proponent") authorizes Bowyer Research, Inc. to file a shareholder proposal on the Proponent's behalf with AbbVie ("the Company") for inclusion in the Company's 2025 proxy statement. The proposal at issue relates to the subject described below.

Proponent: Jean Hoysa
Company: AbbVie Inc.
Subject: Report on Risks of Non-FDA Approved Use of Puberty Blockers

The Proponent gives Bowyer Research, Inc. the authority to address, on the Proponent's behalf, any and all aspects of the shareholder proposal, including drafting and editing the proposal, representing the Proponent in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the Proponent. The 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. The Proponent supports this proposal and authorizes *Bowyer Research* to write a more detailed statement of support of the proposal on the Proponent's behalf.

Jean Hoysa (the "Proponent") has continuously owned more than $5,000 worth of AbbVie securities for more than 3 years and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders.

Pursuant to interpretations of Rule 14a-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following times for a telephone conference to discuss this proposal:

November 25, 2024 at 10:15 AM CT, or
November 29, 2024 at 10:15 AM CT

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

Sincerely,

DocuSigned by:
Jean Hoysa
9BD3ADAD02AE46F...

Jean Hoysa
Proponent

Report on Risks of Non-FDA Approved Use of Puberty Blockers

Whereas: AbbVie is one of the most prominent biomedical companies in the world, employing more than 50,000 people. Because of its status as both an industry leader and a producer of critical medical resources, the Company ought to be carrying out its business practices in a manner primarily aimed at maximizing its service to customers and employees, as well as maximizing its return to shareholders in keeping with its fiduciary duty.

And yet, AbbVie's actions regarding puberty blockers do not match its obligations. Puberty blockers are not approved[1] by the FDA to treat gender dysphoria.[2] Despite this, the Company has faced criticism over its alleged advertisement and promotion of puberty blockers to treat gender dysphoria. As per a 2023 letter[3] from medical professionals and medical organizations sent to the FDA, "When given to children, puberty blockers may pose many additional risks that have not been adequately studied... because puberty blockers are not FDA-approved in children with gender dysphoria, there is no demonstrated benefit of the drugs to justify these risks."

These risks only become more pronounced given the Company's corporate partnerships. Given AbbVie's perfect score[4] on the HRC's Corporate Equality Index, an index that notably requires the provision of puberty blockers to youth as a prerequisite for a perfect score, AbbVie's actions regarding promotion of puberty blockers is highly concerning, indicating that such actions reflect the Company's broader corporate social stance.

The over-politicized world of modern business, particularly in the realm of healthcare, is one in which companies owe it to their shareholders to resist letting activist demands guide corporate policy, particularly when such policies involve compliance with federal regulation. AbbVie should avoid needless political controversies and support fundamental freedoms that are of broad societal impact and benefit every American. One way to do this is through transparency regarding its promotion of puberty blockers, an issue which not only has broad societal impact on the families who make use of

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[1] https://www.webmd.com/children/what-are-puberty-blockers

[2] https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/symptoms-causes/syc-20475255

[3] September 1, 2023Regulations.gov https://downloads.regulations.gov › attachment_1

[4] https://www.hrc.org/resources/cei-equality-100-award

AbbVie's products, but which maintains the potential to create both legal and reputational risk for the Company.

Resolved: Shareholders request the Board of Directors of AbbVie Inc. conduct an evaluation and issue a report within the next year, at reasonable cost and excluding confidential information, assessing how the Company's advertisement and promotion of puberty blockers impacts AbbVie's legal and reputational risks related to providing puberty-blocking drugs for non-FDA-approved uses.

Bowyer Research

January 22, 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 Jean Hoysa at AbbVie Inc. under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of Ms. Jean Hoysa (the "Proponent") to defend her shareholder proposal to AbbVie Inc. ("AbbVie" or the "Company"). Marc S. Gerber wrote to you on behalf of AbbVie on December 19th, 2024 to ask you to concur with AbbVie's view that it can exclude Ms. Hoysa's shareholder proposal from its 2025 Annual Meeting of Shareholders. AbbVie has the burden of demonstrating it can exclude the Proposal. But it cannot bear this burden.

AbbVie's no-action request is based largely on the claim that the proposal in question is so factually inaccurate that it is materially false and misleading under Rule 14a-8(i)(3). Unfortunately for the company, the only glaring factual inaccuracies present are in its no-action request. Abbvie's challenges under Rules (i)(5) and (i)(7) fall similarly flat because the Company ignores the vast public import and debate around puberty blockers, as well as recent no-action precedent harmful to the Company.

A. The Proposal does not make factually inaccurate statements, much less ones that are materially false or misleading.

SEC Staff have long disfavored companies that quibble with a proponent's phrasing or wording of details in the supporting statement. As it stated 20 years ago, a proposal should not be excluded under Rule 14a-8(i)(3) just because "the company objects to factual assertions because they are not supported" or because "the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered." Division of Corporate Finance, Staff Legal Bulletin 14B (Sept. 15, 2004).

But that is exactly what AbbVie is doing here. The company fails to address in any serious way the social concern rules and precedent for this proposal. Instead, it searches for some stronger case and so invents a straw man, which it then proceeds to knock down - that AbbVie itself directly promotes Lupron as a puberty blocker for off-labels uses. We make no such claim. Instead we make a claim that is obviously true and easily verifiable, that there have been allegations of AbbVie promoting puberty blockers. Indeed, the State of Texas investigated / is investigating AbbVie for exactly this reason. (AG Paxton Investigates Potential Violations of State Law by Puberty-Blocking Drug Manufacturers | Office of the Attorney General). We make no claim whatsoever as to whether those allegations are true. Quite to the contrary, we ask for a report about the risks involved with promoting and advertising this product, which includes even the appearance of promoting and advertising it.

Our claim is that there have been allegations—ones that are serious enough to warrant a state investigation. . Does the company deny there are allegations? Quite to the contrary, a representative of the company told us that the Attorney General of Texas issued a press release making these claims, explicitly related to charges of "advertising, marketing, promotion, sale and distribution of prescription hormone blockers for off-label usage," (emphasis ours) and that the company sent documentation to him to dispel the allegations. What was the company rebutting if not allegations of promotion of Lupron for these controversial and illegal purposes?

In addition, our proposal does not specify the promotion of a specific drug, Lupron. This may be somewhat obscured by the fact that the no-action request quotes our statement of support, but inserts [Lupron], a word which does not appear in our statement. The no-action request does this 8 times. This creates the false impression that we are claiming that

HRC promotes Lupron in particular (a claim we never make). In reality, the Human Rights Campaign's Corporate Equality Index promotes puberty blockers and Lupron is one of several/many commonly prescribed compounds in that market.

It is quite reasonable for observers to see the following as of concern: (1) AbbVie sells puberty blockers, (2) puberty blockers are used off-label in highly controversial and legally risky ways, (3) AbbVie profits from such uses, (4) there are high growth rates in that market, (5) Abbvie claims that it doesn't actually promote those usages, yet the company is alleged to promote the drug and partners with (HRC | Human Rights Campaign Foundation and Gilead Will Work Together…), an advocacy group which endorses the use of puberty blockers and pressures companies to cover procedures which require the distribution of puberty blockers to minor children of employees.

The support of 3rd party advocacy groups that promote practices which the company itself cannot legally promote can certainly be a source of reputational risk. Perhaps the most prominent example of this reality is the case of Purdue Pharmaceutical, owned by the Sackler family, which, according to an investigation by Senator McCaskill (Senate report probes Purdue Pharma donations to nonprofits), gave financial support and worked with nonprofits promoting greater use of opioids, all the while maintaining vociferously that it itself did not promote off-label use.

Our proposal makes no claim as to whether AbbVie has violated FDA regulations through direct promotion or, as specified in the Proposal, indirectly promoting the drugs by supporting one of the nation's leading promoters of puberty blockers for minors (the Human Rights Campaign, via its Corporate Equality Index) which also happens to be the leading force lobbying against restrictions in that area, constitutes a violation of FDA regulations. We argue only that such a partnership is part of a general pattern that merits further scrutiny. In the matter of Purdue and the Opioid crisis, for example, management and regulators brushed aside both the business and social risks associated with the sale of Opioids for off-label usages. The company insisted that it did not itself promote the drug that way, all the while supporting entities that promoted more aggressive pain management in ways that redounded to the benefit of Purdue, while keeping the company's fingerprints off such promotion. Or so it seemed.

If the company's risk practices can readily withstand such scrutiny, then they should welcome our call to issue a report to demonstrate such. And they are welcome to counter it in their proxy statement. But they cannot exclude an entire proposal simply because they disagree with its characterization of an item in its supporting statement. The allegation in the no-action request that we engaged in false claims is itself a false claim and should be dismissed by staff.

B. The Proposal demonstrates a clear focus on an issue that is well-established as a significant social policy issue.

AbbVie seeks to exclude the proposal for not addressing significant policy issues under Rule 14a-8(i)(7). But SEC rulemaking has made it abundantly clear that it favors the inclusion of proposals that address issues of broad social concern. Undoubtedly, the use of puberty blocking pharmaceuticals for sexual transition treatments for minors is of broad social concern. Numerous states have banned such practices, including the State of Texas, which has been investigating allegations that AbbVie promotes its products for such use. One of those bans is before the Supreme Court now in United States v. Skrmetti, with related hearings having been held in recent weeks. The issues were also discussed widely in the recent elections. It's hard to think of many issues that have received more social and political focus than that of puberty blockers. SEC Staff also agree. In a pair of proposals from last proxy season, Staff rejected challenges under Rule 14a-8(i)(7) to proposals addressing either side of the debate on the use of puberty blockers. Johnson & Johnson (Feb. 2, 2024) (report about compensation and health benefit gaps, including how the company addresses dysphoria and detransitioning care); J.B. Hunt Transport Services, Inc. (Feb. 2, 2024) (adopt and publicly disclose a policy of equitable healthcare coverage for all employees, regardless of sexual orientation or gender identity).

Perhaps recognizing the social significance of puberty blockers, AbbVie argues that the Proposal merely touches on the issue instead of focusing on it. But the Supporting Statement focuses almost entirely on puberty blockers, the risks they present to children, and the risks they therefore present to AbbVie. The Statement sums up the issue with a clear focus on the social policy impacts of AbbVie promoting and advertising puberty blockers by stating it is “an issue which not only has *broad societal impacts* on families who

make use of AbbVie's products, but which maintains the potential to create both legal and reputational risk for the Company." (emphasis added).

C. The Proposal is not excludable under Rule 14a-8(i)(5) because it focuses on an issue of broad social or ethical concern.

Abbvie's challenge under Rule 14a-8(i)(5) similarly fails. As Staff recently reiterated, "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)." Division of Corporate Finance, Staff Legal Bulletin No. 14L (Nov. 3, 2021).

Although this alone decides the issue under (i)(5), it is questionable whether the reputational, legal, and other risks of promoting and advertising puberty blockers do not also implicate more than 5% of AbbVie's net earnings, gross sales, or total assets. Either way, AbbVie's position that only the amount of sales of Lupron is relevant for this calculation is much too restrictive.

Conclusion

For the foregoing reasons, we respectfully request that the Staff reject AbbVie's request for relief from Ms. Hoysa's Proposal. A copy of this correspondence has been timely provided to AbbVie. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,

Jerry Bowyer
President, Bowyer Research

Cc: Marc S. Gerber

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
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VIA STAFF ONLINE FORM

January 28, 2025

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

RE: AbbVie Inc. – 2025 Annual Meeting
Supplement to Letter dated December 19, 2024
Relating to Shareholder Proposal of
Jean Hoysa

Ladies and Gentlemen:

We refer to our letter dated December 19, 2024 (the "No-Action Request"), submitted on behalf of our client, AbbVie Inc., a Delaware corporation ("AbbVie"), pursuant to which we requested that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with AbbVie's view that the shareholder proposal and supporting statement (the "Proposal") submitted by Bowyer Research, Inc. ("Bowyer"), on behalf of Jean Hoysa (the "Proponent"), may be excluded from the proxy materials to be distributed by AbbVie in connection with its 2025 annual meeting of stockholders (the "2025 proxy materials").

This letter is in response to the letter to the Staff, dated January 22, 2025, submitted by Bowyer, on behalf of the Proponent (the "Proponent's Letter"), and

supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to Bower on behalf of the Proponent.

The Proponent's Letter presents an uncompelling attempt to rebut the No-Action Request. In particular, it argues, among other things, that the Proposal should not be excluded because: (i) it does not make factually inaccurate, materially false or misleading statements, (ii) it focuses on a significant policy issue and (iii) AbbVie relies on a calculation for determining economic significance that is too restrictive. As explained below, these arguments are not persuasive.

I. The Proposal May be Properly Excluded Pursuant to Rule 14a-8(i)(3).

The Proponent's Letter asserts, among other things, that AbbVie has partnered with the Human Rights Campaign (the "HRC"), "an advocacy group which endorses the use of puberty blockers and pressures companies to cover procedures which require the distribution of puberty blockers to minor children of employees." Specifically, the Proponent's Letter claims that "we argue only that such a partnership [with HRC] is part of a general pattern that merits further scrutiny." As support for this assertion, the Proponent's Letter cites to a press release by the HRC that addresses a completely separate corporation's partnership with the HRC and, in fact, AbbVie is not mentioned anywhere in the press release.

The assertion that AbbVie "partners" with the HRC is wholly untrue and utterly unfounded. AbbVie's sole interaction with the HRC is to voluntarily fill out the Corporate Equality Index ("CEI") survey once a year (which does not involve any fee), like hundreds of other companies. This is done electronically through a portal. AbbVie does not have a partnership with the HRC nor has it ever partnered with or entered into any agreements with the HRC. AbbVie has never spoken with the HRC with respect to Lupron or any other drug. Lupron is not mentioned on the HRC's website; nor can we find any evidence of the HRC referring to Lupron anywhere. Furthermore, the CEI score that AbbVie has received from the HRC is entirely unrelated to AbbVie's sales of Lupron. AbbVie does not mention Lupron in response to any questions on the CEI. In fact, in response to the question that asks about a company's "LGBTQ+ Inclusive products and/or services," AbbVie lists only Mavyret, which is approved to treat hepatitis C virus. To the extent that that Proposal suggests any partnership between AbbVie and the HRC, the Proposal is materially false and misleading in violation of Rule 14a-9 and, thus, excludable under Rule 14a-8(i)(3).

In addition, the Proponent's Letter states that the Proposal "does not specify the promotion of a specific drug, Lupron" and observes that the No-Action Request's description of the Proposal has inserted the word "Lupron" into the Proposal. Given that AbbVie produces only a single drug relevant to the Proposal – Lupron – it reasons the Proposal was intended to relate to AbbVie's alleged advertisement and promotion of Lupron. If the Proponent's position is that the Proposal should be read as relating to

anything other than Lupron, then it is likely that investors will be unclear as to what they are being asked to vote on, establishing an additional basis for concluding that the Proposal is materially false and misleading in violation of Rule 14a-9 and, thus, excludable under Rule 14a-8(i)(3).

Accordingly, consistent with the precedents described in the No-Action Request, the Proposal is materially false and misleading in violation Rule 14a-9. Therefore, the Proposal is excludable under Rule 14a-8(i)(3).

II. The Proposal Deals with Matters Relating to AbbVie's Ordinary Business Operations.

The Proponent's Letter asserts that "the Proposal demonstrates a clear focus on an issue that is well-established as a significant social policy issue." In doing so, the Proponent's Letter attempts to extrapolate from the Staff's prior decisions in *Johnson & Johnson* (Feb. 2, 2024) and *J.B. Hunt Transport Services, Inc.* (Feb. 2, 2024). However, while the proposals cited in the Proponent's Letter may have touched upon certain issues affecting the broader LGBTQ+ community, those proposals were actually focused on the equal treatment of persons based on their sexual orientation or gender. Accordingly, *Johnson & Johnson* and *J.B. Hunt Transport Services, Inc.* are more likely evidence of the Staff's consistent view that sex based discrimination is a significant social policy issue, rather than standing for the sweeping characterization in the Proponent's Letter that a proposal related to puberty blockers also transcends ordinary business.

In this instance, while the Proposal relates to puberty blockers, it does not address the concerns of sexual orientation or gender discrimination. Instead, the Proposal is focused on risks related to AbbVie's alleged advertising and promotion of a specific product. As described in the No-Action Request, decisions with respect to how AbbVie decides to sell a particular pharmaceutical product, as well as decisions regarding advertising and promoting pharmaceutical products, are ordinary business matters. These decisions are at the heart of AbbVie's business as a global, diversified research-based biopharmaceutical company. Accordingly, the Proposal is focused on AbbVie's ordinary business matters.

Accordingly, the Proposal should be excluded from AbbVie's 2025 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

III. The Proposal is Not Significantly Related to AbbVie's Business.

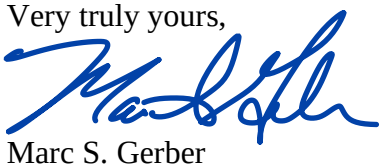
On the topic of relevance, the Proponent's Letter asserts that "AbbVie's position that only the amount of sales of Lupron is relevant for this calculation is much too restrictive." In doing so, the Proponent's assertion suggestions that AbbVie should have used a hypothetical method of calculating the economic relevance of the Proposal

that has no basis under Rule 14a-8(i)(5). As described in the No-Action Request, Rule 14a-8(i)(5) permits companies to exclude shareholder proposals only if "the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Thus, the Proponent's desire for AbbVie to have used any other method of calculation ignores the plain meaning of Rule 14a-8(i)(5). Accordingly, the Proposal should be excluded from AbbVie's 2025 proxy materials because the Proposal relates to less than 5% of AbbVie's total assets, net earnings and gross sales as of and for its most recent fiscal year and is not otherwise significantly related to AbbVie's business.

IV. Conclusion

For the reasons stated above and in the No-Action Request, We respectfully request that the Staff concur that it will take no action if AbbVie excludes the Proposal from its 2025 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of AbbVie's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

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

Jerry Bowyer
Bowyer Research, Inc.

January 29, 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 Jean Hoysa at AbbVie Inc. under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing once again on behalf of Ms. Jean Hoysa (the "Proponent") to defend her shareholder proposal to AbbVie Inc. ("AbbVie" or the "Company"). Marc S. Gerber wrote to you on behalf of AbbVie on January 28th, 2025, offering supplemental correspondence in its petition to ask you to concur with AbbVie's view that it can exclude Ms. Hoysa's shareholder proposal from its 2025 Annual Meeting of Shareholders. AbbVie has the burden of demonstrating it can exclude the Proposal. But, once again, it cannot bear this burden – and the supplemental correspondence it presents only serves to raise more areas of concern and drive home the point of the broad social significance of Ms. Hoysa's proposal. Proponent rests on her January 22, 2025 letter for most of the briefing and writes now only to address AbbVie's misrepresentations about its support for the Human Rights Campaign and the significant social policy focus of the Proposal.

A. The Proposal does not make factually inaccurate statements, much less ones that are materially false or misleading.

In its supplemental correspondence, AbbVie states, "[t]he assertion that AbbVie 'partners' with the HRC is wholly untrue and utterly unfounded. AbbVie's sole interaction with the HRC is to voluntarily fill out the Corporate Equality Index ("CEI") survey once a year

(which does not involve any fee), like hundreds of other companies. This is done electronically through a portal. AbbVie does not have a partnership with the HRC nor has it ever partnered with or entered into any agreements with the HRC."

Unfortunately for the company, the only untrue assertion is its own: that AbbVie's only relationship with the HRC is ongoing participation in the HRC's Corporate Equality Index.

In a 2020 interview[1] posted on AbbVie's external website with Lori Lever, director of Field Force Effectiveness at AbbVie and chair of the company's PRIDE employee resource group (ERG), Lever asserts that "A presence in the external community is critical so people understand that AbbVie is not only this great company that celebrates equality, diversity and inclusion, but that is truly 100% supportive of the LGBTQ+ community. It's about strengthening our current relationships in the broader community—in the form of volunteer opportunities and charitable giving—as well as identifying new connections where we can potentially have some impact. We currently have relationships, or are proud sponsors of Equality Illinois, Glenview Youth Services, PFLAG and the *Human Rights Campaign*. And of course, we are always looking for new relationships to cultivate." (italics added). Lori Lever, a director at AbbVie, gave this statement publicly as the leader of an ERG and AbbVie chose to "shine a spotlight" on it., This alone would indicate that AbbVie's work in concert with the Human Rights Campaign goes deeper than merely filling out a survey via an online portal.

Furthermore, public statements from AbbVie highlight other work done with the HRC, including joining the HRC's "Business Coalition for the Equality Act," a move that was reported by external news outlets[2] and definitionally is separate from AbbVie's rote participation in the CEI. Indeed, the assertion that "AbbVie's sole interaction with the HRC is to voluntarily fill out the Corporate Equality Index ("CEI") survey once a year" is disprovable as a matter of public record.

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[1] https://www.abbvie.com/who-we-are/our-stories/love-is-love-is-love.html

[2]https://www.fair360.com/abbvie-joins-over-400-leading-us-employers-in-the-human-rights-campaigns-business-coalition-for-the-equality-act-2/

Documentation regarding corporate grant matching from the AbbVie Foundation shows the Foundation matching multiple grants to the Human Rights Campaign Foundation totaling in excess of $11,000, including one grant[3] in 2018 and another[4] in 2019. Although the AbbVie Foundation matches grants to many organizations representing many different social and political perspectives, its assertion that its only interaction with the Human Rights Campaign is filling out an annual survey via an online portal is objectively incorrect.

B. **The Proposal demonstrates a clear focus on an issue well-established as a significant social policy issue.**

AbbVie's work with the Human Rights Campaign, while verifiable in direct rebuttal of the company's claims, is secondary to the core purpose of Ms. Hoysa's proposal: the role the Company plays in the use of puberty-blocking drugs such as Lupron for non-FDA-approved uses. On this count — greater transparency regarding a company policy of broad social significance — the company's request to exclude the proposal fails on its face, and ignores existing SEC precedent.

The staff needs no reminder from us: as referenced in our previous no-action response, it has consistently concurred that puberty blockers and similar transgender healthcare issues are considered a significant social policy issue. *Johnson & Johnson* (Feb. 2, 2024); *J.B. Hunt Transport Services, Inc.* (Feb. 2, 2024). AbbVie contends that these decisions focus only on "equal treatment of persons based on their sexual orientation or gender." But this limited framing betrays AbbVie's own bias. Advocates for puberty blockers often characterize it as an issue of discrimination while skeptics question the need for such treatments and the harm to children. The proposal in *Johnson & Johnson* even noted that "transition treatments" can lead to "long-lasting or permanent outcomes like chronic pain, sexual dysfunction, unwanted hair loss or hair gain" and many other complications and that so-called "'gender-affirming' therapies often exacerbate them." *Id.* at 12. Saying that only one side of the debate is addressing a significant social policy issue is not only narrow-

[3] https://projects.propublica.org/nonprofits/organizations/460827839/201931339349102918/full
[4] https://projects.propublica.org/nonprofits/organizations/460827839/202041679349100129/full

minded but raises serious First Amendment concerns of viewpoint discrimination for the SEC.

The issue of abortion is instructive. In 2023, the SEC approved a proposal asking about the risks of opposing pro-life legislation. *Eli Lilly and Company* (Mar. 8 2023). The proponent there noted that its proposal was "substantially indistinguishable" from proposals asking about the risks *posed by* pro-life legislation, or "reproductive health care" as framed by those proponents. *Id.* at 17; *Lowe's Companies, Inc. (Educational Found. of Am.)* (Apr. 7, 2022). The only difference was that the views opposed each other. Staff rightly and wisely stated that the proposal focused on a significant social policy. Just like here, proponents for the pro-abortion proposals described the issue as one of discrimination (specifically sex discrimination) and emphasized the need for "abortion care and other sexual and reproductive healthcare" so that women can have equal footing in the workforce. *Lowe's Companies, Inc.* at 15. So too here.

Further, the ongoing case of *United States v. Skrmetti* exemplifies this broad social impact; notably, a case where AbbVie was mentioned in an amicus brief[5] in direct reference to Lupron's use as a puberty blocker. On the same day that AbbVie filed its supplemental response, numerous national news outlets rushed to cover President Trump's executive order restricting puberty blockers, among other types of transgender procedures for minors.[6] AbbVie may disagree with the legal framework or cultural concern surrounding puberty blockers. But it cannot ignore the existence of broad social/ethical concern generated by the provision of puberty blockers, or deny that such concern extends to AbbVie's business of providing a drug often used off-label as a puberty blocker. On such objective grounds, AbbVie's challenge under Rule 14a-8(i)(5) similarly fails.

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[5]https://www.supremecourt.gov/DocketPDF/23/23-477/328292/20241015135613168_23-477_Amicus%20Brief.pdf

[6] *See, e.g.*, Kiara Alfonseca, Trump signs executive order to restrict transgender care access for people under 19, ABC News (Jan. 28, 2025), https://abcnews.go.com/Politics/trump-signs-executive-order-restrict-transgender-care-access/story?id=118196874; [similar author, *title*, outlet (date), link formatting] https://www.wsj.com/politics/policy/trump-signs-order-to-restrict-medical-treatments-for-transgender-minors-efd37978; https://apnews.com/article/trump-transgender-transition-executive-order-301e4130233b411311978f66f455f1c4.

Conclusion

For the foregoing reasons, we again respectfully request that the Staff reject AbbVie's request for relief from Ms. Hoysa's Proposal. A copy of this correspondence has been timely provided to AbbVie. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,

Jerry Bowyer
President, Bowyer Research

Cc: Marc S. Gerber