



DIVISION OF
CORPORATION FINANCE

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

March 27, 2025

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

Re: BlackRock, Inc. (the "Company")
Incoming letter dated January 14, 2025

Dear Marc S. Gerber:

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

The Proposal requests that the board oversee the preparation of a report assessing the risks posed by the Company's uniform engagement policy in the manner specified in the Proposal.

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).

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: Stefan Padfield
National Center for Public Policy Research

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VIA STAFF ONLINE FORM

January 14, 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: BlackRock, Inc. – 2025 Annual Meeting
Omission of Shareholder Proposal of the
National Center for Public Policy Research

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, BlackRock, Inc., a Delaware corporation (“BlackRock”), 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 BlackRock’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) from the proxy materials to be distributed by BlackRock in connection with its 2025 annual meeting of shareholders (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 the Proponent as notice of BlackRock’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 submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to BlackRock.

I. The Proposal

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

Resolved:

Shareholders request that the Board of Directors oversee the preparation of a report, at reasonable cost and omitting proprietary or confidential information, assessing the risks posed by the Company's uniform engagement policy, including:

1. Evaluation of how the policy aligns with the diverse needs of investor-clients.
2. Assessment of the potential legal, regulatory, and reputational risks stemming from the uniform application of the policy, including instances where it may conflict with applicable laws or investor-client expectations.
3. Consideration of alternative approaches or mechanisms that could enable greater flexibility in engagement to mitigate identified risks.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur with BlackRock's view that it may exclude the Proposal from the 2025 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to BlackRock's ordinary business operations.

III. Background

BlackRock received the Proposal via email on December 5, 2024, along with a cover letter stating that "[a] proof of ownership letter is forthcoming." On December 10, 2024, after confirming that the Proponent was not a registered holder of BlackRock common stock, BlackRock sent a letter to the Proponent, via email, requesting a written

statement from the record owner of the Proponent's shares verifying that the Proponent beneficially owned the requisite number of shares of BlackRock common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal, which the Proponent satisfactorily responded to on December 11, 2024. Copies of the Proposal and related correspondence are attached hereto as Exhibit A.¹

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

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

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

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."). In addition, in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff noted that if a proposal and supporting statement relate 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

¹ Exhibit A omits correspondence between BlackRock and the Proponent 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/corpfina/announcement/announcement-14a-8-submissions-pii-20211217>.

consistently has 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 under Rule 14a-8(i)(7) of shareholder proposals relating to the products and services offered to customers by a company. *See, e.g., American Express Company* (Mar. 9, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing how the company intends to reduce 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”); *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); *JPMorgan Chase & Co.* (Mar. 19, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report examining the “politics, economics and engineering for the construction of a sea-based canal through the Tehuantepec isthmus of Mexico,” noting that the proposal “relates to the products and services offered for sale by the [c]ompany”); *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 report on the adequacy of the company’s policies in addressing the social and financial impacts of its direct deposit advance lending service, noting that the proposal “relates to the products and services offered for sale by the company” and that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)”; *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 “relate[s] to [the company’s] decision to issue refund anticipation loans” and that “[p]roposals concerning the sale of particular services are generally excludable under rule 14a-8(i)(7)”).

More specifically, in the context of asset management businesses, where investment stewardship is an inherent part of the services provided to an asset managers’ clients, the Staff has applied the policy considerations underlying the

ordinary business exception to permit exclusion of shareholder proposals relating to asset managers' proxy voting and engagement policies and practices. For example, in *State Street Corp.* (Mar. 26, 2021),* the Staff permitted exclusion pursuant to Rule 14a-8(i)(7) of a proposal that asked for a report on how the company's "voting and engagement policies, which focus solely on individual corporation materiality to the exclusion of capital markets materiality, affect the majority of its clients and shareholders, who rely primarily on overall stock market performance for their returns." See also, e.g., *JPMorgan Chase & Co.* (Mar. 29, 2024) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the preparation of a report on the risks of the company's alleged misalignment between the proxy votes it casts on behalf of clients and its client's values and preferences, as well as strategies for addressing such misalignments); *Charles Schwab Corporation* (Mar. 27, 2024) (same); *Franklin Resources, Inc.* (Dec. 1, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the board review the company's proxy voting policies and practices, taking into account the company's corporate responsibility and environmental positions and the fiduciary and economic case for the shareholder resolutions presented, and report the results of such review to investors as "relating to [the company's] ordinary business operations"); *State Street Corp.* (Feb. 24, 2009) (same).

In this instance, the Proposal focuses on BlackRock's stewardship practices, including its approach to engaging with the companies in which BlackRock's clients are invested, and how BlackRock assesses the alleged risks posed by its engagement with those companies, both of which are ordinary business matters. In particular, the Proposal's resolved clause requests a report "assessing the risks posed by [BlackRock]'s uniform engagement policy." In addition, the Proposal's whereas clause cites to the fact that BlackRock "recently reaffirmed that its 'Investment Stewardship's Engagement Priorities' for 2024 'are consistent with those from prior years.'" The whereas clause goes on to state that "[t]he failure to stop or modify one-size-fits-all engagement brings with it various risks to BlackRock's financial value." When read together, the Proposal's resolved clause and whereas clause emphasize the Proposal's focus on how BlackRock engages with the companies in which BlackRock's clients are invested.

The Proposal's concern with how BlackRock engages with companies in which its clients are invested clearly demonstrates that the Proposal is focused on BlackRock's ordinary business matters. As a fiduciary asset manager, BlackRock has a duty to act in the best financial interests of its clients. Consistent with this duty, BlackRock has established the highly regarded BlackRock Investment Stewardship team ("BIS"). For the period from July 1, 2023 through June 30, 2024, BIS had 3,500 engagements with

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

2,400 companies.² As described on BIS's website, "[e]ngagement is core to our stewardship efforts" and is "[h]ow we build our understanding of a company's approach to corporate governance and business risks and opportunities."³ This significant engagement effort plays a key role in BlackRock's efforts to help maximize long-term value for BlackRock's clients. BIS regularly publishes global governance and engagement guidelines and reports that guide and provide transparency on BlackRock's engagement with companies for the benefit of BlackRock's clients, the ultimate owners of those companies.

The particular priorities in BIS's engagement policy are determined based on BlackRock's observations of market developments and emerging themes, and its particular engagements vary from company-to-company based on the relevance and financial materiality of those priorities to a given company and the particular business risks or opportunities faced by that company. For example, one of BIS's 2025 engagement priorities is "strategy, purpose, and financial resilience," which "seek[s] to understand a company's strategic framework, the board's process for oversight, how the strategy incorporates key stakeholders' interests, and how strategy evolves over time in response to changing consumer preferences, technology advancements and broader economic, regulatory and sectoral factors."⁴ Decisions with respect to these engagement priorities and practices, their relevance or application to any particular company in which BlackRock's clients are invested and how BlackRock goes about deepening its understanding and knowledge of the companies in which its clients are invested are at the heart of BlackRock's business as a fiduciary asset manager and are so fundamental to BlackRock's day-to-day operations that they cannot, as a practical matter, be subject to direct shareholder oversight. Therefore, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to BlackRock'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

² See BlackRock's 2024 Global Voting Spotlight, available at <https://www.blackrock.com/corporate/literature/publication/2024-investment-stewardship-voting-spotlight.pdf>.

³ See BlackRock's Investment Stewardship website, available at <https://www.blackrock.com/corporate/insights/investment-stewardship>.

⁴ See BlackRock's Investment Stewardship Engagement Priorities Summary for Benchmark Policies (January 2025), available at <https://www.blackrock.com/corporate/literature/publication/blk-stewardship-priorities-final.pdf>.

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).

In this instance, while the Proposal references the fact that BlackRock's clients hold a range of different views on “Environmental, Social, Governance (ESG) factors when it comes to investing,” the overwhelming concern of the Proposal is with how BlackRock engages with the thousands of companies in which BlackRock's clients are invested, which is an ordinary business matter. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on an ordinary business matter.

Accordingly, consistent with the precedent described above, the Proposal should be excluded from BlackRock's 2025 proxy materials pursuant to Rule 14a-8(i)(7) as relating to BlackRock's ordinary business operations.

B. The Proposal seeks to micromanage BlackRock

The Staff consistently has agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* 1998 Release; *see also, e.g., Johnson &*

Johnson (Mar. 1, 2024); *Amazon, Inc.* (Apr. 7, 2023); *JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” See 1998 Release. In Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff explained that a proposal can be excluded on the basis of micromanagement based “on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.”

Applying the principles described above, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of proposals requesting the reporting of information in a manner that would seek to limit the discretion of management in how best to engage with its stakeholders. See, e.g., *Air Products & Chemicals, Inc.* (Nov. 29, 2024) (permitting exclusion on the basis of micromanagement of a proposal requesting an annual report on certain complex lobbying disclosures, where the company argued that the proposal “seeks to indirectly influence management’s decisions and assessments of how best to support the execution of the [c]ompany’s projects and engage with community, regulatory and legislative stakeholders for such projects”); *JPMorgan Chase & Co.* (Mar. 29, 2024) (permitting exclusion on the basis of micromanagement of a proposal requesting an annual report on “the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway,” where the company argued that the proposal “would micromanage the [c]ompany because it would undermine management’s discretion in determining how best to inform and engage with the [c]ompany’s stakeholders”); *The Goldman Sachs Group, Inc.* (Mar. 4, 2024, *recon. denied* Apr. 15, 2024) (permitting exclusion on the basis of micromanagement of a proposal requesting an annual report on “the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway,” where the company argued that the proposal would limit management’s discretion by “[altering] the way it works with its clients”).

In this instance, the Proposal seeks to micromanage BlackRock by undermining management’s discretion in how best to fulfill BlackRock’s fiduciary duties as an asset manager by engaging with the companies in which its clients are invested. It does so by requesting a report that requires “[c]onsideration of alternative approaches or mechanisms that could enable greater flexibility in engagement to mitigate identified risks.” The Proposal’s supporting statement explains that such a report “would help ensure that [BlackRock] remains responsive to its diverse investor-client base and adaptable to the changing external environment.” Taken as a whole, the Proposal seeks to impose a specific method for implementing a complex policy because it would limit BlackRock’s discretion when considering ways to engage with the thousands of

companies in which BlackRock's clients are invested to better understand those companies' approach to business risks and opportunities.

Decisions concerning how BlackRock engages with the companies in which its clients are invested, and assessments of relevant and material topics for engagement based on a company's particular facts and circumstances, and a company's business risks and opportunities, require complex business judgments and assessments by BlackRock's teams. How BlackRock addresses the complex issue of fulfilling its fiduciary duties as an asset manager, acting as a steward of its clients' assets and engaging with the companies in which its clients are invested involves exactly the type of day-to-day operational decisions and matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment, that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7).

Accordingly, consistent with the precedent described above, the Proposal should be excluded from BlackRock's 2025 proxy materials pursuant to Rule 14a-8(i)(7) as relating to BlackRock's ordinary business operations.

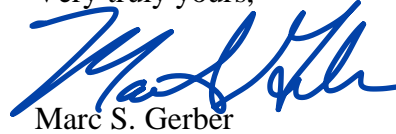
V. Conclusion

Based upon the foregoing analysis, BlackRock respectfully requests that the Staff concur that it will take no action if BlackRock excludes the Proposal from the 2025 proxy materials.

Office of Chief Counsel
January 14, 2025
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Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of BlackRock'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: R. Andrew Dickson, III
Managing Director & Corporate Secretary
BlackRock, Inc.

Stefan Padfield
National Center for Public Policy Research

EXHIBIT A
(see attached)



December 5, 2024

Via email to

Corporate Secretary
BlackRock, Inc.
50 Hudson Yards
New York, New York 10001
Attn.: [REDACTED]

Dear Corporate Secretary,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the BlackRock, Inc. (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2025 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a recorded meeting in person or via teleconference to discuss this proposal December 19, 2024, or December 20, 2024, from 9 a.m. to 12 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times within the window proposed by Rule 14(a)-8(b)(iii) to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion. This letter constitutes notice of our intent to record any related meetings.

As you know, SEC guidance has admonished corporations against seeking no-action “relief” on grounds that could have been resolved by clear and open correspondence between the parties and a good-faith willingness on both sides to reach a mutually satisfactory resolution and to implement whatever revisions may be agreed to. We herewith express our openness to consideration in good faith of any specific objections to this proposal that you might wish to raise, and a commitment to

work earnestly toward an acceptable adjustment in all instances in which the objections raised are demonstrably supported by SEC regulation, staff guidance, or other relevant explications of specific rules governing the situation at hand.

Copies of correspondence or a request for a “no-action” letter should be sent to me at the National Center for Public Policy Research, [REDACTED] and emailed to [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read 'Stefan Padfield', with a stylized, cursive script.

Stefan Padfield
Director, Free Enterprise Project
National Center for Public Policy Research

cc: Ethan Peck, FEP Deputy Director
Enclosures: Shareholder Proposal

Proposal to Assess Risks Associated with the Company's Uniform Engagement Policy

Whereas:

BlackRock has fiduciary duties to its investor-clients,¹ who hold a range of different views on the appropriateness of prioritizing Environmental, Social, and Governance (“ESG”) factors when it comes to investing, proxy voting, and corporate engagement on their behalf.

While BlackRock has apparently addressed voting concerns by at least beginning to implement voting choice, there appears to be no similar choice available for investor-clients when it comes to BlackRock’s engagement with the companies it owns. In fact, BlackRock has recently reaffirmed that its “Investment Stewardship’s Engagement Priorities” for 2024 “are consistent with those from prior years” and there “are no material changes in our approach to engaging companies on these themes.”²

The failure to stop or modify one-size-fits-all engagement brings with it various risks to BlackRock’s financial value, including risks stemming from lawsuits, regulatory action, and public backlash.

Resolved:

Shareholders request that the Board of Directors oversee the preparation of a report, at reasonable cost and omitting proprietary or confidential information, assessing the risks posed by the Company’s uniform engagement policy, including:

1. Evaluation of how the policy aligns with the diverse needs of investor-clients.
2. Assessment of the potential legal, regulatory, and reputational risks stemming from the uniform application of the policy, including instances where it may conflict with applicable laws or investor-client expectations.
3. Consideration of alternative approaches or mechanisms that could enable greater flexibility in engagement to mitigate identified risks.

Supporting Statement:

The following quotes from recent publications make clear BlackRock faces significant risks related to its engagement policies:

- “Asset managers who engage with companies to encourage them to disclose ‘non-material’ climate change risks are breaching their fiduciary duty of loyalty”³
- “Coming clean to consumers about the extent to which ESG commitments permeate [BlackRock’s] ... engagement strategies would ... risk BlackRock’s business success”⁴
- “[W]hen BlackRock conducts ESG engagements leveraging the power of its shares, it is engaging in an ESG investment strategy that includes the purportedly non-ESG funds.”⁵
- “BlackRock continues to focus on using engagements to advance its climate agenda.”⁶

The last two quotes are from a complaint filed by 11 states on November 27, 2024. This type of suit is arguably the natural result of BlackRock's engagement behavior and, moreover, enables a reasonable attack on the company's core business offering (index funds).

The requested report would enable shareholders to better understand the risks associated with the Company's uniform engagement policy and the steps management may take to address these risks. It would also help ensure the Company remains responsive to its diverse investor-client base and adaptable to the changing external environment.

We believe this assessment will strengthen the Company's ability to navigate challenges effectively, protect shareholder value, and uphold its reputation as a responsible and forward-thinking organization.

¹ <https://jelr.law.lsu.edu/2024/03/13/esg-battlegrounds-a-closer-look-at-fiduciary-duties-and-the-evolution-of-responsible-investing/>

² <https://www.blackrock.com/corporate/literature/publication/blk-stewardship-priorities-final.pdf>

³ <https://foleyhoag.com/news-and-insights/blogs/white-collar-law-and-investigations/2024/april/tennessee-v-blackrock-how-this-case-informs-how-we-look-back-and-look-ahead-at-esg/> (describing "March 2023 Letter to Asset Managers")

⁴ <https://www.institutionalinvestor.com/article/2c1lkin2zyu7mvywhfcw0/corner-office/tennessee-attorney-general-sues-blackrock-for-misleading-investors-on-esg-practices>

⁵

<https://www.texasattorneygeneral.gov/sites/default/files/images/press/States%20v%20BlackRock%20Complaint%20Filed.pdf> (complaint alleging antitrust violations and deceptive practices)

⁶ Id.



January 28, 2025

Via Online Shareholder Proposal Form

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

Re: No-Action Request from BlackRock, Inc. Regarding a Shareholder Proposal by the National Center for Public Policy Research (“Proponent” or “NCPFR”)

Ladies and Gentlemen:

This correspondence is in response to the letter of Marc S. Gerber on behalf of BlackRock, Inc. (the “Company”) dated January 14, 2025, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits Proponent’s shareholder proposal (the “Proposal”) from its 2025 proxy materials for its 2025 annual shareholder meeting. The following analysis of the Company’s arguments makes clear that no basis exists for permitting the Company to exclude the Proposal.

I. Introduction

This reply starts by providing excerpts from the recently published book, *A Tyranny for the Good of its Victims: The Ugly Truth about Stakeholder Capitalism*, and the recent court case *Spence v. American Airlines, Inc.* As will hopefully be made clear in course of reading this reply, those excerpts provide material context for resolving the question of excludability.

II. Excerpts from: Andrew F. Puzder, *A Tyranny for the Good of its Victims: The Ugly Truth about Stakeholder Capitalism* (Encounter Books 2025).

As noted in the book description:

Andrew F. Puzder is an author, speaker, political commentator, attorney and retired chief executive officer. For 17 years he served as the CEO of CKE Restaurants, Inc., an international corporation which owns popular restaurant chains Carl’s Jr. and Hardee’s.... Puzder is a Distinguished Fellow at the Heritage Foundation and a Senior Fellow

at Pepperdine University's School of Public Policy, and the America First Policy Institute. He is also a member of the Reagan Institute's National Leadership Council and Reaganomics Lecturer. He serves on the Advisory Boards of the State Financial Officers Foundation, Washington University's School of Law, and Prager University. Puzder is a frequent lecturer on economics and politics. He is a sought-after commentator on economic and political issues in national publications and a regular guest on cable news shows.¹

He has also recently been selected by President Trump to be the US ambassador to the European Union.²

Excerpt 1:

For unelected elites to force businesses to implement policies that lack popular support strikes at the very heart of our representative democracy, undermining our right to determine policy as voters. No one voted them into office. Nor did their investors intend to empower these "passive" asset managers to actively impose their will on society.³

Excerpt 2:

In November of 2017, just two months before issuing his 2018 letter, [BlackRock CEO Larry] Fink had said the quiet part aloud. In an interview on diversity hiring (part of the "S" in ESG), Fink stated that "[b]ehaviors are going to have to change, and this is one thing we are asking companies, you have to force behaviors, and at BlackRock, we are forcing behaviors."⁴

Excerpt 3:

Make no mistake, "investment stewardship" is where BlackRock's real power resides.... So what happens in these stewardship meetings? Well, they are apparently all about ESG. According to BlackRock's Stewardship website, its "stewardship" and "investment" teams work together to provide corporate management with "insight on environmental, social, and governance (ESG) consideration."⁵

III. Excerpts from: *Spence v. American Airlines, Inc.*

On January 10, 2025, the United States District Court for the Northern District of Texas issued its opinion in the case of *Spence v. American Airlines, Inc.*, concluding that "the facts compellingly demonstrated that Defendants breached their fiduciary duty by failing to loyally act solely in the retirement plan's best financial interests by allowing their corporate interests, as well as BlackRock's ESG interests, to influence management of the plan."⁶ While BlackRock was not a

¹ <https://a.co/d/2xENouQ>

² <https://www.firstpost.com/world/trump-picks-fast-food-chain-owner-andrew-puzder-as-ambassador-to-european-union-13855703.html>

³ Puzder at 5.

⁴ Puzder at 26-27.

⁵ Puzder at 28.

⁶ <file:///C:/Users/spadf/OneDrive/Documents/FEP/op%20eds/spence%20v.%20AA.pdf>

defendant in that case, the findings contained therein are relevant to resolution of the issues raised in this no-action request. In fact, according to a word search run by Proponent, BlackRock was named 272 times in that opinion. Accordingly, Proponent will begin this reply by setting forth some of the relevant findings from that case.

It must be stressed at the outset that while BlackRock has apparently introduced a program to allow at least some of its clients to have some choice in how their proxy votes are cast, this action does not negate the fact that BlackRock still employs a one-size-fits-all approach to its corporate engagement in the sense that BlackRock does not send one team to engage with a corporation on behalf of its pro-ESG clients, followed by a second team to engage with that same corporation on behalf of its anti-ESG clients. This means that there is a material, high-level disconnect between the choice clients are purportedly promised (and the duty BlackRock has to act on behalf of those clients), and the engagement these clients finance, which provides no choice. This essentially must be true unless we are to believe that either (1) BlackRock's engagement has no influence on corporate behavior, or (2) every aspect of its corporate engagement is aligned with the perspectives of both its pro-ESG and anti-ESG clients. The following points, drawn from the opinion, support this argument (references to engagement will be highlighted):

Excerpt 1:

Despite its proxy voting guidelines stating that it did *not* see its role as making social, ethical, or political judgments on behalf of clients, BlackRock nonetheless told its staff in February 2016 that it wanted to position itself as a leader of ESG investing.

Excerpt 2:

Consistent with BlackRock's increasing ESG activism, BlackRock's CEO, Larry Fink, led the charge—especially with respect to climate change. Fink's outspoken activism started when he publicly disavowed President Trump's decision to leave the Paris Climate agreement. Desiring to have a greater socio-political impact, in December 2017 Fink sent letters to approximately 120 companies urging them to report climate change dangers in line with the recommendations of the Financial Stability Board's Task Force on Climate-Related Financial Disclosures.

Over the next two years, Fink continued to signal robust ESG commitments, including his desire to use proxy voting to push BlackRock's agenda onto companies through open letters to CEOs that BlackRock subsequently publicized. In January 2018, BlackRock published Fink's annual letter to CEOs under the title, "A Sense of Purpose." Fink stated that, as an index provider, BlackRock could not sell shares in companies whose policies it did not approve of that were within its index fund. Instead, Fink explained that BlackRock would use its votes [and engagement] to drive social change:

.... In managing our index funds ..., BlackRock cannot express its disapproval by selling the company's securities as long as that company remains in the relevant index. As a result, our responsibility to engage and vote is more important than ever.

Fink's letter generated considerable reaction, including the remark that the content upended a half-century of business thought. Nevertheless, in January 2019, BlackRock published another letter from Fink. Doubling down on ESG activism through proxy voting [and engagement], Fink put CEOs—

including American's CEO—on notice that BlackRock's investment priorities had changed dramatically:

BlackRock's Investment Stewardship engagement priorities for 2019 are: governance, including your company's approach to board diversity; corporate strategy and capital allocation; compensation that promotes long-termism; environmental risks and opportunities; and human capital management.

Delivering financial performance was no longer enough, according to Fink. And to underscore how strongly he felt about this, he threatened that companies must also “contribute to society ... or risk losing the support of the world's largest asset manager.”

Excerpt 3:

Climate Action 100+ is a group of investors focused on pressing the world's biggest emitters of greenhouse gases to change their ways. BlackRock joining the Climate Action 100+ coincided with yet another open letter from Fink to CEOs, “A Fundamental Reshaping of Finance,” which outlined BlackRock's view that a wholesale shift away from managing assets solely for the financial benefit of a plan is essential. Fink's letter touted BlackRock's climate change initiatives, including its founding role in a task force on climate-related financial disclosures and signing the United Nations' Principles for Responsible Investment. It also affirmed BlackRock's socio-political agenda by “fundamental[ly] reshaping ... finance” based on its belief that “[e]very government, company, and shareholder must confront climate change.”⁷

Excerpt 4:

By the end of 2020, BlackRock published ... proxy voting guidelines and stewardship expectations, which outlined the expectation that companies must disclose a plan for how their business models will be compatible with a low-carbon economy—that is, an economy where global warming is limited to well below two degrees Celsius and consistent with a worldwide aspiration of net zero GHG emissions by 2050.

Excerpt 5:

Often times, BlackRock couched its ESG investing in language that superficially pledged allegiance to an economic interest. But BlackRock never gave more than lip service to show how its actions were actually economically advantageous to its clients. Absent a cognizable basis for claiming that certain ESG considerations capture material financial risks, slapping the label “financial interest” serves as mere pretext. BlackRock regularly employed rhetorical devices—such as the “long-term” modifier—to discuss some amorphous and unsupported financial benefit of an ESG factor in order to shift attention away from its non-pecuniary goals. The most emblematic example of this pretext is found in BlackRock's defense of its climate change investment activism based on nothing more than *ipse dixit*. Just because BlackRock says it is “financial” or “material” does not automatically

⁷ Cf. Andy Puzder, *How BlackRock And The Rest Of The 'Climate Cartel' Stacked Exxon's Board With Fossil Fuel Haters*, THE FEDERALIST (Jan. 18, 2025) (“Even lawyers affiliated with the environmental activist ... of which both BlackRock and State Street were members — thought that ‘... costs’ of Paris Agreement compliance ‘are so high’ that they do not align with the fiduciary duty that asset managers owe their clients.”).

mean that it is. Using such labels is clever pretext, particularly when dealing with an unproven and nebulous issue like climate change.

At a minimum, BlackRock's own statements made clear that financial interests did not exclusively drive their aims:

[E]very company must not only deliver financial performance, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate. Without a sense of purpose, no company, either public or private, can achieve its full potential.

While these may be important aims for BlackRock, making a positive contribution to society and benefiting the communities in which they operate are not on their face financial benefits

Excerpt 6:

Recently, ... states—led by Texas—... fil[ed] a lawsuit against BlackRock and two other leading institutional investors. Compl., *Texas, et al. v. BlackRock, Inc., et al.*, No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024) (ECF No. 1). This lawsuit alleged similar patterns as those revealed by the evidence in this case: large institutional investment managers “acquir[ing] substantial stockholdings” to concomitantly “acquire[] the power to influence the policies of these competing companies” and “us[ing] [their] power to ... pressure the management of all the portfolio companies in which they held assets to align with net-zero goals.” *Id.* at 1–2. Of the three named defendants, the complaint alleged that BlackRock is the worst because “it would use [its] shareholdings to advance climate goals” without informing investors. *Id.* at 3. At the same time, BlackRock would “consistently and uniformly represent[] its non-ESG funds would be dedicated solely to enhancing shareholder value.” *Id.*

IV. The Proposal Does Not Impermissibly Deal with Matters Relating to BlackRock’s Ordinary Business Operations.

In Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”), the Commission stated that the determinative question for deciding whether a proposal impermissibly interferes with ordinary business is whether “the subject matter of the proposal” seeks to regulate “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.” Additional considerations regarding social significance and micromanagement only become relevant if this first question is answered in the affirmative.

A. The Proposal does not impermissibly relate to BlackRock’s ordinary business matters

The Company’s ordinary business argument boils down to the proposition that the Proposal improperly concerns “how BlackRock engages with companies in which its clients are invested.” However, the Proposal is in fact concerned with a much higher-level issue than the Company’s day-to-day engagement-related decision-making. Rather, the subject matter of the Proposal is ultimately a “whether” question, not a “how” question – as in whether BlackRock should engage with companies at all, or whether the current one-engagement-per-company approach is too risky. As the Proposal notes: “The failure to stop or modify one-size-fits-all engagement brings with it

various risks to BlackRock’s financial value, including risks stemming from lawsuits, regulatory action, and public backlash.” These “whether” questions are a far cry from the sort of day-to-day decision-making that the 1998 Release deems “impracticable for shareholders to decide.” Certainly, if shareholder democracy is to mean anything at all, it must allow shareholders to request an assessment of the risks posed by the Company’s uniform engagement policy. Such a request is multiple steps removed from the day-to-day engagement-related decisions properly protected by the ordinary business exclusion:

Step 1. Shareholders request an assessment of the risks posed by the Company’s uniform engagement policy.

Step 2. Assuming the Proposal passes, the board decides whether to honor the request or not.

Step 3. If the board decides to honor the request, the board decides how to conduct the assessment.

Step 4. Once the assessment is completed, the board decides how to implement it.

Step 5. Assuming the Company continues engagement, management decides how to engage with company X on topic Y.

Turning to the Company’s cited no-action decisions, Proponent first notes that only one of the descriptions includes a reference to engagement, and that request was answered without a letter in response to an exclusion request that included arguments based on (1) vague and misleading, (2) illegal under both state and federal law, (3) substantially implemented, and (4) ordinary business. *State Street Corp.* (Mar. 26, 2021).

As to the argument that no-action decisions related to products and services offered for sale by the Company are applicable, Proponent notes that nothing beyond bald assertion is provided in terms of categorizing the Company’s engagement as a product or service purchased by clients. This bald assertion can be contrasted with the following quote from Puzder:

For unelected elites to force businesses to implement policies that lack popular support strikes at the very heart of our representative democracy, undermining our right to determine policy as voters. No one voted them into office. Nor did their investors intend to empower these “passive” asset managers to actively impose their will on society.⁸

Finally, the Company attempts to argue that the Proposal’s reference to fraud impermissibly connects it to the Company’s business: “The Proposal’s concern with fraud clearly demonstrates that the Proposal is focused on BlackRock’s ordinary business matters.” Putting aside the own goal, as well as the lack of any reference to “fraud” in the Proposal, Proponent notes that none of the no-action decisions cited by the Company base exclusion on concerns with fraud.

⁸ Puzder at 5.

B. The Proposal Relates to a significant social policy issue that transcends the company's ordinary business

The significant social policy exception is applicable to “proposals that raise significant social policy issues.” SLB 14L. The significant social policy exception “is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters.” SLB 14L. The foregoing analysis makes clear that authority over day-to-day business matters is not impermissibly interfered with by the Proposal, and the Puzder and *American Airlines* excerpts above make clear the Proposal raises significant social policy issues related to abuse of power that undermines democracy and capitalism. These issues are inseparable from the Company’s current form of engagement, which is why the Proposal focuses on:

- (1) “risks stemming from lawsuits, regulatory action, and public backlash,”
- (2) “legal, regulatory, and reputational risks stemming from the uniform application of the policy, including instances where it may conflict with applicable laws,”
- (3) “using engagements to advance its climate agenda,”
- (4) “a complaint filed by 11 states,”
- (5) “ensure the Company remains ... adaptable to the changing external environment,” and
- (6) “strengthen the Company’s ability to navigate challenges effectively ... and uphold its reputation as a responsible and forward-thinking organization.”

C. The Proposal does not seek to impermissibly micromanage BlackRock

The core question that needs to be answered in order to determine whether the Proposal impermissibly micromanages the Company is whether the Proposal “prob[es] 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.

The Company argues the Proposal impermissibly micromanages BlackRock because its subject matter “involves exactly the type of day-to-day operational decisions and matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” But the argument that the Proposal deals with day-to-day decision-making has already been rebutted in the ordinary business discussion. Accordingly, the only thing left to decide here is whether the Proposal is too complex for shareholders to exercise informed judgment. On this point, SLB 14L provides that “we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” Applying this standard, it is manifestly insulting for the Company to argue that BlackRock shareholders are too unsophisticated to make an informed decision about whether to request a review of the Company’s engagement risks in light of the “robustness of public discussion and analysis on the topic” as evidenced by examples like the Puzder book, the *American Airlines* decision, and the citations to various publications in the Proposal.

The no-action decisions cited by the Company for support in the second paragraph of its micromanagement argument suffer from a problematic practice that is common to many companies seeking no-action relief, and which arguably deserves consideration as misleading. Specifically, the practice is to latch on to one of many arguments made by a company in a successful request and to then characterize that argument as having been dispositive when the Staff's letter provides only that some general overarching argument was accepted – in this case, micromanagement. Here, not one of the three decisions cited⁹ can be fairly described as having turned on the argument highlighted by the Company. (To the Company's credit, it does provide a clue to this fact by noting "the company argued" in the parentheses.) Because it is impossible to determine whether that argument was accepted, rejected, or relied on in any way whatsoever, those decisions should be ignored.

It is also worth noting here that the SEC's current exclusion/exception hierarchy whereby the micromanagement exclusion trumps considerations of social policy, thereby elevating the Company's authority to manage its daily business above a shareholder's right to have a vote on matters of social importance may well have a questionable statutory basis. Cf. *All. for Fair Bd. Recruitment v. Sec. & Exch. Comm'n*, No. 21-60626, 2024 WL 5078034, at *16 (5th Cir. Dec. 11, 2024) (noting that because the SEC "has no inherent or implied authority, its powers to make major decisions must come only from unequivocal statutory text" and concluding the SEC exceeded its authority in approving Nasdaq's diversity rule). At the very least, that should weigh in Proponent's favor in case of any close calls on the micromanagement issue.

V. Conclusion

In conclusion, the arguments presented by the Company for excluding the Proposal are not convincing. The Proposal should accordingly be included in the proxy materials for the 2025 annual meeting.

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at spadfield@nationalcenter.org.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

Sincerely,

⁹ *Air Products & Chemicals, Inc.* (Nov. 29, 2024); *JPMorgan Chase & Co.* (Mar. 29, 2024); *The Goldman Sachs Group, Inc.* (Mar. 4, 2024, recon. denied Apr. 15, 2024).

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Stefan Padfield
Executive Director
Free Enterprise Project
National Center for Public Policy Research

cc: Marc S. Gerber