



DIVISION OF  
CORPORATION FINANCE

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

March 24, 2025

John B. Beckman  
Hogan Lovells US LLP

Re: Bristol-Myers Squibb Company (the "Company")  
Incoming letter dated December 23, 2024

Dear John B. Beckman:

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 Company consider abolishing its DEI program, policies, department, and goals.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

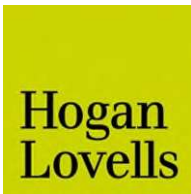
We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal does not seek to micromanage the Company.

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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December 23, 2024

**Rule 14a-8(i)(3)**  
**Rule 14a-8(i)(7)**

**VIA ONLINE SHAREHOLDER PROPOSAL FORM**

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

Re: ***Bristol-Myers Squibb Company – Proposal Submitted by the National Center for Public Policy Research***

To Whom it May Concern:

On behalf of Bristol-Myers Squibb Company (the “**Company**”), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 to notify the Securities and Exchange Commission (the “**Commission**”) of the Company’s intention to exclude a shareholder proposal (the “**Proposal**”), and a statement in support thereof (the “**Supporting Statement**”) submitted by the National Center for Public Policy Research (the “**Proponent**”) from the Company’s proxy statement and form of proxy (together, the “**2025 Proxy Materials**”) to be distributed to the Company’s shareholders in connection with its 2025 annual meeting of shareholders (the “**2025 Annual Meeting**”). The Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the “**Staff**”) will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from the 2025 Proxy Materials for the reasons discussed below.

In accordance with Staff guidance, this letter is being submitted using the Staff’s online Shareholder Proposal Form. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponent. Rule 14a-8(k) and SLB No. 14D provide that a shareholder proponent is required to send to the Company a copy of any correspondence the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the

Proponent should concurrently furnish a copy of that correspondence to the undersigned on behalf of the Company (by e-mail).

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the Staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

The Company intends to file its definitive 2025 Proxy Materials with the Commission on or about March 26, 2025.

### **THE PROPOSAL**

The Proposal sets forth the following resolution to be voted on by shareholders at the 2025 Annual Meeting:

**Resolved:** Shareholders request that the Company consider abolishing its DEI program, policies, Department, and goals.

A copy of the Proponent's complete submission, including the Proposal, the Supporting Statement, and related materials, is attached hereto as Exhibit A.

### **BASES FOR EXCLUSION**

The Company hereby respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to: (i) Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite, and subject to multiple interpretations, such that it violates the proxy rules; and (ii) Rule 14a-8(i)(7) because the Proposal seeks to impermissibly micromanage the Company.

#### **I. Rule 14a-8(i)(3) – The Proposal is Impermissibly Vague, Indefinite and Subject to Multiple Interpretations, such That it Violates the Proxy Rules.**

##### **A. Background**

A shareholder proposal may be excluded under Rule 14a-8(i)(3) “if the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials.” *See also* Staff Legal Bulletin No. 14E (October 27, 2009) (providing that, when analyzing a proposal to determine its underlying subject matter, the Staff looks not only to the resolved clause, but to the supporting statement and the proposal in its entirety).

The Staff has determined that shareholder proposals may be excluded pursuant to Rule 14a-8(i)(3) where “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the

proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (September 15, 2004) (“*SLB No. 14B*”). On numerous occasions, the Staff has permitted exclusion of proposals that are vague and indefinite. *See Alaska Air Group, Inc.* (March 10, 2016) (permitting exclusion of a broad, ambiguous proposal requiring to take action to “require that the management of our company strictly honor shareholders rights to disclosure identification and contact information to the fullest extent possible by technology”); *Yahoo! Inc.* (Mar. 26, 2008) (permitting exclusion of a proposal requiring the board of directors to “establish a new policy of doing business in China”); *Bank of America Corp.* (February 25, 2008) (permitting exclusion of a proposal requesting that the company “amend its GHG emissions policies”); *Puget Energy, Inc.* (May 7, 2002) (permitting exclusion of a proposal requesting that the company “implement a policy of improved corporate governance”).

In addition, the Staff has noted that a proposal may be excludable when the “meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations,” such that “any action ultimately taken by the company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal.” *See Fuqua Industries, Inc.* (March 12, 1991); *see also Kroger Co.* (March 19, 2004) (permitting the exclusion of a proposal requesting that the company prepare a sustainability report based on the Global Reporting Initiative’s sustainability reporting guidelines, where the company argued that the proposal’s “extremely brief and basic description of the voluminous and highly complex Guidelines” did not adequately inform the company of the actions necessary to implement the proposal). The Staff has also noted that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal fails to define key terms. *See, e.g., The Boeing Company* (February 23, 2021) (permitting exclusion of a proposal requiring that 60% of the company’s directors “must have an aerospace/aviation/engineering executive background” where such phrase was undefined), *Apple Inc.* (December 6, 2019) (permitting exclusion of a proposal seeking to “improve guiding principles of executive compensation” that did not provide an explanation or definition of the key term “improve”), *AT&T Inc.* (February 21, 2014) (permitting the exclusion of a proposal requesting a review of policies and procedures related to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined), and *Berkshire Hathaway Inc.* (January 31, 2012) (permitting the exclusion of a proposal that specified company personnel “sign off [by] means of an electronic key . . . that they . . . approve or disapprove of [certain] figures and policies” because it did not “sufficiently explain the meaning of ‘electronic key’ or ‘figures and policies’”).

Under the standards set forth in the precedents cited above and for the reasons provided below, the subject of the Proposal is so vague and indefinite, and thus excludable pursuant to Rule 14a-8(i)(3), that different shareholders considering the Proposal are likely to have different understandings of what it entails and, if approved, how it should be implemented. In the event that the Company’s shareholders approve the Proposal, this inherent ambiguity engenders virtual certainty that the Company would be unable to implement the Proposal in a manner consistent with the understanding of shareholders voting on the Proposal.

- B. *“DEI program,” “DEI policies,” “DEI Department,” and “DEI goals,” are undefined and inherently vague and indefinite terms, subject to an unknown number of interpretations, preventing the Company and its shareholders from being able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.***

The Proposal requests that the Company “consider abolishing its DEI program, policies, Department, and goals.” However, the terms “DEI program,” “DEI policies,” “DEI Department,” and “DEI goals,” each of which is central to the Proposal’s request, are inherently vague and indefinite, and subject to an unknown number of interpretations as to the meaning of “DEI program,” and what policies, department (or departments), and goals are intended to be covered by the Proposal, such that, if adopted, the Company and its shareholders will be unable to know with reasonable certainty exactly what must and will be abolished, and what specific corporate actions will be prohibited after the Proposal is implemented. “DEI” generally is understood to refer to “diversity, equity and inclusion,” a broad concept in society and the corporate world that has divergent applications among different entities, with no universal meaning or implementation. “DEI” (and each of the subparts of “diversity,” “equity” and “inclusion”) is not a monolithic concept and is sufficiently vague such that it captures a whole host of corporate actions, which can range from actions as involved as comprehensive affirmative action programs to those as ordinary as legal compliance programs related to anti-discrimination. The Company does not have a preset, exhaustive list of criteria, characteristics, or attributes that deem a program, practice, procedure, policy, or initiative as one *not* relating to DEI. In other words, without more clarity from the Proposal, there is no meaningful way for the Company and its shareholders to understand the intended meaning of the foregoing terms and the scope of the Proponent’s request given the broad application of “DEI” and its component elements of “diversity,” “equity” and “inclusion.”

### **1. *DEI Program***

The Company has neither defined “DEI program” nor disclosed the existence of one, there is no widely accepted definition of “DEI program” to inform the Company’s or its shareholders’ understanding of the term’s meaning, the source cited in reference to “corporate DEI programs” in the Supporting Statement makes mention of distinct programs and initiatives but does not provide an example of a company-wide DEI program, and “DEI program” is not defined in the Proposal or the Supporting Statement, such that the Company could ascertain what exactly should and would be abolished if the Proposal were to be adopted, rendering the term, and thus the Proposal, impermissibly vague and indefinite.

As stated above, what actions are encompassed by a “DEI program” could be interpreted to mean an inordinately wide range of typical corporate decisions, and there is no clarity about which “programs” would require abolishment. By way of explanation, the following examples could each be reasonably included under the “DEI program” umbrella: employee trainings about anti-discrimination; trainings for leadership about managing multi-cultural employee teams; business efforts to understand differing patient demographics; internal pay equity efforts; business

efforts to expand pharmaceutical access in underserved communities around the world; flexible work arrangements; employee mentorship programs; and celebrations of different cultures, constituencies, and holidays throughout the year. Many of these actions, if not all, are integrally related to running a complex multinational corporation in today's society, and all of them have pure business benefits that extend beyond goals relating to social responsibility. For an additional example, the Company's business plan to increase diversity in clinical trials of its pharmaceutical product candidates to improve efficacy and safety is one of the Company's inclusion and diversity goals, but is also a commercial imperative for the Company's business. However, in its overreach, it is unclear if the Proposal is asking the Company to "abolish" all of these types of fundamental, ordinary business actions. In addition, upon a strict interpretation of the Proposal, without greater clarity, certain Company compliance programs aligned with federal law such as Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, color, religion, sex, and national origin ("*Title VII*"), or the Americans with Disabilities Act, which prohibits age discrimination against individuals 40 years of age or older (the "*ADA*"), could fall within its ambit. As a result, the Company and its shareholders have no insight into precisely what "program" the Company is being asked to abolish and which ones it may keep.<sup>1</sup>

## 2. *DEI Policies*

Similar to the above, the term "DEI policies" is also vague and indefinite. The Proponent identifies one policy in the Supporting Statement but does not mention whether such policy should be abolished and does not request that any other policies be abolished, even though the Resolved clause indicates that the Proponent requests that more than one DEI policy be abolished. The Proposal is ambiguous and requires a great degree of subjective judgment in trying to ascertain the action requested. In order for the Company to be able to determine with any reasonable certainty exactly what actions the Proposal requires, the Company must determine which policies relate to DEI. The Proposal provides only one policy that shareholders and management would be able to look to in order to ascertain which policies would be subject to abolishment. As broad as the term "DEI" is, and given its broad application and meaning, a multitude of policies maintained by a multinational company with approximately 34,100 employees in 43 countries as of December 31, 2023, could implicate DEI, whether directly or indirectly.

In addition, the Proposal's vague overreach in requesting the simple "abolishment" of DEI policies results in confusion about the requested result. For example, the Supporting Statement

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<sup>1</sup> In a potential effort to lend more clarity, the Supporting Statement includes the following examples that are "include[d]" in the Company's DEI program: "(1) race-based employee resource groups, (2) collaboration with the controversial Human Rights Campaign, (3) race-based workforce representation goals, (4) supplier diversity commitments, and (5) 'affirmative action policies.'" However, the resolution of the Proposal is much broader than covering these five items; it requests abolishment of the Company's "DEI program, policies, Department, and goals," and the reference to the word "includes" implies that many other actions and decisions are encompassed by the term "DEI Program." In addition, the five examples listed by the Supporting Statement are equally subject to the vague ambiguity of what specific and ordinary corporate actions under these categories are permissible or should be abolished. Accordingly, the Supporting Statement's inclusion of these five examples does not serve to refine the clarity or limit the scope of the broad reach of the Proposal itself.

devotes its greatest attention to race-based discrimination and the related risks to the Company, as discrimination is clearly an issue about which the Proponent is concerned. Accordingly, Company policies related to anti-discrimination on the basis of race or ethnicity would seem to fall clearly within the Proposal's reach for "DEI policies" that should be abolished, as they relate directly to diversity and inclusion. The Company has a publicly disclosed equal opportunity policy (which the Supporting Statement points out) that specifically states that recruiting, hiring and promotion decisions, as well as compensation, benefits, access to training and other programs, are made "*without regard to race, ethnicity, national origin, religion, age, color, sex, sexual orientation, gender identity or expression, disability, or protected veteran status, or any other characteristic protected by local, state, or federal laws, rules, or regulations.*" (emphasis added).<sup>2</sup> The Company's Standards of Business Conduct and Ethics<sup>3</sup> has a similar anti-discrimination and equal opportunity policy, stating "[the Company] ensure[s] equal employment opportunity without unlawful discrimination or harassment in the workplace," as required by certain federal laws (e.g., Title VII and the ADA). However, these are "DEI policies" that the Proposal specifically requests be abolished, even though abolishing them is plainly contrary to the aims of the Supporting Statement. This result is just one example of the contradictions presented by the Proposal's impermissible vagueness.

### 3. *DEI Department*

The Company does not have a dedicated DEI department; its inclusion and diversity ("*I&D*") efforts are overseen by the Company's Chief Human Resource Officer or human resources ("*HR*") team under the leadership of a chief inclusion & diversity officer. However, it is unclear whether the proposal requests removal of individual roles related to the Company's I&D function, or if this request is moot due to the Company not having a DEI department. In other words, it is unlikely that shareholders or the Company know whether the Proposal requests the elimination of certain roles in the event no such department exists. Given that I&D is part of the Company's HR function, and the Company cannot reasonably be expected to "abolish" its HR department, the term "DEI Department" is impermissibly vague and indefinite under the standards discussed above.

### 4. *DEI Goals*

The Company's Global I&D strategy includes the following five-year I&D aspirational goals and health equity commitments: (i) increasing diversity in clinical trials globally to improve the efficacy and safety of the Company's medicines; (ii) leveraging and strengthening the diversity of the Company's workforce to better understand the unique needs and preferences of the Company's patients and communities; (iii) collaborating across global communities and beyond to improve education and access, ensuring the Company's partners can provide culturally competent and appropriate care; and (iv) driving economic empowerment in the communities the

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<sup>2</sup> <https://www.bms.com/about-us/global-diversity-and-inclusion/our-commitment-to-eco/eco-policy-statement.html>

<sup>3</sup> <https://www.bms.com/assets/bms/us/en-us/pdf/principles-of-integrity.pdf>

Company serves by investing in diverse businesses to enhance the innovation and agility within the Company's supply chain. However, the Supporting Statement only covers "race-based workforce representation goals," similar to the goal in clause (ii) above. Accordingly, it is unclear whether the Proposal requests only the end of race-based workforce representation goals or all other goals part of the Company's Global I&D strategy. For example, the Company's 2024 Proxy Statement provides that one of the Company's specific I&D goals under its Global I&D strategy is to "[a]ccelerate disease awareness and education programs with at-risk patients; improve access to care; advocate for policies that promote health equity." Would abolishing this goal, although counter to the needs of patients and the Company's business strategy, be required by the Proposal? It is not clear. Each of these goals is important to the Company's commercial business, operations, and prospects, and go far beyond the Company's social aspirations. If adopted, neither shareholders voting on the Proposal, nor the Company in implementing the Proposal, would be able to determine with reasonable certainty what goals must be and will be abolished.

\* \* \*

As discussed above, the Proposal and Supporting Statement do not describe or define in any meaningfully determinate way the foregoing terms and include terms that are so inherently vague or indefinite that neither the shareholders voting on it, nor the Company in implementing the proposal (if adopted), will be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires. Accordingly, the Proposal may properly be excluded from the 2025 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is materially false and misleading in violation of Rule 14a-9.

## **II. Rule 14a-8(i)(7) – The Proposal Seeks to Impermissibly Micromanage the Company**

Rule 14a-8(i)(7) permits the omission of a shareholder proposal that deals with a matter relating to the ordinary business of a company. The core basis for an exclusion under Rule 14a-8(i)(7) is to protect the authority of a company's board of directors and management to manage the business and affairs of the company. The Commission has explained that the "general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Securities Exchange Act Release No. 34-40018 (May 21, 1998). In addition, a shareholder proposal may be excluded under Rule 14a-8(i)(7) if the proposal attempts to micromanage a company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment," which "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies," even those circumstances where the proposal is found to address a significant social policy. *Id.* The excludability of proposals on the basis of micromanagement will "be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed." *Id.* In addition, the Commission has indicated that "the Staff will take a measured approach to evaluating companies' micromanagement arguments." Staff Legal Bulletin No. 14L (November 3, 2021).

The Staff has consistently permitted exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the knowledge and expertise of shareholders. *See, e.g., Delta Air Lines, Inc.* (April 24, 2024) (permitting exclusion of a proposal that requested a reporting disclosing, among other things, “expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions”); *The Kroger Co.* (April 25, 2023) (permitting exclusion of a proposal because it micromanaged the company by requesting that management’s practices relating to the company’s supply chain be supplanted by decisions of shareholders); *JPMorgan Chase & Co.* (March 22, 2019) (permitting exclusion of a proposal because it micromanaged the company by requiring the company to adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service); *Royal Caribbean Cruises Ltd.* (March 14, 2019) (permitting exclusion of a proposal because it micromanaged the company by requiring shareholder approval for all company buybacks); *Walgreens Boots Alliance, Inc.* (November 20, 2018) (permitting exclusion of a proposal requesting that stock buybacks adopted by the board not become effective until approved by shareholders for micromanaging by substituting shareholder approval for board decision-making); *JPMorgan Chase & Co.* (March 30, 2018) (permitting exclusion of a proposal because it micromanaged the company by requesting that the board establish a human rights committee); *Amazon.com, Inc.* (January 18, 2018) (permitting exclusion of a proposal requesting that the company list certain efficient showerheads before others on its website for micromanaging by mandating a specific business decision without regard for the business judgment of management).

The Company’s day-to-day operations involve the discovery, development, licensing, manufacturing, marketing, distribution, and sale of biopharmaceutical products on a global basis. Certain of the Company’s goals that are part of its Global I&D strategy directly aid in the Company’s ability to develop and distribute its biopharmaceutical products. However, under one of many interpretations as to the implementation of the Proposal, the Proponent seemingly requests that such goals, initiatives, and business strategies be discontinued and forbidden, which directly implicates the detailed and complex day-to-day business decisions and policies involving the persons and entities with whom the Company engages. Under the Proposal, management would not be permitted to exercise its business judgment and discretion with respect to these important operational and strategic matters; instead, shareholders will have substituted their judgment for management’s and *eliminated* management’s discretion in running the business in a manner that conceivably implicates diversity, equity, or inclusion.

The overbreadth of the Proposal to abolish programs, policies, and goals that have a relationship with DEI would significantly impair management’s ability to exercise its discretion to pursue important business strategies. For example, with respect to development, one of the Company’s business strategies is to increase diversity in clinical trials globally to improve the efficacy and safety of the Company’s medicines. This goal is directly tied to management’s ability to manage a critical aspect of the operations of the Company: drug and product development. As it relates to distributions, the Company is focused on driving economic empowerment in the communities it serves by investing in diverse businesses to enhance the innovation and agility

within its supply chain. Under the Proposal, management would no longer be able to pursue these business imperatives because they also relate to “DEI”. Ensuring the efficacy and safety of medicines is essential to the Company’s reputation and bottom line. Improving access to the Company’s pharmaceutical products is an important element of the Company’s development prospects.

The same analysis applies to the Company’s ordinary course HR policies and practices. Successfully managing an international organization requires devoting significant resources and judgment to the HR function. Part of the complex discretion management applies in managing its employee base involves making decisions about recruitment and retention initiatives that are critical for ensuring the Company attracts and retains key employee talent. Requiring management to second-guess whether HR-related initiatives, such as mentorship programs, employee trainings, internal pay equity efforts, holiday celebrations, or otherwise, relate to DEI generally would interfere with the required exercise of the Company’s discretion regarding its workforce management. Moreover, as detailed above, a broad construction of “DEI” implicates laws relating to anti-discrimination and equal opportunity for employees. Administering HR policies and procedures that ensure employees are free from discrimination is required by federal and local laws, and adoption of the Proposal would represent impermissible interference from shareholders into a complicated legal compliance system that is rightly left to the discretion of management. Read literally, it would also require management to abolish programs relating to anti-discrimination, eliminating management’s discretion with respect to legal compliance in this area.

Accordingly, the Proposal would undoubtedly hamper management’s ability to operate key functions of the Company’s business. The Proposal seeks to usurp management’s authority and permit shareholders to determine how management should best pursue its commercial strategies, manage its employees, implement legal compliance programs and operate the Company’s business. Further, the Proposal impermissibly micromanages the Company by inappropriately limiting discretion of the board or management in using goals, objectives and policies that could be reasonably be categorized as DEI in the day-to-day operations of the Company’s business and to advance critical aspects of the Company’s business performance (i.e., increased efficacy and safety of medicines, enhanced agility and innovation of the Company’s supply chain and legal compliance with anti-discrimination laws applicable to the Company’s workforce) in violation of Rule 14a-8(i)(7).

The Proposal involves the type of micromanagement that the ordinary business exclusion set forth in Rule 14a-8(i)(7) is intended to address. The overreaching mandate of the proposal implicates an impossibly thin tightrope for management to walk, whereby each decision that has any potential relationship to “DEI” programs, policies, or goals, even those that are integral to the Company’s business strategy and commercial objectives, are flatly prohibited. This is the quintessence of micromanagement – imposing a broad mandate and leaving no discretion for its implementation, while simultaneously introducing substantial uncertainty about how to arrive at the Proposal’s intended goals. It is clear that the Proposal would interfere with management’s and the board’s responsibilities and therefore is excludable under Rule 14a-8(i)(7).

**CONCLUSION**

For the reasons discussed above, the Company believes that it may omit the Proposal from the 2025 Proxy Materials. We request the Staff's concurrence in our view or, alternatively, confirmation that the Staff will not recommend any enforcement action if the Company omits the Proposal.

If you have any questions or need additional information, please feel free to contact me at (202) 637-5464. Correspondence regarding this letter may be sent to me by e-mail at: [john.beckman@hoganlovells.com](mailto:john.beckman@hoganlovells.com).

Sincerely,

A handwritten signature in blue ink that reads "John B. Beckman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John B. Beckman

Enclosures

cc: Amy Fallone, Bristol-Myers Squibb Company  
Lisa A. Atkins, Bristol-Myers Squibb Company  
Stefan Padfield, National Center for Public Policy Research  
Ethan Peck, National Center for Public Policy Research

**Exhibit A**

**Proponent's Submission**



November 27, 2024

Via email to:

Corporate Secretary  
Bristol-Myers Squibb Company  
Route 206 & Province Line Road  
Princeton, NJ 08543  
Attn.: [REDACTED]@bms.com

Dear Corporate Secretary,

Dear Corporate Secretary,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Bristol-Myers Squibb Company (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 16 or December 17, 2024, from 1-4 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]@nationalcenter.org 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, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [REDACTED]@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stefan Padfield'. The signature is fluid and cursive, with a large loop at the end.

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

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

## Request to Cease DEI Efforts

### RESOLVED:

Shareholders request that the Company consider abolishing its DEI program, policies, Department, and goals.

### SUPPORTING STATEMENT:

Last year, the US Supreme Court ruled in *SFFA v. Harvard* that discriminating on the basis of race in college admissions violates the equal protection clause of the 14th Amendment.<sup>1</sup> As a result, the legality of corporate Diversity, Equity and Inclusion (DEI) programs was called into question<sup>2</sup> and thirteen Attorneys General warned that *SFFA* implicated corporate DEI programs.<sup>3</sup>

This year, those implications widened when the Supreme Court ruled in *Muldrow v. City of St. Louis* that Title VII of the Civil Rights Act protected against discriminatory job transfers.<sup>4</sup> The ruling also lowered the bar for employees to successfully sue their employers for discrimination,<sup>5</sup> and is therefore likely to lead to an increase in discrimination claims.

Since *SFFA*, a number of DEI-related lawsuits have been filed. Starbucks was successfully sued for discrimination by an employee for \$25.6 million,<sup>6</sup> and the risk of being sued for such discrimination is rising.<sup>7</sup>

Sensibly, many major companies have responded by rolling back their DEI commitments and laying off DEI departments due to the risks DEI creates of illegal discrimination.<sup>8</sup> Alphabet and Meta cut DEI staff and DEI-related investments;<sup>9</sup> and Microsoft and Zoom laid off their entire DEI teams.<sup>10</sup> Since *Muldrow*, John Deere publicly halted DEI-related policies<sup>11</sup> after Tractor Supply explicitly stated that it “eliminate[d] DEI roles and retire[d] our current DEI goals,”<sup>12</sup> Lowe’s and Ford ended their participation in the Human Rights Campaign’s Corporate Equality (CEI),<sup>13</sup> Harley Davidson ceased its DEI efforts,<sup>14</sup> Jack Daniels ended both its DEI efforts and CEI participation,<sup>15</sup> and Boeing got rid of its DEI department.<sup>16</sup>

DEI poses risks to companies and their shareholders, including the risk that adopting DEI policies that implement illegal discrimination will constitute a breach of fiduciary duties.

Despite these obvious risks, the *SFFA* and *Muldrow* decisions, and the wave of corporate DEI retreats, Bristol Myers Squibb still has a DEI program, which includes (1) race-based employee resource groups,<sup>17</sup> (2) collaboration with the controversial Human Rights Campaign,<sup>18</sup> (3) race-based workforce representation goals,<sup>19</sup> (4) supplier diversity commitments,<sup>20</sup> and (5) “affirmative action” policies.<sup>21</sup>

With over 30,000 employees,<sup>22</sup> BMS likely has thousands of employees who are potentially victims of this type of discrimination. If even only a fraction of them file suit, and only some of those prove successful, the cost to BMS could reach billions of dollars.

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<sup>1</sup> <https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/>

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- <sup>2</sup> <https://freebeacon.com/democrats/starbucks-hired-eric-holder-to-conduct-a-civil-rights-audit-the-policies-he-blessed-got-the-coffee-maker-sued/>
- <sup>3</sup> <https://ag.ks.gov/docs/default-source/documents/corporate-racial-discrimination-multistate-letter.pdf>
- <sup>4</sup> [https://www.supremecourt.gov/opinions/23pdf/22-193\\_q86b.pdf](https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf)
- <sup>5</sup> <https://www.skadden.com/insights/publications/2024/06/quarterly-insights/supreme-court-lowers-the-bar>; <https://www.dailysignal.com/2024/04/17/supreme-court-just-made-easier-sue-employers-dei-policies/>
- <sup>6</sup> <https://www.foxbusiness.com/features/starbucks-manager-shannon-phillips-wins-25-million-lawsuit-fired-white-donte-robinson-rashon-nelson>
- <sup>7</sup> <https://aflegal.org/america-first-legal-files-class-action-lawsuit-against-progressive-insurance-for-illegal-racial-discrimination/>; <https://aflegal.org/afl-files-federal-civil-rights-complaint-against-activision-for-illegal-racist-sexist-and-discriminatory-hiring-practices-and-sends-letter-to-activision-board-demanding-they-end-unlawful-dei-policies/>; <https://aflegal.org/america-first-legal-files-federal-civil-rights-complaint-against-kelloggs-warns-management-that-its-violating-fiduciary-duties/>
- <sup>8</sup> <https://techcrunch.com/2024/07/29/dei-backlash-stay-up-to-date-on-the-latest-legal-and-corporate-challenges/>
- <sup>9</sup> <https://www.cnn.com/2023/12/22/google-meta-other-tech-giants-cut-dei-programs-in-2023.html>
- <sup>10</sup> <https://www.businessinsider.com/microsoft-layoffs-dei-leader-email-2024-7>;  
<https://www.bloomberg.com/news/articles/2024-02-06/zoom-dei-workers-fired-in-recent-round-of-job-cuts>
- <sup>11</sup> <https://x.com/JohnDeere/status/181331897765084794411>
- <sup>12</sup> <https://corporate.tractorsupply.com/newsroom/news-releases/news-releases-details/2024/Tractor-Supply-Company-Statement/default.aspx>
- <sup>13</sup> <https://www.nbcnews.com/business/business-news/lowes-becomes-later-paring-back-dei-efforts-rcna168380>; <https://www.cbsnews.com/news/lowes-dei-harley-davidson-john-deere-tractor-supply/>
- <sup>14</sup> <https://x.com/harleydavidson/status/182556413803223499414>
- <sup>15</sup> <https://www.foxnews.com/lifestyle/jack-daniels-renounces-woke-agenda-latest-iconic-us-brand-bring-sanity-back-business>
- <sup>16</sup> <https://www.bloomberg.com/news/articles/2024-10-31/boeing-dismantles-diversity-team-as-pressure-builds-on-new-ceo>
- <sup>17</sup> <https://www.bms.com/about-us/global-diversity-and-inclusion/people-and-business-resource-groups.html>
- <sup>18</sup> <https://www.hrc.org/resources/buyers-guide/bristol-myers-squibb-4>; <https://www.bms.com/about-us/working-at-bms.html>
- <sup>19</sup> <https://news.bms.com/news/philanthropy/2023/Bristol-Myers-Squibb-Announces-Progress-Toward-Long-Term-Inclusion--Diversity-Goals-and-Health-Equity-Commitments/default.aspx> ;  
<https://www.esg.bms.com/assets/bms-esg/us/documents/BMS-ESG-Report-2023.pdf>
- <sup>20</sup> <https://www.bms.com/about-us/our-company/doing-business-with-us-as-a-supplier/supplier-diversity.html>
- <sup>21</sup> <https://www.bms.com/about-us/global-diversity-and-inclusion/our-commitment-to-eeo/eeo-policy-statement.html> ; <https://www.bms.com/about-us/global-diversity-and-inclusion/our-commitment-to-eeo.html>
- <sup>22</sup> <https://www.macrotrends.net/stocks/charts/BMY/bristol-myers-squibb/number-of-employees>



January 6, 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 Bristol-Myers Squibb Company Regarding a Shareholder Proposal by the National Center for Public Policy Research (“Proponent” or “NCPPR”)**

Ladies and Gentlemen:

This correspondence is in response to the letter of John B. Beckman on behalf of Bristol-Myers Squibb Company (the “Company”) dated December 23, 2024, 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.

**I. The Proposal is Not Impermissibly Vague, Indefinite or Subject to Multiple Interpretations, and Accordingly Does Not Violate the Proxy Rules.**

**A. Background**

The Company argues that the Proposal is impermissibly vague and indefinite. It claims that the terms "DEI program," "DEI policies," "DEI Department," and "DEI goals" are subject to multiple interpretations, preventing shareholders and management from knowing what actions the Proposal requires. The Company further argues that the Proposal's terms lack sufficient guidance and accordingly any action taken by the Company to implement the Proposal could differ from what shareholders envisioned. However, the Proposal is not inherently vague or indefinite, and does offer sufficient guidance.

While the Company argues that “DEI” is a broad concept with divergent applications, it also acknowledges that “DEI” generally refers to "diversity, equity and inclusion." Although the Company contends that there is no universal meaning or implementation of DEI, the fact that the acronym is in common use suggests that there is a shared understanding of its general meaning. Accordingly, shareholders can reasonably understand the Proposal to be about abolishing programs, policies,

departments and goals related to diversity, equity, and inclusion, as these terms are generally understood.

On this point, it may be worthwhile to compare the following from the Company's website:

"Our value of inclusion defines who we are and how we do business. Inclusion and diversity are the foundation of our culture and essential to creating a positive, high-performing environment where all can contribute to our mission to serve patients."<sup>1</sup>

Note that "inclusion" and "diversity" are not defined here yet the Company is confident readers, including shareholders, will be able to make sense of this statement. Either these terms, and the frequently associated term "equity," are sufficiently clear to require no additional definition when the Company communicates to shareholders and other stakeholders directly, in which case the Proposal is similarly understandable, or the Company is engaging in some form of misleading communication by acting as if the terms are clear and understandable externally while holding a different view internally.

The Company notes that the supporting statement offers some examples of the Company's DEI program, such as "race-based employee resource groups," "collaboration with the controversial Human Rights Campaign," "race-based workforce representation goals," "supplier diversity commitments," and "affirmative action policies." Although the Company argues these examples do not clarify the scope of the Proposal, it is impossible for them not to given that they provide concrete guidance as to what specific types of Company actions the Proposal is intended to target.

The Company lists a wide range of activities that could be included under the DEI umbrella such as employee trainings about anti-discrimination, flexible work arrangements, equal opportunity and anti-discrimination policies, and celebrations of different cultures. It argues that it is unclear whether the Proposal is asking the Company to abolish all of these types of actions. However, this simply misrepresents the nature of the Proposal. It is not Proponent's job to itemize the programs, policies, departments and goals to be abolished by the Company upon implementation of the Proposal. Were Proponent to do so, the Company would be arguing the Proposal is excludable as contrary to law by usurping the statutorily defined discretion of management. Rather, the Proposal asks the Company to *consider* abolishing DEI programs, policies, departments and goals – which necessarily involves the exercise of judgment on the part of the Company.<sup>2</sup> Accordingly, it is the Company's job, as part of its consideration, to apply the more-than-sufficient guidance of the Proposal to the specific programs, policies, departments and goals of the Company. To ask for more from Proponent would be, among other things, an indictment of the 500-word limit all proposals are subject to. And certainly, the Company can comfortably conclude that implementation of the Proposal would not require it to abolish legally required programs, policies, departments and goals.

The standard for inclusion of a proposal is not whether it is so specific that no further interpretation is needed, but whether it is "so inherently vague or indefinite that neither the stockholders voting on

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<sup>1</sup> <https://www.bms.com/about-us/global-diversity-and-inclusion.html>

<sup>2</sup> <https://www.merriam-webster.com/dictionary/consider> (defining "consider" to include "to come to judge or classify").

the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." While the Proposal may not provide an exhaustive list of every specific action to be taken, its overall intent for the Company to consider ending its DEI programs is clear enough for shareholders to make an informed decision. The implementation details can be worked out by the Company, in accordance with applicable fiduciary duties, if the Proposal is approved.

In summary, the Proposal is not so vague and indefinite that it cannot be understood and implemented. The Proposal's use of the term DEI, along with the call to "consider" abolishing it, along with the examples of DEI programs in the supporting statement, provide sufficient guidance to shareholders and the Company about the Proposal's intent.

The Company cites several no-action letters to support its argument that the Proposal is impermissibly vague and indefinite under Rule 14a-8(i)(3). However, these precedents are distinguishable because they either border on nonsensical, *Alaska Air Group, Inc.* (March 10, 2016), or otherwise fail to provide any meaningful guidance by asking for policies to be selected from a limitless universe of possible policies (or "voluminous and highly complex" external guidelines) as opposed to asking for abolition of a company's existing internal (and thus far more readily identifiable and understandable) policies.

As for the relevant letters not distinguished by the foregoing, Proponent notes that *The Boeing Company* (February 23, 2021) appears to have been issued without a letter. If that is correct, then it is misleading to cite it for the proposition that "aerospace/aviation/engineering executive background" was impermissibly vague when the original request for no action cited four separate grounds for exclusion, only one of which was vagueness. If that is correct, it also makes a lot of sense because deeming "aerospace/aviation/engineering executive background" impermissibly vague would arguably best be characterized as simply wrong.<sup>3</sup>

Beyond that, "improve," *Apple Inc.* (December 6, 2019), is certainly vaguer than "abolish." And undefined phrases like "moral, ethical and legal fiduciary duties and opportunities," *AT&T Inc.* (February 21, 2014), and "electronic key" / "figures and policies," *Berkshire Hathaway Inc.* (January 31, 2012), are certainly vaguer than the commonly understood "DEI."

In summary, the no-action letters cited by the Company involve proposals that contain vague or undefined terms, lack a clear objective, or reference complex external standards without sufficient explanation. The current Proposal, while broad in scope, is not as vague or indefinite as the proposals in the cited no-action letters. The Proposal is focused on a clearly defined concept (DEI), a clear action (abolish), and it includes a supporting statement with examples, thus differentiating it from the cited precedents.

Shareholder proposals addressing specific forms of bias or discrimination—such as those related to race, gender, or national origin—have been accepted in the past without being deemed impermissibly vague. Cf. *Mcdonnell Douglas Corp.* (Feb. 8, 1990) (refusing to concur in issuer's view that proposal may be omitted as vague where it required "that any MDC-funded programs ...

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<sup>3</sup> Even Homer sometimes nods. <https://dictionary.cambridge.org/dictionary/english/even-homer-sometimes-nods>

be free of religious bias” and “suspend expenditures for ... groups practicing religious discrimination”).

**B. “DEI Program,” “DEI Policies,” “DEI Department,” and “DEI Goals,” Are Not Inherently Vague and Indefinite Terms, nor Subject to an Unknown Number Of Interpretations, and Thus Do Not Prevent the Company and Its Shareholders From Being Able To Determine With Any Reasonable Certainty Exactly What Actions or Measures the Proposal Requires.**

It is worth noting that the Company cites zero no-action letters in connection with its arguments on these points. That makes sense because the number of proposals that have been allowed to be presented for a shareholder vote that contained “DEI” would likely make it odd to now exclude a related proposal for vagueness.

The Company argues that the terms "DEI program," "DEI policies," "DEI Department," and "DEI goals" are inherently vague and indefinite, and subject to an unknown number of interpretations. However, a closer examination, especially when considering the context of the Proposal and the supporting statement, reveals that these terms are not so vague as to render the Proposal meaningless, and they can be understood with reasonable certainty.

Furthermore, as explained above, applying the common understanding of these phrases, together with the provided examples, to the Company’s actual programs is an expected part of the requested consideration the Company is to give to this matter, and involves nothing more than the exercise of the type of judgment management exercises every day in accordance with its fiduciary duties.

**1. DEI Program**

While the Company claims it has not defined "DEI program" nor disclosed the existence of one, and that there is no widely accepted definition of the term, the Proposal itself and the supporting statement provide context that clarifies what is meant by "DEI program." The supporting statement includes examples of what is included in the Company’s DEI program such as “(1) race-based employee resource groups, (2) collaboration with the controversial Human Rights Campaign, (3) race-based workforce representation goals, (4) supplier diversity commitments, and (5) ‘affirmative action policies.’” Although the Company argues that the use of "includes" implies that many other actions are encompassed by the term, this does not mean the term is infinitely vague. The listed items provide a concrete understanding of the types of initiatives the Proposal seeks to abolish. Furthermore, many of the items listed as potentially falling under the “DEI Program” umbrella, such as "employee trainings about anti-discrimination," or "internal pay equity efforts," are generally understood in the context of corporate human resources and compliance.

**2. DEI Policies**

The Company argues that the term "DEI policies" is vague because the proponent only identifies one policy in the supporting statement but does not mention whether such policy should be abolished. However, the Proposal requests consideration of abolishment of all DEI policies, not just the one mentioned.

The supporting statement mentions the Company's equal opportunity policy, which states that the Company makes decisions "without regard to race, ethnicity, national origin, religion, age, color, sex, sexual orientation, gender identity or expression, disability, or protected veteran status, or any other characteristic protected by local, state, or federal laws, rules, or regulations." This is obviously referenced to make clear that abolishing the Company's DEI programs, etc., is motivated in part to reduce the risk of the Company violating its own equal opportunity policy. To suggest that management would be confused about whether implementation of the Proposal would require elimination of its equal opportunity policy, or otherwise require the violation of law, is disingenuous. The Proposal cannot, and does not, require management to breach its duties. The Proposal's intent is to target policies that promote diversity, equity and inclusion through preferential treatment or goals, rather than anti-discrimination policies which promote equal opportunity. This is further clarified in the supporting statement, which focuses on race-based discrimination and the related risks to the Company. Although there are many policies that could "implicate DEI, whether directly or indirectly", this does not make the term so vague that shareholders would be unable to make an informed decision or that the Company would be unable to implement the Proposal in line with the shareholders' understanding.

### **3. DEI Department**

The Company claims that because the Company does not have a dedicated DEI department, it is unclear whether the Proposal requests removal of individual roles related to the Company's inclusion and diversity ("I&D") function, or if this request is moot. It is also argued that, because I&D is part of the Company's HR function, the term "DEI Department" is impermissibly vague and indefinite. However, the absence of a specific "DEI Department" does not render the Proposal meaningless. It is common knowledge that "rebranding" DEI is one of the strategies companies are employing in an attempt to handwave away concerns about the risks associated with DEI.<sup>4</sup> The Staff should not reward employment of such an artifice. The Proposal is clearly directed at the function of DEI within the Company, whether labeled "DEI" or "I&D," and whether housed in a free-standing department or under the umbrella of HR.

### **4. DEI Goals**

The Company contends that because the supporting statement only covers "race-based workforce representation goals," it is unclear whether the Proposal requests only the end of those goals or all goals part of the Company's Global I&D strategy. However, the Proposal clearly states that the Company should "consider abolishing its DEI program, policies, Department, and goals." The fact that the supporting statement focuses on race-based goals does not limit the scope of the Proposal itself, which clearly requests consideration of all DEI goals.

In conclusion, while the application of the terms "DEI program," "DEI policies," "DEI Department," and "DEI goals" requires the exercise of judgment, they are not impermissibly vague or indefinite. The examples provided in the supporting statement, along with the common understanding of the term "DEI" in the corporate context, offer sufficient guidance for both the shareholders and the Company to understand the Proposal's intent.

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<sup>4</sup> <https://news.bloomberglaw.com/esg/corporate-dei-programs-recoil-and-rebrand-as-pressure-mounts>

## **II. The Proposal Does Not Seek to Impermissibly Micromanage the Company**

The Company argues that the Proposal should be excluded under Rule 14a-8(i)(7) because it seeks to impermissibly micromanage the Company. However, the Proposal does not seek to manage the day-to-day operations of the Company but rather to address a broader issue of an overarching corporate policy. This relevant decision is about the overall direction of the Company and its values and is therefore appropriate for shareholders to consider. While the implementation of such a decision may involve complex details, the initial decision itself is a matter of broad policy that shareholders are capable of evaluating. Shareholders are capable of understanding the broad implications of abolishing a DEI program without needing to be experts on the day-to-day business operations of a multinational corporation. Cf. *Eli Lilly and Company (Overway)* (March 10, 2023) (concluding proposal requesting a report “on the effectiveness of the Company’s diversity, equity, and inclusion efforts ... does not micromanage the Company”).

The Proposal is not about the granular day-to-day decision-making of the Company, but rather a request that the Company reconsider its overall approach to diversity, equity, and inclusion. The Proposal does not seek to substitute shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the knowledge and expertise of shareholders, but rather seeks to give shareholders the opportunity to ask the Company to reconsider its DEI commitments in light of the obvious risks created by DEI programs, etc., which are amply set forth in the Proposal, are easily understood by shareholders, and do not impermissibly implicate detailed and complex day-to-day operations.

The Company cites a number of no-action letters for the proposition that impermissible micromanagement should be found when a proposal seeks to substitute shareholder judgment for that of management with respect to complex day-to-day business operations that are beyond the knowledge and expertise of shareholders. However, as noted above, DEI and the risks associated with its implementation are not beyond the knowledge and expertise of shareholders. One need look no further than the role DEI played in our recent presidential election to confirm this.<sup>5</sup> In addition, it certainly must be the case that the Company’s daily business deliberations do not involve whether to abolish its DEI programs, etc. Seen in this light, none of the no-action letters the Company cites in section II are controlling.

## **III. The Proposal Implicates a Significant Social Policy Issue That Transcends the Company’s Ordinary Business; Providing a Micromanagement Exception to the Social Significance Exception to the Ordinary Business Exclusion Arguably Exceeds the SEC’s Authority.**

It cannot be seriously disputed that the Proposal raises a significant social policy issue that would typically transcend the ordinary business of the Company. Cf. *Eli Lilly and Company (Overway)* (March 10, 2023) (concluding proposal requesting a report “on the effectiveness of the Company’s diversity, equity, and inclusion efforts ... transcends ordinary business matters because it raises human capital management issues with a broad societal impact”). However, the Company notes that the micromanagement exclusion applies regardless of any social significance the Proposal might have. This reflects the SEC’s current exclusion/exception hierarchy whereby the

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<sup>5</sup> <https://nypost.com/2024/12/29/opinion/donald-trumps-expected-rollback-of-dei-cant-come-soon-enough/>

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.

One may question the statutory basis for such a hierarchy. 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.

#### **IV. Conclusion**

In conclusion, the arguments presented by the Company for excluding the Proposal are not convincing. The Proposal should 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](mailto: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,

A handwritten signature in black ink, appearing to read 'Stefan Padfield', with a stylized, cursive flourish extending to the right.

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

cc: John B. Beckman



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February 20, 2025

**Rule 14a-8(i)(7)**

**VIA ONLINE SHAREHOLDER PROPOSAL FORM**

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

Re: ***Bristol-Myers Squibb Company – Proposal Submitted by the National Center for Public Policy Research***

To Whom it May Concern:

On behalf of the Company, we are submitting this letter to supplement our letter to the Staff dated December 23, 2024 (the “**Initial Letter**”) expressing the Company’s intention to omit the Proposal from its 2025 Proxy Materials. For ease of reference, capitalized terms used in this letter have the same meaning ascribed to them in the Initial Letter. This letter addresses the application of new interpretive positions set forth in Staff Legal Bulletin No. 14M (“**SLB 14M**”), which was published by the Staff on February 12, 2025.<sup>1</sup>

Under the new interpretive guidance set forth in SLB 14M, the Proposal remains excludable under Rule 14a-8(i)(7) because the Proposal seeks to impermissibly micromanage the Company.

SLB 14M reinstated previous guidance applicable to the micromanagement analysis under Rule 14a-8(i)(7), explaining that the primary focus of the analysis is on the proposal’s level of prescriptiveness in potentially limiting the judgment and discretion of the board and management. Under the prior guidance in place at the time of the submission of the Initial Letter, the Staff noted that it would focus on “the level of granularity sought in the proposal and whether and to what

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<sup>1</sup> SLB 14M did not impact the basis for exclusion under Rule 14a-8(i)(3) set forth in the Initial Letter, and the Company reiterates its view that the Proposal may be excluded on that basis.

extent it inappropriately limits discretion of the board or management.” Staff Legal Bulletin No. 14L (Nov. 3, 2021).

However, regardless of whether the Proposal is analyzed based on its level of prescriptiveness or on its level of granularity, in either event, the Proposal seeks to eliminate the discretion of the Company’s management to run its business in any manner that conceivably implicates diversity, equity or inclusion. As explained in the Initial Letter, the overbreadth of the Proposal to abolish programs, policies, and goals that have any nexus to such items micromanages the Company’s ordinary business responsibilities related to its commercial objectives, legal compliance programs, human capital management and business strategy, and leaves no discretion to management for how to navigate and implement the Proposal’s directives. The Proposal therefore involves the type of micromanagement that the ordinary business exclusion set forth in Rule 14a-8(i)(7) is intended to address, under both the former micromanagement interpretive framework and the new framework.

As the Staff stated in SLB 14M, “[w]hen a proposal prescribes specific actions that the company’s management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted.” Because the Proposal inappropriately limits management’s discretion and flexibility in using goals, objectives and policies that could be reasonably categorized as relating to diversity, equity or inclusion in the day-to-day operations of the Company’s business and to advance critical aspects of the Company’s business performance, the Proposal violates Rule 14a-8(i)(7).

\* \* \*

Accordingly, the Company continues to believe that it may omit the Proposal from its 2025 Proxy Materials in reliance on Rule 14a-8(i)(7). If you have any questions or need additional information, please feel free to contact me at (202) 637-5464.

Sincerely,



John B. Beckman

Enclosures

cc: Amy Fallone, Bristol-Myers Squibb Company  
Lisa A. Atkins, Bristol-Myers Squibb Company  
James McRitchie  
John Chevedden



March 5, 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 Supplemental Letter from Bristol-Myers Squibb Company Regarding a Shareholder Proposal by the National Center for Public Policy Research (“Proponent” or “NCPPR”)**

Ladies and Gentlemen:

This correspondence is in response to the supplemental letter of John B. Beckman on behalf of Bristol-Myers Squibb Company (the “Company”) dated February 20, 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.

First, Proponent notes that the Staff recently concluded that a proposal essentially identical to the Proposal did not impermissibly interfere with a company’s ordinary business or impermissibly micromanage that company. *Levi Strauss & Co.* (February 21, 2025).

Second, the Company provides no basis for concluding that SLB 14M warrants reaching a different conclusion here. The Company argues that SLB 14M shifts the focus from granularity to prescriptiveness but admits that this shift in focus makes no difference, concluding that the result is the same “regardless of whether the Proposal is analyzed based on its level of prescriptiveness or on its level of granularity.” This makes sense given that the real issue is whether a proposal inappropriately limits discretion of the board or management. Here, *Levi Strauss* makes clear that discretion is not inappropriately limited by the Proposal because, among other things, it merely requests that the board “*consider abolishing its DEI program, policies, Department, and goals*” (emphasis added).

In conclusion, the arguments presented by the Company for excluding the Proposal are not convincing. The Proposal should 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,

A handwritten signature in black ink, appearing to read 'SPADFIELD', with a stylized, cursive flourish extending to the right.

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

cc: John B. Beckman