



DIVISION OF
CORPORATION FINANCE

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

April 19, 2024

Ryan Robski
Shearman & Sterling LLP

Re: Paramount Global (the "Company")
Incoming letter dated January 30, 2024

Dear Ryan Robski:

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 list the recipients of corporate charitable contributions of \$5,000 or more on the Company's website, along with the amount contributed and any material limitations or monitoring of the contributions.

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 seeks to micromanage the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

SHEARMAN & STERLING LLP

599 Lexington Avenue
New York, NY 10022-6069
+1.212.848.4000

January 30, 2024

VIA ONLINE SHAREHOLDER PROPOSAL FORM

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

**Re: Paramount Global
Stockholder Proposal from the National Center for Public Policy Research
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

On behalf of Paramount Global, a Delaware corporation (the “Company”), we are filing this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude the shareholder proposal described below (the “Proposal”) from the Company’s proxy statement and form of proxy (together, the “2024 Proxy Materials”) to be distributed to the Company’s stockholders in connection with its 2024 annual meeting of stockholders (the “2024 Annual Meeting”). The Company respectfully requests confirmation that the staff of the Division of Corporation Finance of the Commission (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from the 2024 Proxy Materials.

Pursuant to Rule 14a-8(j), we have filed this letter and the related correspondence from the Proponent (defined below) with the Commission not less than 80 days before the Company intends to file the 2024 Proxy Materials with the Commission. A copy of this letter and its attachments are being concurrently sent to the Proponent, informing the Proponent of the Company’s intention to exclude the Proposal from the 2024 Proxy Materials.

Rule 14a-8(k) and 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 proponent elects 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 the undersigned.

SHEARMAN.COM

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THE PROPOSAL

On November 16, 2023, the Company received the Proposal dated November 14, 2023 from the National Center for Public Policy Research (the “Proponent”) for inclusion in the 2024 Proxy Materials. The Proposal states as follows:

“Whereas: Charitable contributions should enhance the image of our Company in the eyes of the public. Increased disclosure of these contributions would serve to create greater goodwill for our Company. It would also allow the public to better voice its opinions on our corporate giving strategy. Inevitably, some organizations might be viewed more favorably than others. This could be useful in guiding our Company’s philanthropic decision making in the future. Corporate giving should ultimately enhance shareholder value in line with the Company’s fiduciary duty.

Resolved: Shareholders request the Company list the recipients of corporate charitable contributions of \$5,000 or more on the Company’s website, along with the amount contributed and any material limitations or monitoring of the contributions.”

A copy of this Proposal and the supporting statement (the “Supporting Statement”), as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company believes that it may properly exclude the Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) and Rule 14a-8(i)(10), because (1) the Proposal relates to the Company’s ordinary business operations and (2) the Proposal has already been substantially implemented.

ANALYSIS

A. Background on the Ordinary Business Standard Under Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it “deals with a matter relating to the company’s ordinary business operations.” According to the Commission, the term “ordinary business” in this context “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations,” and the determination as to whether a proposal deals with a matter relating to a company’s ordinary business operations is made on a case-by-case basis. *See* Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

The 1998 Release also provides that “the policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. 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.” *Id.* 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.” *Id.*

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

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals, like the Proposal, that focus on contributions to specific organizations or types of organizations. For example, in *The Walt Disney Co.* (Nov. 20, 2014), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting the company “preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions” as relating to the ordinary business matter of “charitable contributions to a specific organization.” *See also, e.g., PG&E Corp.* (Feb. 4, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the company form a committee to “solicit feedback on the effect of anti-traditional family political and charitable contributions” as relating to the ordinary business matter of “contributions to specific types of organizations”); *PepsiCo* (Feb. 24, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal to prohibit support of organizations that reject or support homosexuality, noting that the proposal related to “charitable contributions directed to specific types of organizations”); *Target Corp.* (Mar. 31, 2010) (concurring in exclusion of a proposal requesting a report on charitable donations and a feasibility study of policy changes, “including minimizing donations to charities that fund animal experiments,” on the basis that it related to the company’s ordinary business operations in that it concerned “charitable contributions directed to specific types of organizations”); *Starbucks Corp.* (Dec. 16, 2009) (concurring in exclusion of a proposal nearly identical to the proposal at issue in *Target Corp.*); *Wachovia Corp.* (Jan. 25, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the board disallow the payment of corporate funds to Planned Parenthood and any other organizations involved in providing abortion services as relating to the company’s “ordinary business operations (i.e., contributions to specific types of organizations)”).

Further, the Staff has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to contributions where the proposal itself is facially neutral, but the supporting statement appears to be directed at a particular organization or type of organization – and specifically, contributions related to allegedly highly divisive political and social causes. For example, in *McDonald’s Corporation* (Mar. 26, 2021)*, a proposal by the Proponent requested a wide-ranging report listing and analyzing charitable contributions made or committed during the prior year, including identifying organizational and individual recipients of donations in excess of \$500, and the supporting statement noted that “[n]eed for reporting has now grown acute,” as the political and social events that triggered recent corporate charitable contributions are “highly divisive.” McDonald’s argued that while the language used in the proposal’s resolution was facially neutral, when read together with the supporting statement and accompanying footnotes, the proposal was specifically concerned with the perceived reputational risks associated with the company’s contributions to organizations related to the Black Lives Matter (“BLM”) movement. In *Netflix Inc.* (Apr. 9, 2021)*, the Staff permitted exclusion of a similar proposal by the Proponent whose supporting statement also referenced “highly divisive” political and social events, with the accompanying footnotes containing links to articles discussing recent racial and social justice protests and the company’s contributions to causes associated with said protests.

See also AT&T Inc. (Jan. 15, 2021)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions where the supporting statement referred to “highly divisive” charitable commitments, with the accompanying footnotes focusing on BLM, as relating to the company’s ordinary business matters); *Facebook, Inc.* (Mar. 26, 2021)* (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions where the supporting statement referred to “highly divisive” charitable commitments, including contributions to specific organizations that supported particular racial justice movements including BLM, as relating to the company’s ordinary business matters); *The Walt Disney Co.* (Dec. 23, 2020) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions where the supporting statement referred to “highly divisive” charitable commitments, including the NAACP and unspecified organizations that support social justice, as relating to the company’s ordinary business matters); *JPMorgan Chase & Co.* (Feb. 28, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual report concerning the company’s charitable contributions where the supporting statement referenced contributions to specific organizations as relating to “contributions to specific types of organizations”); *Starbucks Corp.* (Jan. 4, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual report concerning the company’s charitable contributions where the supporting statement referred to certain organizations as “problematic,” as relating to “contributions to specific types of organizations”).

In this instance, the Proposal and the Supporting Statement, when read together, focus primarily on the Company’s contributions to a specific type of organization—namely, organizations that support LGBTQ+ causes. References to LGBTQ+ causes are not limited to the Supporting Statement’s footnotes, with the text of the Supporting Statement discussing one particular LGBTQ+ organization as well as controversies related to other companies’ public involvement with LGBTQ+ causes. The Supporting Statement notes that the Company is listed as an “advocate” on the website of the Gay, Lesbian & Straight Education Network (“GLSEN”). It goes on to say that “[w]hat is clear is that GLSEN is highly controversial. It advocates for concealing a student’s preferred gender identity from parents, providing sexually explicit books to minors, and integrating gender ideology at all levels of curriculum in public schools.” The Proponent not only identifies a particular organization, but explicitly lays out, in its own words, several alleged goals of the organization that it perceives to be “highly controversial.” The Proponent has demonstrated that it intends the Proposal to function as a shareholder referendum on a specific type of organization, and, more granularly, on the appropriateness of the Company’s association with certain alleged goals of such an organization. The Proponent’s true interest is in using the Proposal as a tool to identify charitable recipients that the Proponent believes advance specific and controversial goals associated with LGBTQ+ causes — and not simply seeking a list of the Company’s charitable contributions. The Supporting Statement makes this clear, with its references to backlash faced by Anheuser-Busch, Target Corporation and The Walt Disney Company due to the companies’ public involvement with issues related to LGBTQ+ causes, declaring that “recent events have demonstrated that company bottom-lines,

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

and therefore value to shareholders, decrease when companies engage in overtly political and divisive partnerships.”

The Proposal leaves no doubt as to which “overtly political and divisive partnerships” the Proponent is seeking to address. The Proponent’s goal with the Proposal is to direct the Company’s charitable contributions away from LGBTQ+ causes, and the information that it seeks from the Company through its neutrally-worded Proposal is intended to be used to mount arguments to limit or cease the Company’s charitable contributions to LGBTQ+ causes in particular.

The Company makes charitable contributions to hundreds of organizations each year. Decisions regarding the types of causes and initiatives and the specific organizations that are supported are important ones for the Company. Corporate social responsibility is an important part of the Company’s culture, which the Company and its employees express in a number of different ways. Decisions regarding the charitable organizations and initiatives that are supported are complex and based on a range of factors that require management, with input from a variety of stakeholders, to align charitable activities with several goals, including promoting projects that align with the Company’s business strategy, meeting the needs of the communities in which the Company operates, and selecting among competing projects in the context of limited resources.

The Proposal when read together with the Supporting Statement reveals a clear intention to pressure the Company into limiting or ceasing charitable giving to LGBTQ+ organizations because the Proponent is of the view that such charitable giving creates unreasonable risks for the Company. The Proposal therefore relates directly to the well-recognized ordinary business matter of deciding which organizations a company should be able to support. The Proponent’s attempt to subject such decisions to shareholder oversight counts as inappropriate interference in the Company’s ordinary business matters.

Accordingly, consistent with the precedent discussed above, the Proposal attempts to limit the specific types of organizations that the Company contributes to, namely those with a particular focus on LGBTQ+ causes, and therefore may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) as relating to the ordinary business operations of the Company.

(2) The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because It Seeks to Micromanage the Company.

The Proposal may also be excluded in reliance on Rule 14a-8(i)(7) on the basis that it seeks to micromanage the Company's management with respect to how it publicizes its charitable contributions. In particular, the Proposal requests that the Company list every charitable contribution made by the Company of \$5,000 or greater, along with the amount contributed and any material limitations on or monitoring of the contributions. In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff clarified that in evaluating companies' micromanagement arguments, it will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff further noted that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters."

Here, the Proposal would require granular information about the Company's charitable giving and would inappropriately limit the Company's discretion in choosing the form and substance of its charitable giving disclosure. More specifically, the Proposal would require the Company to assess its various charitable contributions, which are made in multiple forms not limited to cash, to identify contributions in excess of \$5,000 (which is a relatively low amount relative to the usual size of the Company's contributions), along with the specific amounts and any material limitations or monitoring associated with each such contribution. In 2023, the Company made over \$15 million in total charitable contributions in several forms and in varying amounts, including cash grants to community and non-profit organizations, in-kind donations of public service announcement time and employee matching donations. The Proposal also dictates exactly how the Company should report on the recipients of donations by requiring a specific \$5,000 threshold and by requiring the recipients be listed on the Company's website. The Company reports its total annual charitable contributions in its annual ESG report, which is publicly available on its website, in a manner consistent with its public relations and broader corporate social responsibility strategy. The Company chooses to highlight certain organizations and programs in these reports, rather than listing every contribution and its amount above a certain threshold, which would be administratively burdensome. Based on preliminary data, the Company made more than 770 contributions, approximately 70% of which equaled or exceeded \$5,000 in amount, to more than 550 qualifying non-profit organizations in 2023. For this reason, requiring the Company to list the specific recipients who received over \$5,000 in contributions along with the amounts of the contribution is not only burdensome and impractical, but deprives the Company's management of the flexibility to consider and address the complex matters of the Company's charitable giving strategy, charitable contributions and public relations activities.

Further, as demonstrated above, the Proposal when read together with the Supporting Statement seeks to limit the specific types of organizations to which the Company contributes, focusing in particular on organizations associated with LGBTQ+ causes. In this respect, the Proposal seeks to dictate not only the form and substance of the disclosure of the Company's charitable contributions, but also the ultimate recipients of its charitable contributions.

Since the publication of SLB 14L, the Staff has concurred that proposals, like the Proposal, that probe too deeply into matters of a complex nature by seeking disclosure of

intricate details around internal company policies and practices attempt to micromanage the company and therefore may be excluded in reliance on Rule 14a-8(i)(7). *See, e.g., Verizon Communications Inc.* (Mar. 17, 2022) (concurring in exclusion of a proposal requesting that the company publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the Company’s employees on the basis that the proposal “micromanages the company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the company’s employment and training practices”); *American Express Co.* (Mar. 11, 2022) (same); and *Deere & Co.* (Jan. 3, 2022) (same).

Similar to these proposals, publication of a list of all recipients of \$5,000 or more in charitable donations by the Company along with the specific donation amounts and any material limitations on or monitoring of the donations would probe too deeply into matters of a complex nature by seeking disclosure of intricate details about the Company’s policies and practices. The Company’s charitable giving consists of numerous types and forms of donations. Under the Proposal, all of these types of charitable donations of \$5,000 or more would be disclosable on the Company’s website, requiring the Company to disclose intricate and granular details about its charitable practices. This disclosure is not the type of “large strategic corporate matters” the Staff has stated shareholders should be able to provide “high-level direction on”; rather, it is an attempt to micromanage how the Company publicizes its charitable contributions.

For the reasons set out above, and consistent with the precedent discussed above, the Proposal may be excluded in reliance on Rule 14-8(i)(7) because the Proposal seeks to micromanage the Company with regard to its charitable giving and disclosures of the same.

B. Background on the Substantial Implementation Standard under Rule 14a-8(i)(10)

Rule 14a-8(i)(10) permits the omission of a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the “substantially implemented” standard in 1983 after determining that the “previous formalistic application” of the rule defeated its purpose, which is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”) and Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be “fully effected” provided that they have been “substantially implemented” by the company. *See* 1983 Release.

(1) The Proposal May be Excluded Pursuant to Rule 14a-8(i)(10) Because the Proposal Has Been Substantially Implemented by the Company.

Applying the above standard, the Staff has consistently permitted exclusion of a proposal under Rule 14a-8(i)(10) when it has determined that the company’s policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., JPMorgan Chase & Co.* (Mar. 9, 2021)*; *AbbVie Inc.* (Mar. 2, 2021)*; *Devon Energy Corp.* (Apr. 1, 2020)*; *Johnson & Johnson* (Jan. 31, 2020)*; *Pfizer Inc.* (Jan. 31, 2020)*; *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart*

Stores, Inc. (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company has addressed the underlying concerns and satisfied the essential objectives of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. For example, in *Pfizer Inc.* (Dec. 20, 2019), the Staff permitted exclusion of a proposal requesting disclosure of Pfizer's charitable giving standards and rationale for charitable contributions, including listing the recipients of donations on its website. In arguing that the proposal had been substantially implemented, Pfizer referred to its website, where the company had included disclosure relating to many of its charitable contributions, including its standards and rationale for charitable contributions and lists of donation recipients and amounts. Pfizer also referred to several published quarterly reports disclosing its grants, charitable contributions and other funding to U.S. medical, scientific, patient and civic organizations. *See also PG&E Corp.* (Mar. 10, 2010) (permitting exclusion on substantial implementation grounds of a proposal requesting a report on the company's standards for choosing the organizations to which it makes charitable contributions and the "business rationale and purpose for each" of the charitable contributions, where PG&E had a website describing its policies and guidelines for determining the types of grants it makes); *The Boeing Co.* (Feb. 3, 2016) (permitting exclusion on substantial implementation grounds of a proposal requesting a report on, among other matters, the intended purpose of each charitable contribution by the company, where Boeing disclosed the intended purpose of its charitable giving but did not disclose each contribution made by the company); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion on substantial implementation grounds of a proposal requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (permitting exclusion on substantial implementation grounds of a proposal requesting a report disclosing policies and procedures for political contributions and monetary and nonmonetary political contributions where the company had adopted corporate political contributions guidelines).

The Company has substantially implemented the Proposal. The recital explains that the Proposal's request for disclosure is based on the view that "[c]haritable contributions should enhance the image of our Company in the eyes of the public," and "[i]ncreased disclosure of these contributions would serve to create greater goodwill for our Company." Therefore, the Proposal's essential objective is disclosure and publicization of the Company's charitable giving so as to enhance the Company's reputation, create goodwill for the Company and promote the Company's interests. As further explained below, the Company already discloses and publicizes its charitable giving in detail in various reports and through other initiatives, including on its website.

The Company's website contains and makes available to the Company's stockholders and other stakeholders information relating to the Company's objectives and philosophy related to charitable giving, including through its annual ESG Report. The Company's website contains details regarding various initiatives including employee matching programs, academic

scholarships, volunteer opportunities and community partnerships, which often involve monetary support and in-kind donations. The information on the website makes clear that the Company is focused on leveraging charitable giving as one of many elements used to deepen the connection among its employees, audiences and community. The Company's existing disclosures on its website provide a clear indication of the importance of charitable giving and the types of causes and initiatives that the Company supports. All of this responds to the essential objective of the Proposal of providing stakeholders with clarity regarding the Company's objectives and philosophy regarding charitable giving.

In light of the foregoing, the Company has satisfied the essential objective of the Proposal. Accordingly, the Proposal has been substantially implemented and may be excluded under Rule 14a-8(i)(10).

CONCLUSION

Based on the foregoing, the Company believes that the Proposal may be omitted from the 2024 Proxy Materials. Accordingly, we respectfully request that the Staff indicate that it will not recommend enforcement action to the Commission if the Company excludes the Proposal from the 2024 Proxy Materials.

If you have any questions regarding this request, please contact the undersigned at (416) 360-2961 or ryan.robski@shearman.com or Lona Nallengara at (212) 848-8414 or lona.nallengara@shearman.com. Thank you for your consideration.

Very truly yours,



Ryan Robski

cc: Scott Shepard, *National Center for Public Policy Research*
Christa A. D'Alimonte, *Paramount Global*
Heidi Naunton, *Paramount Global*
Jay Larry, *Paramount Global*
Lona Nallengara, *Shearman & Sterling LLP*

EXHIBIT A



November 14, 2023

Via FedEx to

Attention: Christa A. D'Alimonte
Executive Vice President, General Counsel and Secretary
Paramount Global
1515 Broadway
New York, NY 10036

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Paramount Global (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 the 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 2024 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 telephone conference to discuss this proposal December 6, 2023 or December 7, 2023 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

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]

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard
FEP Director

Enclosures: Shareholder Proposal

Charitable Giving Reporting

Whereas: Charitable contributions should enhance the image of our Company in the eyes of the public. Increased disclosure of these contributions would serve to create greater goodwill for our Company. It would also allow the public to better voice its opinions on our corporate giving strategy. Inevitably, some organizations might be viewed more favorably than others. This could be useful in guiding our Company's philanthropic decision making in the future. Corporate giving should ultimately enhance shareholder value in line with the Company's fiduciary duty.

Resolved: Shareholders request the Company list the recipients of corporate charitable contributions of \$5,000 or more on the Company's website, along with the amount contributed and any material limitations or monitoring of the contributions.

Supporting Statement: Current disclosure is insufficient to allow shareholders to evaluate the proper use of corporate assets by outside organizations and how those assets should be used, especially for controversial issues.

For instance, according to the Company's "Giving Back" report, "\$26.5M total cash grants [was] given out by ViacomCBS in 2020[.]"¹ While it notes that this total includes a "\$5M commitment to NAACP Legal Defense Fund, Equal Justice Initiative, National Bail Out, The Bail Project, Community Coalition and others," it fails to provide further details about these "other" donations.²

Paramount's report goes on to tout its collaboration with "non-profits, community organizations, academic institutions and our peers," but there is a lack of clarity as to the groups with which the Company is collaborating, the issues involved, and how much financial support the Company may be providing.

Given the divisive nature of some of the organizations with which Paramount collaborates, it's critical that the Company is fully transparent regarding its financial contributions.

For instance, both Paramount - and Nickelodeon, its children's network - are listed as an "advocate" on GLSEN's website.³ It is unclear what this means in terms of the Company's financial support of this organization.

¹ <https://www.paramount.com/sites/g/files/dxjhpe226/files/2021-08/ViacomCBS-Social-Impact-Review.pdf>

² <https://www.paramount.com/sites/g/files/dxjhpe226/files/2021-08/ViacomCBS-Social-Impact-Review.pdf>

³ <https://www.glsen.org/take-action/corporate-partners>

What is clear is that GLSEN is highly controversial. It advocates for concealing a student's preferred gender identity from parents, providing sexually explicit books to minors, and integrating gender ideology at all levels of curriculum in public schools.⁴

Supporting such activities create reputational and legal risk, are outside of the Company's fiduciary remit, and may negatively impact shareholder value.

Indeed, recent events have demonstrated that company bottom-lines, and therefore value to shareholders, decrease when companies engage in overtly political and divisive partnerships. Following Bud Light's similar embrace of partisanship, its revenue fell \$395 million in North America when compared to the same time a year ago.⁵ This is roughly 10 percent of its revenue in the months following its leap into contentious politics.⁶ Target's market cap fell over \$15 billion amid backlash for similar actions.⁷ And Disney stock fell 44 percent in 2022 - its worst performance in nearly 50 years - amid its decision to pursue extreme partisan agendas.⁸

⁴ <https://www.glsen.org/activity/model-local-education-agency-policy-on-transgender-nonbinary-students#d>; <https://www.foxnews.com/media/target-partners-org-pushing-kids-genders-secretly-changed-schools-without-parental-consent>

⁵ <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

⁶ <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

⁷ <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>; <https://nypost.com/2023/05/23/target-to-remove-some-lgbtq-merchandise-after-facing-customer-backlash/?dicbo=v2-x4CMNWo>

⁸ <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>; <https://www.foxnews.com/media/disneys-decline-shows-woke-focus-alienating-fans-wsj-column>

From: Larry, Jay N [REDACTED]
Sent: Wednesday, November 29, 2023 11:53 AM
To: [REDACTED]@nationalcenter.org
Cc: D'Alimonte, Christa; Groce, Caryn; Naunton, Heidi
Subject: Paramount Global Response to NCPPR Shareholder Proposal
Attachments: Paramount Global 11-29-2023 Notice of Deficiency.pdf

Good morning Mr. Shepard,

With regard to the shareholder proposal we received from you on November 16th on behalf of the National Center for Public Policy Research for inclusion in Paramount Global's 2024 proxy materials, please see the attached notice of certain deficiencies in the proposal.

Please confirm your receipt of the attached deficiency notice.

Thank you,
Jay Larry



JAY LARRY
Corporate Counsel and Asst. Secretary



paramount.com



Paramount



Jay Larry
Corporate Counsel and Assistant Secretary
Paramount Global
1515 Broadway
New York, NY 10036

November 29, 2023

VIA EMAIL

Scott Shepard
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC 20036
[REDACTED]

Re: Notice of Deficiency Relating to Stockholder Proposal

Dear Mr. Shepard:

On November 16, 2023, Paramount Global (the “Company”) received the stockholder proposal you submitted on behalf of the National Center for Public Policy Research (the “Proponent”) for consideration at the Company’s 2024 Annual Meeting of Stockholders (the “Proposal”). Based on the date the Company received the Proposal via FedEx, the Company has determined that the date of submission was November 16, 2023 (the “Submission Date”).

The purpose of this letter is to notify you, pursuant to the requirements of Regulation 14A of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that the above referenced submission of the Proposal fails to satisfy certain procedural requirements specified under Rule 14a-8(b) under the Exchange Act. Rule 14a-8(b) provides that, as of the Submission Date, a stockholder proponent must have continuously held:

- At least \$2,000 in market value of the company’s securities entitled to vote on the proposal for at least three years; or
- At least \$15,000 in market value of the company’s securities entitled to vote on the proposal for at least two years; or
- At least \$25,000 in market value of the company’s securities entitled to vote on the proposal for at least one year.

The cover letter accompanying the Proposal indicated that the Rule 14a-8 requirements, including continuous ownership of the required stock value, will be met. To date, the Company has not received proof that the Proponent has satisfied Rule 14a-8’s ownership requirements as of the Submission Date. The Company’s stock records do not indicate that the Proponent is the record owner of any Company shares. To remedy this defect, the Proponent must provide sufficient proof of its eligibility by submitting either:

- (1) A written statement from the “record” holder of the Proponent’s securities (usually a broker or a bank) verifying that, as of the Submission Date, the Proponent continuously held at least \$2,000, \$15,000 or \$25,000 in market value of the Company’s securities entitled to vote on the Proposal for at least three years, two years or one year, respectively. As addressed by the staff of the Securities and Exchange Commission (“SEC”) in Staff Legal Bulletins



Paramount

14F and 14G, please note that if the Proponent's securities are held by a bank, broker or other securities intermediary that is a Depository Trust Company ("DTC") participant or an affiliate thereof, proof of ownership from either that DTC participant or its affiliate will satisfy this requirement. Alternatively, if the Proponent's securities are held by a bank, broker or other securities intermediary that is not a DTC participant or an affiliate of a DTC participant, proof of ownership must be provided by both (1) the bank, broker or other securities intermediary and (2) the DTC participant (or an affiliate thereof) that can verify the holdings of the bank, broker or other securities intermediary; or

- (2) If the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that it continuously held at least \$2,000, \$15,000 or \$25,000 in market value of the Company's securities entitled to vote on the Proposal for at least three years, two years or one year, respectively, a copy of the schedule and/or form, and any subsequent amendments, reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of Company securities for the requisite period.

This letter will constitute the Company's notice to you under Rule 14a-8 that the Proponent must submit sufficient proof of its ownership of the requisite number of Company securities during the applicable time period preceding and including the Submission Date. Rule 14a-8(f) requires that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please send any response to me by email at [REDACTED]. Please note that the SEC Staff has advised that you are responsible for confirming receipt of any correspondence you receive from the Company in connection with the Proposal. The failure to correct the deficiencies within this timeframe will provide the Company with a basis to exclude the Proposal from the Company's proxy materials for its 2024 Annual Meeting of Shareholders.

If you have any questions with respect to the foregoing, please contact me at the above noted email address.

Regards,



Jay Larry

Cc: Christa D'Alimonte

From: Stefan Padfield [REDACTED]
Sent: Thursday, November 30, 2023 12:57 PM
To: Larry, Jay N
Cc: D'Alimonte, Christa; Groce, Caryn; Naunton, Heidi; Scott Shepard
Subject: Re: Paramount Global Response to NCPPR Shareholder Proposal
Attachments: NCPPR Paramount Global Proof of Ownership Ltr 11.20.23.pdf

External Email

Please find attached our proof of ownership. Please confirm receipt.

Regards,
Stefan

Stefan J. Padfield, JD
Associate
Free Enterprise Project
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>



Advisors

1650 Tysons Boulevard, Suite 500
McLean, VA 22102



November 20, 2023

National Center for Public Policy Research Inc
2005 Massachusetts Avenue NW
Washington DC 20036-1030

RE: Verification of Assets for Account Number ending in PII

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

i (i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in PII, established on 08/04/2023.

(ii) As of November 20, 2023, the National Center for Public Policy Research holds, and has held continuously since November 13, 2020, more than \$2,000 of Paramount Global common stock.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,

David A. Bos
Senior Vice President - Investments
Branch Manager – Private Client Group



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- Not Insured by the FDIC or Any Federal Government Agency
- Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate
- Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested

Investment products and services are offered through Wells Fargo Advisors, a trade name used by Wells Fargo Clearing Services, LLC, Member SIPC, a registered broker-dealer and non-bank affiliate of Wells Fargo & Company.

From: Larry, Jay N [REDACTED]
Sent: Friday, December 1, 2023 2:38 PM
To: Scott Shepard; Stefan Padfield
Cc: D'Alimonte, Christa; Groce, Caryn; Naunton, Heidi
Subject: RE: Paramount Global Response to NCPPR Shareholder Proposal
Attachments: 12-1-23 Paramount Global Second Deficiency Notice.pdf

Messrs. Shepard and Padfield,

With regard to the broker letter from Wells Fargo Advisors we received on November 30th, please see the attached notice of certain deficiencies.

Please confirm your receipt of the attached deficiency notice.

Thank you,
Jay Larry



Jay Larry
Corporate Counsel and Assistant Secretary
Paramount Global
1515 Broadway
New York, NY 10036

December 1, 2023

VIA EMAIL

Scott Shepard
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC 20036
[REDACTED]

Re: Second Notice of Deficiency Relating to Stockholder Proposal

Dear Mr. Shepard:

On November 30, 2023, we received from Mr. Stefan Padfield the letter dated November 20, 2023 from Wells Fargo Advisors (the "Broker Letter") indicating that the National Center for Public Policy Research (the "Proponent"), as of November 20, 2023, "...holds, and has held continuously since November 13, 2020, more than \$2,000 of Paramount Global common stock." The Broker Letter was sent in response to our letter to you dated November 29, 2023 (the "Response Letter"), which responded to the stockholder proposal dated November 14, 2023 (the "Proposal") that you submitted on behalf of the Proponent and that Paramount Global (the "Company") received on November 16, 2023 (the "Submission Date").

The Response Letter states, in relevant part:

"Rule 14a-8(b) provides that, as of the Submission Date, a stockholder proponent must have continuously held:

- At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
- At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
- At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year. ...

This letter will constitute the Company's notice to you under Rule 14a-8 that the Proponent must submit sufficient proof of its ownership of the requisite number of Company securities during the applicable time period preceding and including the Submission Date."



I am writing, as a courtesy, to notify you that the Broker Letter is insufficient to establish whether the Proponent satisfies the requirements of 14a-8(b)(1) because it refers only to the Proponent's ownership of the Company's "common stock," which includes both Class A voting and Class B non-voting shares, and does not provide proof that the Proponent owns a sufficient amount of the Company's Class A voting shares to satisfy any of the Ownership Requirements (as defined in the Response Letter). Therefore, the procedural deficiency described in the Response Letter has not been cured and must be remedied in order for the Proposal to be included in the Company's 2024 proxy statement.

You must indicate how many shares of the Company's Class A common stock, which is denoted by the ticker symbol "PARAA", the Proponent has owned in compliance with the Ownership Requirements prior to the Submission Date, and confirm the Proponent will continue to hold such shares through the date of the Company's 2024 annual meeting in accordance with Rule 14a-8(b) of the Exchange Act (as defined in the Response Letter).

As a reminder, pursuant to Rule 14a-8, you have 14 calendar days from the date you first received the Response Letter to provide this information in order to be eligible to submit a stockholder proposal.

If you have any questions with respect to the foregoing, please contact me at the above noted email address.

Regards,

Jay Larry

Jay Larry

Cc: Christa D'Alimonte
Stefan Padfield, National Center for Public Policy Research

From: Stefan Padfield [REDACTED]
Sent: Thursday, December 7, 2023 3:42 PM
To: Larry, Jay N
Cc: D'Alimonte, Christa; Groce, Caryn; Naunton, Heidi
Subject: Re: Paramount Global Response to NCPPR Shareholder Proposal
Attachments: NCPPR Paramount Global.pdf

External Email

Please find attached an updated proof of ownership letter. Please confirm receipt.

Regards,
Stefan

Stefan J. Padfield, JD
Deputy Director
Free Enterprise Project
National Center for Public Policy Research
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>



Advisors

1650 Tysons Boulevard
Suite 500
McLean, Virginia 22102



December 6, 2023

National Center for Public Policy Research Inc
2005 Massachusetts Avenue NW
Washington DC 20036-1030

RE: Verification of Assets for Account Number ending in PII

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in PII.

(ii) As of December 6, 2023, the National Center for Public Policy Research holds, and has held continuously since November 13, 2020, more than \$2,000 of Paramount Global common stock ticker symbol PARAA. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,

David A. Bos
Senior Vice President - Investments
Branch Manager – Private Client Group
Wells Fargo Advisors
1650 Tysons Blvd, Suite 500 | McLean, VA 22102



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February 27, 2024

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: Paramount Global No-Action Request for Shareholder Proposal by the National Center for Public Policy Research (“NCPPR” or “Proponent”)

Ladies and Gentlemen:

This correspondence is in response to the letter of Ryan Robski on behalf of Paramount Global (the “Company” or “Paramount”) dated January 30, 2024, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our shareholder proposal (the “Proposal”) from its 2024 proxy materials for its 2024 annual shareholder meeting.

RESPONSE TO THE COMPANY’S CLAIMS

Our Proposal asks the Company to:

list the recipients of corporate charitable contributions of \$5,000 or more on the Company’s website, along with the amount contributed and any material limitations or monitoring of the contributions.

The Company seeks to exclude the Proposal from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7) and Rule 14a-8(i)(10), because (1) the Proposal relates to the Company’s ordinary business operations and (2) the Proposal has already been substantially implemented.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

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.

Analysis

Part I. Rule 14a-8(i)(7).

In Staff Legal Bulletin No. 14L (November 3, 2021) (“SLB 14L”), the Staff noted that “Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8.”¹ Specifically, it “permits a company to exclude a proposal that ‘deals with a matter relating to the company’s ordinary business operations.’”

The Staff provides guiding principles in SLB 14L relevant to the applicability of the ordinary business exclusion to our Proposal. Generally, “the policy underlying the ordinary business exception rests on two central considerations.” The first “relates to the proposal’s subject matter; the second relates to the degree to which the proposal ‘micromanages’ the company.”

Micromanagement, the Staff noted, occurs when shareholders probe “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.”² Whether “a proposal probes matters ‘too complex’ for shareholders, as a group, to make an informed judgment” may turn on “the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.” Focusing on these issues preserves “management’s discretion on ordinary business matters” but does not “prevent shareholders from providing high-level direction on large strategic corporate matters.”

Notably, “specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.” Put another way, “proposals seeking detail ... do not per se constitute micromanagement.” Rather, the focus is “on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.”³ To that end, proposals seeking details do not constitute micromanagement when the level of detail sought is “consistent with that needed to enable investors to assess an issuer’s impacts ..., risks or other strategic matters appropriate for shareholder input.”

As to subject matter, SLB 14L makes clear that a corporation may not rely on the ordinary business exclusion when a proposal raises “significant social policy issues.” This 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.” In determining the social policy significance “of the issue that is the subject of the shareholder proposal.... the Staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” Put another way, proposals “focusing on sufficiently significant social policy issues. . . generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”⁴

Part II. Our Proposal is not excludable under Rule 14a-8(i)(7) for impermissibly implicating ordinary business decisions

The Company cites a number of no-action letters in section A.(1) of its request in support of its claim that the Proposal impermissibly implicates the Company’s ordinary business. These no-action letters are inapplicable to our Proposal for three broad reasons. First, the six no-action letters cited by the Company in the first paragraph of section A.(1)⁵ are inapplicable because they deal with proposals wherein the resolution targeted specific organizations or types of organizations, while our resolution is facially neutral. Second, the no-action letters cited in the second paragraph of section A.(1) for the proposition that the

¹ All quotations in this section are from SLB 14L unless otherwise indicated.

² Quoting Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

³ Emphasis added.

⁴ Quoting the 1998 Release.

⁵ The Walt Disney Co. (Nov. 20, 2014), PG&E Corp. (Feb. 4, 2015), PepsiCo (Feb. 24, 2010), Target Corp. (Mar. 31, 2010), Starbucks Corp. (Dec. 16, 2009), Wachovia Corp. (Jan. 25, 2005).

Staff may look to the supporting statement to find some impermissible targeting of specific organizations or types of organizations can not carry the burden the Company seeks to place on them because they either were decisions issued without a letter⁶ or the letter did not specifically reference the supporting statement.⁷ To the extent the Company were to argue that the supporting statements can be the only possible basis for the Staff's conclusions in *JPMorgan Chase & Co.* (Feb. 28, 2018) and *Starbucks Corp.* (Jan. 4, 2018), we submit that, as discussed further below, it exceeds the Staff's authority to support exclusion of a facially neutral proposal because the supporting statement references specific organizations or types of organizations. Upholding such a rule would, among other things, impermissibly infringe on a proponent's right to provide examples, and the Staff should reject any claim that our Proposal may be excluded because it provides relevant examples of potentially problematic use of shareholder assets in the supporting statement that accompanies an otherwise facially neutral resolution.

Further doubt is cast on the Company's proposition because of the simple incongruity of the claim. It asserts that the Staff has concluded that a proposal that is neutral in application but that explains in the supporting statement the concerns that animated the submission thereby becomes an intrusion into the ordinary business of the company. But that doesn't make any sense. A proposal that seeks company transparency or accountability either improperly implicates the company's ordinary business or it doesn't, whatever the proposal might include by way of explanation for why the proponents were impelled to seek the transparency. If the Staff decisions cited by the Company do stand for the proposition that the Staff has decided that certain modes of supporting-statement explanation render an otherwise acceptable proposal an invasion of "ordinary business," then it means that the Staff had improperly misapplied the ordinary business ground for exclusion by extending its application in a manner that has nothing to do with the question of ordinary business *vel non*, presumably because it wanted to exclude some proposals but had no proper basis to do so. This, though, would at very least constitute arbitrary and capricious behavior on the part of the Staff – an abuse of its own rules and *ultra vires* decision-making by the Staff. And if, as it seems, the Staff has in practice used this rule to exclude some proposals because relevant staffers don't personally approve of the reasons the proposal was submitted, then there is a very good reason there is no legitimate heading under which to lodge it: because the Staff does not and cannot have the authority to make decisions on that basis.

This concern rises to the level of conclusion when it is considered that the Staff has found no need to omit proposals that have focused on organizations or types of organizations in ways the Staff approves of. In *McDonald's Corporation* (avail. Feb. 28, 2017), the proposal focused on giving to "health-related organizations, including the American Academy of Pediatrics, the California Dietetic Association, and the Michigan Academy of Nutrition and Dietetics conference, among others" as its reason for opposing McDonald's giving to schools for class activities that would "expose" children to McDonald's products. Here is a focus on giving to one type of organization (medical professional organizations) being used to justify objection to giving to another type of organization (elementary schools) as justification for the neutral request for transparency. Likewise, in *Mastercard* (avail. April 25, 2019), the proponent sought the formation of a standing committee on human rights. The supporting statement revealed that the proponent wished the committee to be responsible for cutting off services to a specific type of organization, specifically naming some examples, that expressed opinions with which the proponents disagreed. While it appears in that instance that the organizations specifically mentioned were indeed espousing noxious views, this cannot provide a relevant ground for distinction for the Staff. The Staff may not determine which proposals to omit and which to allow through on the grounds of its personal agreement with the proposals themselves. In that proceeding the Staff decided that the proposal did not constitute excludable ordinary business despite focusing in its supporting statement on a specific type of groups and naming three examples. *Amazon.com, Inc.* (avail. April 3, 2019) and *Alphabet, Inc.* (avail. April 19, 2019) followed the same pattern to the same result – finding that proposals that in their

⁶ McDonald's Corporation (Mar. 26, 2021), Netflix Inc. (Apr. 9, 2021), AT&T Inc. (Jan. 15, 2021), Facebook, Inc. (Mar. 26, 2021), The Walt Disney Co. (Dec. 23, 2020).

⁷ JPMorgan Chase & Co. (Feb. 28, 2018), Starbucks Corp. (Jan. 4, 2018).

supporting statements focused on specific types of organizations in order to explain the purpose of their proposal were not omissible.

Now to be sure, these proposals sought to *try to get the companies to stop selling certain goods or providing services* to the individually named groups and that type of group. This is to say, the purpose of the proposals trenched directly on the ordinary business of the company, buying and selling, rather than on a necessarily peripheral activity – giving away shareholder assets to third parties. At the most fundamental level, the distinction is without a difference: either a focus in supporting statements on specific organizations or types of organizations somehow turns otherwise acceptable proposals into ordinary business, or it does not. But if the distinction is not meaningless, then surely buying and selling are more truly ordinary business activities than donations, so the “ordinary-business-making” effect of mentioning specific organizations or types of organizations should be more powerful in proposals dealing with core business activities.

Then there are the lobbying and trade-association membership proposals. For more than a decade the Staff has declined to omit proposals that sought company transparency in its lobbying and trade-association activities even though those proposals singled out individual organizations, such as the National Association of Manufacturers, the American Petroleum Institute and the American Legislative Exchange Council (ALEC), and that focused on specific types of organizations (*e.g.*, those that opposed shifting away from reliable and affordable energy on politicized timelines). *See, e.g.*, Devon Energy (March 31, 2014). The Staff’s refusal to omit proposals that focus in their supporting statements on those organizations and that type of organization is so well established that it has been many years since any company has challenged one except when it could append non-ordinary-business grounds as well. *See, e.g.*, *Eli Lilly & Co.* (avail. March 2, 2018) (proposal specifically named the Chamber of Commerce, ALEC and the Pharmaceutical Research and Manufacturers of America, which the proponents opposed because they were the type of organization that fought to maintain free-market pricing of medicines; proposal not omissible). Proponents are so certain that singling out specific organizations and types of organizations is – for *some* types of organizations and topics – acceptable to the Staff that a massive wave of proposals targeting lobbying groups fighting green extremism, not just in the supporting statement but in the resolution of the proposal as well, have recently descended on companies. And companies are so certain that the Staff will allow specific identification of and focus on *those* organizations of *that* type that they don’t even bother to seek no-action relief.

No principled distinction can be made between (a) using shareholder assets to lobby or to be members of trade organizations and (b) giving shareholder assets to organizations that may then themselves undertake lobbying and public advocacy, and even use some of those assets to pressure corporations themselves to adopt partisan positions and to end support for certain lobbying and trade associations that those organizations oppose. Yet even when the National Center submitted a proposal specifically explaining that an organization that a company was funding was itself funding efforts to end corporate relationships with the lobbying groups mentioned above, and was therefore functionally indistinguishable from those groups, the Staff omitted our proposal because we had mentioned a specific group. *See Johnson & Johnson* (avail. Jan. 1, 2018). This left the Staff having taken the position that it *did not* constitute grounds for omission to focus in a supporting statement on the desire to defund a specific type of organizations and even to name individual organizations, while it *did* constitute grounds for omission to focus in a supporting statement on the desire to defund a group, and others like it, that were lobbying for the defunding of the groups that it was not grounds for exclusion to focus on.

It is difficult to find any ground other than bias to explain those twin decisions and the divergent results in the others cited above,⁸ but even if there were some other explanation, the haphazard application of this

⁸ Note that both decisions cited by the Company above, *JPMorgan Chase & Co.* (Feb. 28, 2018) and *Starbucks Corp.* (Jan. 4, 2018), further support this claim. Both were either submitted by right-of-center proponents and/or criticized left-of-center organizations in the supporting statement.

rule – combined with the Staff’s regular refusal to explain its decisions and the lack of any relationship between ordinary business and a focus on certain groups or types of groups in supporting statements – render its application arbitrary and capricious. The Staff has so many times in so many contexts permitted proposals to avoid omission even though their supporting statements (or even their resolutions) focused on specific organizations or type of organizations that it cannot with fidelity use that as a reason to omit our Proposal here.

Part III. Our Proposal is not excludable under Rule 14a-8(i)(7) for impermissible micromanagement

The Company argues that our Proposal is excludable because it seeks to impermissibly micromanage the Company.

At one point, the Company cites the following three no-action letters as supporting its request for a no-action letter here: *Verizon Communications Inc.* (March 17, 2022), *American Express Company* (March 11, 2022), and *Deere & Co.* (January 3, 2022). However, these letters are simply irrelevant. They request in one case disclosure of “the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the company’s employees” and in the other two cases requesting the disclosure of “the written and oral content of employee-training materials offered to the company’s employees.” As the companies in those cases argued, there are lots of training materials spread throughout the company dealing with all sorts of issues irrelevant to the purpose of, in particular, the latter of these proposals, and, they claimed, it would have taken a heavy lift to collect and publish all of them, redacting to avoid disclosure of proprietary information and such. That is simply not the case here. The Company has – it must have, if only in its tax records – a list of its annual donations each year. Our Proposal would have the Company find that list, sort for “above or below \$5,000,” and stick it up on its website. There is no other burden at all. In fact, our Proposal is much less burdensome and costly than the proposals that the Staff blessed as non-omissible in *Walt Disney Co.* (Jan. 12, 2023) and *Kroger Co.* (Apr. 25, 2023). So even if “micromanage” is taken, with terminological inexactitude of a sort that redundantly undermines the legitimacy of the Staff’s whole review process, to mean “would take a while to do,” our Proposal does manifestly far less micromanaging than *Walt Disney Co.* (Jan. 12, 2023) and *Kroger Co.* (Apr. 25, 2023).

Part IV. Our Proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the Company

We note that even if the SEC decides our Proposal otherwise constitutes excludable micromanaging, the issue of corporate charitable giving of the sort that the Company has undertaken sufficiently “raises issues with a broad societal impact, such that they transcend the ordinary business of the company.”⁹ For example, our Proposal notes that:

Given the divisive nature of some of the organizations with which Paramount collaborates, it’s critical that the Company is fully transparent regarding its financial contributions. For instance, both Paramount – and Nickelodeon, its children’s network – are listed as an “advocate” on GLSEN’s website.¹⁰ It is unclear what this means in terms of the Company’s financial support of this organization. What is clear is that GLSEN is highly controversial. It advocates for concealing a student’s preferred gender identity from parents, providing sexually explicit books to minors, and integrating gender ideology at all levels of curriculum in public

⁹ SLB 14L (2021).

¹⁰ <https://www.glsen.org/take-action/corporate-partners>

schools.¹¹

More broadly, corporate charitable giving could fund antisemitism by way of donations to organizations like the Council on American-Islamic Relations (CAIR).¹²

The SEC has also routinely denied no-action relief for proposals seeking disclosure of political contributions, which address the same or similar issues as the charitable contributions that our Proposal focuses on. For example, in one recent proposal the proponent noted the “shared objectives that political contributions and charitable giving often have - influence over public policy and stakeholders.”¹³ In light of this, granting the Company’s no-action request here would raise a specter of bias, as discussed below in Part V.A.

We note that there is nothing inconsistent with arguing that (1) our facially neutral resolution does not improperly target specific organizations or types of organizations, (2) our reference to specific organizations in our supporting statement is a permissible use of examples demonstrating the risks to shareholder value, and (3) our reference to specific organizations in our supporting statement properly highlights the social significance of our Proposal. In fact, it is difficult to imagine how a proponent is supposed to alert shareholders to the reputational and other financial risks¹⁴ of corporate charitable contributions – and the resulting need for increased transparency – without using specific examples.

Part V. Issuing relief to the Company would raise serious constitutional and administrative law concerns.

For the reasons discussed above, our Proposal’s merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company’s request for relief. If the Staff elects to issue relief to the Company despite its clear merits, the Staff’s decision would raise a host of constitutional and administrative law issues.

A. The Company is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.

Our Proposal relates to the socially significant issue of the company’s charitable and politically motivated spending, which the Staff have previously recognized is not excludable under Rule 14a-8(i)(7). By urging the Staff to issue relief for the Proposal regardless, the Company invites the Staff to itself discriminate based on viewpoint.

It is well-established that the government cannot engage in viewpoint discrimination.¹⁵ This principle

¹¹ <https://www.glsen.org/activity/model-local-education-agency-policy-on-transgender-nonbinary-students#d>; <https://www.foxnews.com/media/target-partners-org-pushing-kids-genders-secretly-changed-schools-without-parental-consent>

¹² Cf. Gabby Deutch, *White House distances itself from CAIR, condemns director’s ‘antisemitic statements,’* JEWISH INSIDER (Dec. 7, 2023), available at <https://jewishinsider.com/2023/12/white-house-distances-itself-from-cair-condemns-directors-antisemitic-statements/>.

¹³ PepsiCo, Inc., 2022 WL 192904, at *16 (S.E.C. No - Action Letter Mar. 12, 2022). Cf. Michael Megaris, *The SEC and Mandatory Disclosure of Corporate Spending by Publicly Traded Companies*, KAN. J.L. & PUB. POL’Y, Summer 2013, at 432, 441 (“Proposals concerning corporate political spending are typically considered to be related to a company’s social policy.”).

¹⁴ Cf. Tyler O’Neil, *Detransitioner Medical Malpractice Lawsuits Will Yield \$10M Judgments, Lawyer Says*, THE DAILY SIGNAL (Feb. 09, 2024), available at <https://www.dailysignal.com/2024/02/09/transgender-series-part-3-detransitioner-medical-malpractice-lawsuits-will-10m-judgments-lawyer-says/>.

¹⁵ *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019).

prevents governments from regulating speech “because of the speaker’s specific motivating ideology, opinion, or perspective.”¹⁶ And the Supreme Court defines “the term ‘viewpoint’ discrimination in a broad sense.”¹⁷ This is because “[v]iewpoint discrimination is a poison to a free society.”¹⁸

The rule against viewpoint discrimination prevents allowing speech based on one “political, economic, or social viewpoint” while disallowing other views on those same topics.¹⁹ It also prohibits excluding views that the government deems “unpopular”²⁰ or because of a perceived hostile reaction to the views expressed.²¹

Here, the Company invites the Staff to engage in viewpoint discrimination by issuing relief on our Proposal.

Just last year, in *The Walt Disney Co.* (Jan. 12, 2023) and *The Kroger Co.* (Apr. 25, 2023) the Staff denied companies no-action relief for proposals seeking the disclosure of charitable contributions where the proponents praised corporate “support of Planned Parenthood” and the “Southern Poverty Law Center . . . since they included several conservative Christian organizations in their list of hate groups.” These proposals clearly espoused the viewpoint that corporate charitable contributions to groups associated with the political left were praiseworthy and grounded their advocacy for the proposal on that basis. Similarly, the Staff has denied relief to companies seeking to disclose political expenditures aligned with the political like “problematic company sponsored advocacy efforts” to “undercut public health policies.”²²

Our Proposal addresses the same issue of corporate contributions—but from a different viewpoint. Where the Staff blessed proposals last year that praised contributions to left-aligned groups like Planned Parenthood and the Southern Poverty Law Center, our Proposal notes the controversy surrounding contributions to left-aligned groups like GLSEN. So if the Staff opts to issue relief to exclude our Proposal, one might reasonably conclude that it could only do so because of its opinion of the distinctive political *views* our Proposal expresses.

The Staff—and the Commission—needs a principled basis for such a distinction. The Company proposes none. As the Supreme Court has explained, to avoid viewpoint discrimination the government must have “narrow, objective, and definite” standards to prevent officials from covertly discriminating based on viewpoint through subjective and unclear terms.²³ And here, the Staff has complete discretion to determine what “issues” are significant and do not “micromanage” the company and even to censor on the same issue when they are presented by speakers with different political views. The Staff should choose not exercise this discretion here by denying the Company’s request for no-action relief.

B. The Company is asking the Staff to take arbitrary and capricious action under the Administrative Procedure Act.

If the Staff grants no-action relief to the Company for our Proposal, it must explain how our Proposal is distinct from prior charitable contribution and political expenditure disclosure proposals that it has blessed.

Under the Administrative Procedure Act (APA), agency action that is “arbitrary and capricious” may be

¹⁶ Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 820 (1995).

¹⁷ Matal, 137 S. Ct. at 1763.

¹⁸ Iancu, 139 S. Ct. at 2302 (Alito, J., concurring).

¹⁹ Rosenberger, 515 U.S. at 831.

²⁰ McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 357 (1995).

²¹ Forsyth Cnty., Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992).

²² PepsiCo, Inc., *supra*.

²³ Forsyth Cnty., Ga., 505 U.S. at 131.

set aside.²⁴ The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”²⁵ Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision.²⁶

Additionally, where an agency seeks to change its position from a prior regime, it must “display awareness that it is changing position,” “show that there are good reasons for the new policy” and provide an even “more detailed justification” when the “new policy rests upon factual findings that contradict those which underlay its prior policy,” and “take[] into account” “reliance interests” on the prior policy.²⁷

Given the Staff’s prior precedent on charitable contributions and political expenditures, issuing relief to the Company would undoubtedly be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

C. *The Company is requesting relief the Staff lacks statutory authority to issue.*

Regardless, the Staff lack statutory authority to grant the Company no-action relief. The Company has notice that we intend to submit our Proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

Section 14(a) of the Exchange Act prohibits anyone from “solicit[ing] any proxy” “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”²⁸ While this authority might be read “broadly,” “it is not seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”²⁹ The purpose of Section 14(a) was to ensure that investors had “adequate knowledge” about the “financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders’ meetings.”³⁰

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the “firmly established” state-law jurisdiction over corporate governance.³¹ Recognizing that state law provides the “confining principle” to Section 14(a)’s otherwise “vague ‘public interest’ standard,” the D.C. Circuit has held that “the Exchange Act cannot be understood to include regulation of” “the substantive allocation” of corporate governance that is “traditionally left to the states.”³² Under Section 14(a), then, the SEC may compel the disclosure in a company’s proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation’s annual meeting if the proposal is a proper subject for action by the corporation’s stockholders.³³ A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders’ power to

²⁴ 5 U.S.C. § 706(2)(A).

²⁵ FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1158 (2021); see also Motor Vehicle Mfs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50 (1983).

²⁶ See FCC, 141 S. Ct. at 1160.

²⁷ FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

²⁸ 15 U.S.C. § 78n(a)(1).

²⁹ Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

³⁰ S. Rep. No. 792 at 12 (1934).

³¹ Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

³² Id.

³³ See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).

adopt.³⁴

Our Proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that the Company disclose our Proposal in its proxy materials. The Staff therefore may not then give the Company no-action relief to exclude it.

Conclusion

Our Proposal seeks only a disclosure of readily available charitable contributions, not in any way the micromanagement of the Company, and it does so about issues of significant social policy interest. In addition, issuing relief to the Company would raise serious constitutional and administrative law concerns, including concerns related to improper viewpoint discrimination, arbitrary and capricious action, and exceeding statutory authority.


The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,



Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Ryan Robski ([REDACTED])

³⁴ Id. at 232.