



DIVISION OF
CORPORATION FINANCE

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

February 28, 2024

Margaret M. Madden
Pfizer Inc.

Re: Pfizer Inc. (the "Company")
Incoming letter dated December 18, 2023

Dear Margaret M. Madden:

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 (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the Company list the recipients of corporate contributions to third-party public policy or nonprofit organizations of \$5,000 or more on its website, along with the amount contributed and any material limitations or monitoring of the contributions.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(b)(1)(i) and Rule 14a-8(f). In our view, the Proponent has supplied clear documentary support evidencing the Proponent's eligibility to submit the Proposal. The requirements the Company argues must be imposed on the Proponent are not supported by a plain reading of Rule 14a-8(b)(2)(ii).

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 address ordinary business matters.

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



Margaret M. Madden
Senior Vice President and Corporate Secretary
Chief Governance Counsel

Pfizer Inc. – Legal Division
66 Hudson Boulevard East, New York, NY 10001
Tel 212-733-3451 Fax 646-563-9681
margaret.m.madden@pfizer.com

VIA STAFF ONLINE FORM

December 18, 2023

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

RE: Pfizer Inc. – 2024 Annual Meeting
Omission of Shareholder Proposal of
the National Center for Public Policy Research

Ladies and Gentlemen:

We are writing pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that, for the reasons stated below, Pfizer Inc., a Delaware corporation (“Pfizer”), may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) from the proxy materials to be distributed by Pfizer in connection with its 2024 annual meeting of shareholders (the “2024 proxy materials”).

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of Pfizer’s intent to omit the Proposal from the 2024 proxy materials.

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

I. The Proposal

The text of the resolution and supporting statement contained in the Proposal (footnotes omitted) are set forth below:

Resolved: Shareholders request Pfizer list the recipients of corporate contributions to third-party public policy or nonprofit organizations of \$5,000 or more on Pfizer’s website, along with the amount contributed and any material limitations or monitoring of the contributions.

Supporting Statement: While Pfizer currently reports on its political and lobbying contributions, current disclosure is insufficient for shareholders to evaluate the proper use of corporate assets given to third-party public policy organizations and how those assets should be used.

According to Pfizer, “Essential aspects of our business are being challenged by barriers to access, counterfeit medicines, illegal importation, and challenges to intellectual property protection. For this reason, we actively participate in public policy dialogues to explain our perspectives.” It goes on to note its “Third Party Funding Criteria” of “think tanks and legislative organizations.”

Such statements suggest that Pfizer funds groups seeking to prevent the sale of dangerous counterfeit drugs or improve access to life-saving treatments. What it doesn’t suggest is Pfizer donating untold sums of money to promote divisive agendas outside its fiduciary remit.

For instance, Pfizer is listed on the Human Rights Campaign’s (HRC) website as a “Platinum Partner.” The HRC indoctrinates children as young as 5-years-old with radical gender ideology and instruction on sexual orientation by pushing books and lesson plans in schools.

Pfizer also “generously” funds the HRC’s “Healthcare Equality Index” (HEI). To earn a perfect HEI score, “hospitals must display LGBT symbols, solicit and use patients’ preferred pronouns, and conduct trainings on LGBT issues.” They must also “provide the same treatments for gender dysphoria that they provide for other medical conditions—meaning a hospital that uses puberty blockers to treat precocious puberty cannot withhold the drugs from children who say they’re transgender.”

It has become clear that promoting extreme, partisan ideology creates reputational and legal risk. 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. This is roughly 10 percent of its revenue in the months following its leap into contentious politics. Target's market cap fell over \$15 billion amid backlash for similar actions. And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to pursue extreme partisan agendas.

II. Bases for Exclusion

We hereby respectfully request that the Staff concur with Pfizer's view that the Proposal may be excluded from the 2024 proxy materials pursuant to:

- Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because the Proponent failed to timely provide proof of the requisite stock ownership after receiving notice of such deficiency; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to Pfizer's ordinary business operations.

III. Background

On November 16, 2023, Pfizer received the Proposal via FedEx, accompanied by a cover letter from the Proponent dated November 14, 2023. On November 20, 2023, after confirming that the Proponent was not a registered holder of Pfizer common stock, in accordance with Rule 14a-8(f)(1), Pfizer sent a letter via email to the Proponent (the "First Deficiency Letter") requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent beneficially owned the requisite number of shares of Pfizer common stock continuously for at least the requisite period preceding and including November 14, 2023. On November 22, 2023, Pfizer received a letter from Wells Fargo Advisors, dated November 20, 2023, purporting to verify the Proponent's stock ownership (the "Wells Fargo Letter"). The Wells Fargo Letter indicated that the Proponent's account was established on August 4, 2023, however, and accordingly, Pfizer sent a second letter via email to the Proponent on November 29, 2023 (the "Second Deficiency Letter" and together with the First Deficiency Letter, the "Deficiency Letters") requesting verification of the Proponent's ownership of Pfizer common stock continuously for the period from November 14, 2020 through August 3, 2023.

On December 4, 2023, Pfizer received, via email, a letter from UBS Financial Services, dated December 4, 2023 (the "UBS Letter"), which included statements from UBS Financial Services that the Proponent transferred "95 individual equity positions" and "cost basis data" from UBS Financial Services to Wells Fargo Advisors during the month of October 2023. The UBS Letter did not provide verification that the Proponent satisfied the stock ownership requirements continuously for the period identified in the Deficiency Letters. Copies of the Proposal, cover letter, Deficiency Letters, Wells Fargo Letter, UBS Letter and related correspondence are attached hereto as Exhibit A.

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) Because the Proponent Failed to Timely Provide Proof of the Requisite Stock Ownership After Receiving Notice of Such Deficiency.

Rule 14a-8(b)(1) provides that, in order to be eligible to submit a proposal, a shareholder must have continuously held (i) at least \$2,000 in market value of the company's common stock for at least three years, preceding and including the date that the proposal was submitted; (ii) at least \$15,000 in market value of the company's common stock for at least two years, preceding and including the date that the proposal was submitted; or (iii) at least \$25,000 in market value of the company's common stock for at least one year, preceding and including the date that the proposal was submitted. If the proponent is not a registered holder, he or she must provide proof of beneficial ownership of the securities. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that he or she meets the eligibility requirements of Rule 14a-8(b), provided that the company notifies the proponent of the deficiency within 14 calendar days of receiving the proposal and the proponent fails to correct the deficiency within 14 days of receiving such notice.

The Staff has consistently permitted exclusion under Rule 14a-8(f)(1) of shareholder proposals where a proponent has failed to provide timely evidence of eligibility to submit a shareholder proposal in response to a timely deficiency notice from the company. *See, e.g., The Home Depot, Inc.* (Mar. 9, 2023) (permitting exclusion of a proposal under Rule 14a-8(f)(1) where the proponent failed to supply any evidence of eligibility to submit a shareholder proposal after receiving the company's timely deficiency notice); *The Walt Disney Co.* (Sept. 28, 2021)* (permitting exclusion under Rule 14a-8(f)(1) of a proposal where the proponent failed to supply any evidence of eligibility to submit a shareholder proposal after receiving the company's timely deficiency notice); *PG&E Corp.* (May 26, 2020)* (permitting exclusion under Rule 14a-8(f)(1) of a proposal where the proponent failed to supply any evidence of eligibility to submit a shareholder proposal after receiving the company's timely deficiency notice).

In this instance, the Proponent has failed to provide adequate evidence of its eligibility to submit a shareholder proposal to Pfizer after receiving two timely deficiency notices from Pfizer. In this regard, after receiving the Proposal on November 16, 2023, Pfizer sent the First Deficiency Letter to the Proponent, via email, on November 20, 2023, timely notifying the Proponent of the Proponent's failure to provide adequate proof of the requisite stock ownership. The First Deficiency Letter also clearly explained the proof of ownership requirements of Rule 14a-8(b) and how to satisfy those requirements. Consistent with Rule 14a-8(f)(1), the First Deficiency Letter requested that the Proponent's proof of ownership be provided within 14 days of the Proponent's receipt of the First Deficiency Letter. The First Deficiency Letter was sent to the Proponent by email on November 20,

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

2023. Accordingly, to be timely, adequate proof of ownership would have needed to be received by Pfizer by December 4, 2023.

On November 22, 2023, Pfizer received the Wells Fargo Letter in response to the First Deficiency Letter, which failed to provide sufficient evidence of the Proponent's eligibility to submit the Proposal because it contained an ambiguous representation as to the Proponent's continuous ownership of Pfizer common stock during the period from November 14, 2020 to August 3, 2023. On the one hand, the Wells Fargo Letter represented that the Proponent "holds, and has held continuously since November 13, 2020, more than \$2,000 of Pfizer Incorporated common stock." At the same time, the Wells Fargo Letter stated unequivocally that the Proponent's account with Wells Fargo was established "on 08/04/2023." Accordingly, the Wells Fargo Letter could only verify the Proponent's continuous holding of Pfizer's common stock for the period since inception of the account.

In consideration of the guidance in Section E of Staff Legal Bulletin No. 14L (Nov. 3, 2021) that it is appropriate for companies to "identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s)," Pfizer notified the Proponent of this defect in the Second Deficiency Letter, which was emailed to the Proponent on November 29, 2023. The Second Deficiency Letter specifically referenced the defect in the Wells Fargo Letter and explained how the deficiency could be cured, noting that the Wells Fargo Letter was "insufficient to establish the requisite ownership levels [. . .] because it only covers the period from August 4, 2023 to November 14, 2023" and that "[t]here is a gap in the period of ownership from November 14, 2020 through August 3, 2023." In particular, the Second Deficiency Letter requested a written statement from the record holder of the Proponent's shares "verifying that the [P]roponent has beneficially held the requisite number of shares of Pfizer common stock continuously for the period from November 14, 2020 through August 3, 2023." The Second Deficiency Letter also requested that the Proponent respond by December 4, 2023, which was 14 days from the date of the First Deficiency Letter.

On December 4, 2023, Pfizer received two emails from the Proponent, the second of which attached the UBS Letter. The Proponent's first email states that "NCPPR's continuous stock ownership was established via the cost-basis data that was transferred to Wells Fargo when we established our account with them. This information routinely transfers when assets are transferred, and the adequacy of this transfer is implicit in the proof of ownership letter from Wells Fargo because Wells Fargo would not affirm our relevant ownership without a reasonable basis for doing so." The UBS Letter, however, is insufficient to establish continuous ownership of the Proponent's holdings for the requisite period. In fact, it does not establish any historical record of the Proponent's ownership of Pfizer common stock for purposes of Rule 14a-8. It states that, "During the month of October 2023, the [Proponent] transferred assets, including 95 individual equity positions, from UBS Financial Services [...] to Wells Fargo. As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions"

The UBS Letter does not verify the Proponent's continuous ownership of Pfizer common stock for any particular period, thus the Proponent has failed to provide that it continuously held Pfizer common stock from November 14, 2020 through August 3, 2023. Moreover, the Proponent's assertion that proof of ownership is "implicit" in the Wells Fargo Letter demonstrates a misunderstanding of the explicit proof that is required to demonstrate eligibility to submit shareholder proposals under Rule 14a-8. Pfizer did not receive any other purported proof of the Proponent's stock ownership.

Accordingly, consistent with the precedent described above, the Proposal may be excluded pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) as the Proponent has failed to timely provide proof of the requisite stock ownership after receiving timely notice of such deficiency.

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

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

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."); *see also Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

Consistent with this guidance, the Staff has permitted companies to exclude shareholder proposals under Rule 14a-8(i)(7) when, viewed in their entirety, those proposals focused primarily on relationships with or contributions made to specific organizations or types of organizations. For example, in *Netflix, Inc.* (Apr. 9, 2021)*, the Staff permitted the

exclusion of a proposal requesting that the company prepare and annually update a report to shareholders listing and analyzing charitable contributions made or committed during the prior year. The company noted that the proposal and the supporting statement, when read together, focused primarily on the company's contributions to organizations that support social justice movements. The Staff concurred that the proposal therefore related to the company's ordinary business operations and was excludable under Rule 14a-8(i)(7). *See also Johnson & Johnson* (Mar. 2, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the business rationale for the company's participation in corporate and executive membership organizations where the supporting statement listed specific organizations, including the World Economic Forum, the Council on Foreign Relations and the Business Roundtable); *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 made or committed during the prior year where the supporting statement referred to "highly divisive" charitable contributions, including to 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"); *Pfizer Inc.* (Feb. 12, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company review its policies related to human rights to assess and report on areas where the company needed to adopt and implement additional policies, in which the company argued that the proposal, "viewed in its entirety with the preamble and the supporting statement, focuses primarily on Pfizer's relationships with specific organizations, namely Pfizer's relationships with the Human Rights Campaign and the Southern Poverty Law Center"); *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"); *PG&E Corp.* (Feb. 4, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal calling for formation of a committee to solicit feedback on the effect of anti-traditional family political and charitable contributions, noting that "the proposal relates to contributions to specific types of organizations"); *The Walt Disney Co.* (Nov. 20, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions under a company program, noting that "the proposal relates to charitable contributions to a specific organization"); *Home Depot, Inc.* (Mar. 18, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a list of recipients of charitable contributions or merchandise vouchers of \$5,000 or more, noting that "the proposal relates to contributions to specific types of organizations," *i.e.*, groups supporting the gay, lesbian, bisexual and transgender community and same-sex marriage). As is clearly demonstrated in these letters, a proposal focused primarily on relationships with or contributions made to specific organizations or types of organizations is excludable under Rule 14a-8(i)(7) both in instances where that focus is clear from the resolution and in

instances where, despite a facially neutral resolution, that focus is clear from the proposal viewed in its entirety.

In this instance, the Proposal, viewed in its entirety with the supporting statement, focuses primarily on Pfizer's contributions to specific types of organizations—namely the Human Rights Campaign and similar organizations. In this regard, the supporting statement alleges that Pfizer donates “untold sums of money to promote divisive agendas,” highlighting, “[f]or instance” that Pfizer is “listed on the Human Rights Campaign’s (HRC) website as a ‘Platinum Partner’” and claiming that the Human Rights Campaign “indoctrinates children [...] with radical gender ideology. . . .” The supporting statement criticizes Pfizer’s relationship with the Human Rights Campaign and its goals, noting that Pfizer “ ‘generously’ funds the HRC’s ‘Healthcare Equality Index,’ ” which the Proposal claims requires hospitals to “display LGBT symbols, solicit and use patients’ preferred pronouns, and conduct trainings on LGBT issues,” among other things. In addition, the Proposal’s supporting statement implies that the aforementioned activities “promot[e] extreme, partisan ideology creat[ing] reputational and legal risk.” Thus, it is clear that the Proposal focuses on Pfizer’s support of specific types of organizations—the Human Rights Campaign and similar organizations that promote LGBTQ rights. Accordingly, the Proposal may be excluded from Pfizer’s 2024 proxy materials pursuant to Rule 14a-8(i)(7) as relating to the ordinary business operations of Pfizer.

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a matter of broad public policy versus matters related to the company’s ordinary business operations. *See* 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *PetSmart, Inc.* (Mar. 24, 2011), the proposal requested that the company’s board require suppliers to certify that they had not violated certain laws regulating the treatment of animals. Those laws affected a wide array of matters dealing with the company’s ordinary business operations beyond the humane treatment of animals, which the Staff has recognized as a significant policy issue. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted the company’s view that “the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” *See also, e.g., CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, the Proposal does not appear to touch on any significant policy issue. However, even if the Proposal did touch on a significant policy issue, the Proposal's overwhelming concern with Pfizer's contributions to specific types of organizations demonstrates that the Proposal's focus is on ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

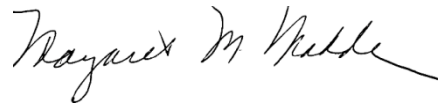
Accordingly, consistent with the examples cited above, the Proposal should be excluded from Pfizer's 2024 proxy materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

VI. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if Pfizer excludes the Proposal from its 2024 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Pfizer's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at (212) 733-3451 or Marc S. Gerber of Skadden, Arps, Slate, Meagher & Flom LLP at (202) 371-7233.

Very truly yours,



Margaret M. Madden

Enclosures

cc: Scott Shepard
National Center for Public Policy Research

EXHIBIT A

(see attached)



November 14, 2023

Via FedEx to

Corporate Secretary
Pfizer Inc.
235 East 42nd Street
New York, New York 10017

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Pfizer (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 5, 2023 or December 6, 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

Corporate Giving Reporting

Whereas: Corporate contributions should enhance the image of Pfizer in the eyes of the public. Increased disclosure of these contributions would serve to create greater goodwill for Pfizer. 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 Pfizer's public policy and philanthropic decision making in the future. Corporate giving should ultimately enhance shareholder value in line with the Company's fiduciary duty.

Resolved: Shareholders request Pfizer list the recipients of corporate contributions to third-party public policy or nonprofit organizations of \$5,000 or more on Pfizer's website, along with the amount contributed and any material limitations or monitoring of the contributions.

Supporting Statement: While Pfizer currently reports on its political and lobbying contributions, current disclosure is insufficient for shareholders to evaluate the proper use of corporate assets given to third-party public policy organizations and how those assets should be used.

According to Pfizer, "Essential aspects of our business are being challenged by barriers to access, counterfeit medicines, illegal importation, and challenges to intellectual property protection. For this reason, we actively participate in public policy dialogues to explain our perspectives."¹ It goes on to note its "Third Party Funding Criteria" of "think tanks and legislative organizations."²

Such statements suggest that Pfizer funds groups seeking to prevent the sale of dangerous counterfeit drugs or improve access to life-saving treatments. What it doesn't suggest is Pfizer donating untold sums of money to promote divisive agendas outside its fiduciary remit.

For instance, Pfizer is listed on the Human Rights Campaign's (HRC) website as a "Platinum Partner."³ The HRC indoctrinates children as young as 5-years-old with radical gender ideology and instruction on sexual orientation by pushing books and lesson plans in schools.⁴

Pfizer also "generously" funds the HRC's "Healthcare Equality Index" (HEI).⁵ To earn a perfect HEI score, "hospitals must display LGBT symbols, solicit and use patients' preferred pronouns,

¹ <https://www.pfizer.com/about/programs-policies/political-partnerships>

² <https://cdn.pfizer.com/pfizercom/Third-Party-Funding-Criteria-30AUG2022.pdf>

³ <https://www.hrc.org/about/corporate-partners>

⁴ <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/welcoming-schools/documents/WS-Lesson-I-Am-Jazz-Book-Transgender.pdf?mtime=20210509204030&focal=none>; <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/welcoming-schools/documents/WS LGBTQ Definitions for Students.pdf?mtime=20200713131845&focal=none>; <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/welcoming-schools/documents/WS-Lesson-They-She-He-Easy-as-ABC-Understand-Pronouns.pdf>; <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/welcoming-schools/documents/WS Simple Ways to Include LGBTQ Material.pdf?mtime=20200713132045&focal=none>;

⁵ <https://www.hrc.org/resources/healthcare-equality-index>

and conduct trainings on LGBT issues.”⁶ They must also “provide the same treatments for gender dysphoria that they provide for other medical conditions—meaning a hospital that uses puberty blockers to treat precocious puberty cannot withhold the drugs from children who say they’re transgender.”⁷

It has become clear that promoting extreme, partisan ideology creates reputational and legal risk. 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.⁸ This is roughly 10 percent of its revenue in the months following its leap into contentious politics.⁹ Target’s market cap fell over \$15 billion amid backlash for similar actions.¹⁰ And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to pursue extreme partisan agendas.¹¹

⁶ <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/HEI-2024-Scoring-Criteria-Tiers.pdf>;
<https://freebeacon.com/latest-news/how-left-wing-activist-group-teamed-up-with-big-pharma-to-push-radical-gender-ideology-on-american-hospitals/>

⁷ <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/HEI-2024-Scoring-Criteria-Tiers.pdf>;
<https://freebeacon.com/latest-news/how-left-wing-activist-group-teamed-up-with-big-pharma-to-push-radical-gender-ideology-on-american-hospitals/>

⁸ <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

⁹ <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

¹⁰ <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-x4CMNW0>

¹¹ <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>



Suzanne Y. Rolon
Director – Corporate Governance
Legal Division

Pfizer Inc.
66 Hudson Boulevard East, New York, NY 10001
Tel [REDACTED] Fax [REDACTED]
[REDACTED]

Via Email
[REDACTED]

November 20, 2023

Scott Shepard
FEP Director
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC 20036

Re: Shareholder Proposal for 2024 Annual Meeting of Shareholders

Dear Mr. Shepard:

This letter will acknowledge receipt on November 16, 2023 of your letter dated November 14, 2023, to Pfizer Inc. submitting a shareholder proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”) for consideration at our 2024 Annual Meeting of Shareholders.

Rule 14a-8(b) of the Exchange Act provides that the proponent must submit sufficient proof that it has continuously held:

- at least \$2,000 in market value of the company’s common stock for at least three years, preceding and including the date that the proposal was submitted; or
- at least \$15,000 in market value of the company’s common stock for at least two years, preceding and including the date that the proposal was submitted; or
- at least \$25,000 in market value of the company’s common stock for at least one year, preceding and including the date that the proposal was submitted.

Our records indicate that the proponent is not a registered holder of Pfizer common stock. Please provide a written statement from the record holder of the proponent’s shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) ¹

¹ In order to determine if the broker or bank holding your shares is a DTC participant, you can check the DTC’s participant list, which is currently available on the Internet at <http://www.dtcc.com/client-center/dtc-directories>

Mr. Shepard
November 20, 2023
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verifying that the proponent has beneficially held the requisite number of shares of Pfizer common stock continuously for at least the requisite period preceding and including November 14, 2023, which is the date the proposal was submitted.

If the broker or bank holding the proponent's shares is not a DTC participant, the proponent also will need to obtain proof of ownership from the DTC participant through which the shares are held. You should be able to find out who this DTC participant is by asking the proponent's broker or bank. If the DTC participant knows the proponent's broker or bank's holdings, but does not know the proponent's holdings, the proponent can satisfy Rule 14a-8 by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of shares were continuously held for at least the requisite period – one from the proponent's broker or bank confirming the proponent's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

The rules of the SEC require that your response to this letter be postmarked or transmitted electronically no later than 14 days from the date you receive this letter. Please send any response to me at the address or email address provided above. For your reference, please find enclosed a copy of Rule 14a-8.

Once we receive any response, we will be in a position to determine whether the proposal is eligible for inclusion in the proxy materials for our 2024 Annual Meeting of Shareholders. We reserve the right to seek relief from the SEC as appropriate. If you have any questions, please feel free to contact me directly.

Sincerely,

DocuSigned by:
Suzanne Rolon
4544A0A9BC43432...
Suzanne Y. Rolon

cc: Margaret M. Madden, Pfizer Inc.

Attachment



Advisors

1650 Tysons Boulevard, Suite 500
McLean, VA 22102

Direct: [REDACTED]
Toll Free: 800-925-3308
Fax: [REDACTED]

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 [REDACTED]

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 [REDACTED], 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 Pfizer Incorporated 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

Direct: [REDACTED] | Fax: [REDACTED]
[REDACTED]

Investment and Insurance Products are:
• 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.



Suzanne Y. Rolon
Director – Corporate Governance
Legal Division

Pfizer Inc.
66 Hudson Boulevard East, New York, NY 10001
Tel [REDACTED] Fax [REDACTED]
[REDACTED]

Via Email
[REDACTED]

November 29, 2023

Scott Shepard
FEP Director
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC 20036

Re: Shareholder Proposal for 2024 Annual Meeting of Shareholders

Dear Mr. Shepard:

This letter will acknowledge receipt on November 22, 2023 of a letter from Wells Fargo Advisors, dated November 20, 2023 (the “Wells Fargo Letter”) that purports to demonstrate the eligibility of the National Center for Public Policy Research (the “proponent”) to submit a shareholder proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”) for consideration at our 2024 Annual Meeting of Shareholders. The Wells Fargo Letter was received separately from a letter to Pfizer dated November 14, 2023 submitting the shareholder proposal.

Rule 14a-8(b) of the Exchange Act provides that the proponent must submit sufficient proof that it has continuously held:

- at least \$2,000 in market value of the company’s common stock for at least three years, preceding and including the date that the proposal was submitted; or
- at least \$15,000 in market value of the company’s common stock for at least two years, preceding and including the date that the proposal was submitted; or

¹ In order to determine if the broker or bank holding your shares is a DTC participant, you can check the DTC’s participant list, which is currently available on the Internet at <http://www.dtcc.com/client-center/dtc-directories>

Mr. Shepard
November 29, 2023
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- at least \$25,000 in market value of the company's common stock for at least one year, preceding and including the date that the proposal was submitted.

Our records indicate that the proponent is not a registered holder of Pfizer common stock, and to date, we have not received sufficient proof that the proponent has satisfied Rule 14a-8's ownership requirements. In this regard, the Wells Fargo Letter indicates that "[a]s 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 Pfizer Incorporated common stock." However, the letter also indicates that the account with Wells Fargo Advisors was "established on 08/04/2023." Thus, it is unclear how Wells Fargo Advisors can make any representations as to the proponent's ownership prior to August 4, 2023. Accordingly, this is insufficient to establish the requisite ownership levels described above because it only covers the period from August 4, 2023 to November 14, 2023. There is a gap in the period of ownership from November 14, 2020 through August 3, 2023.

Please provide a written statement from the record holder of the proponent's shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) ¹ verifying that the proponent has beneficially held the requisite number of shares of Pfizer common stock continuously for the period from November 14, 2020 through August 3, 2023.

If the broker or bank holding the proponent's shares is not a DTC participant, the proponent also will need to obtain proof of ownership from the DTC participant through which the shares are held. You should be able to find out who this DTC participant is by asking the proponent's broker or bank. If the DTC participant knows the proponent's broker or bank's holdings, but does not know the proponent's holdings, the proponent can satisfy Rule 14a-8 by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of shares were continuously held for at least the requisite period – one from the proponent's broker or bank confirming the proponent's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

Please respond by December 4, 2023, which is 14 days from the date of our first deficiency letter. Once we receive any response, we will be in a position to determine whether the proposal is eligible for inclusion in the proxy materials for our 2024 Annual Meeting of Shareholders. We reserve the right to seek relief from the SEC as appropriate.

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If you have any questions, please feel free to contact me directly.

Sincerely,

DocuSigned by:

4544A0A9BC43432...
Suzanne Y. Rolon

cc: Margaret M. Madden, Pfizer Inc.

[REDACTED]

From: Stefan Padfield [REDACTED]
Sent: Monday, December 4, 2023 9:42 AM
To: Rolon, Suzanne [REDACTED]
Cc: Madden, Margaret [REDACTED]; Scott Shepard
[REDACTED]
Subject: [EXTERNAL] Re. Pfizer's Acknowledgement of Your 2024 Shareholder Proposal

Dear Director Rolon,

The following is in response to your letter dated Nov. 29, 2023. NCPPR's continuous stock ownership was established via the cost-basis data that was transferred to Wells Fargo when we established our account with them. This information routinely transfers when assets are transferred, and the adequacy of this transfer is implicit in the proof of ownership letter from Wells Fargo because Wells Fargo would not affirm our relevant ownership without a reasonable basis for doing so. You may request that we seek a formal statement to this effect from Wells Fargo, but we will have 14 days from the date of that request to respond unless you provide us with a specific SEC provision mandating an earlier response date.

Regards,
Stefan

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



UBS Financial Services Inc.
1000 Harbor Blvd
3rd Floor
Weehawken, NJ 07086

Confirmation

ubs.com/fs

National Center for Public Policy Research
2005 Massachusetts Ave NW
Washington, DC 20036

12/4/2023

Confirmation: Information regarding the account of The National Center for Public Policy Research

Dear Sir,

Please accept this letter as a confirmation of the following facts:

- During the month of October 2023, the National Center for Public Policy Research transferred assets, including 95 individual equity positions, from UBS Financial Services account [REDACTED] to Wells Fargo account [REDACTED].
- As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions transferred to Wells Fargo.
- UBS has reviewed a copy of the October 2023 Wells Fargo statement for account [REDACTED] and has confirmed the original purchase dates and purchase prices which were transmitted by UBS Financial Services to Wells Fargo are being accurately and correctly reported on this statement.

Questions

If you have any questions about this information, please contact the UBS Wealth Advice Center at 877-827-7870.

Sincerely,

Evan Yeaw
Head Wealth Advice Center Operations
UBS Financial Services



January 16, 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: No-Action Request from Pfizer Regarding Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of Margaret M. Madden on behalf of Pfizer Inc. (the “Company” or “Pfizer”) dated December 18, 2023, 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 contributions to third-party public policy or nonprofit organizations of \$5,000 or more on Pfizer’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 2024 Proxy Materials pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because it claims Proponent failed to timely provide proof of the requisite stock ownership, and Rule 14a-8(i)(7) because it claims the subject matter of the Proposal directly concerns the Company’s ordinary business operations.

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.

I. The Proponent Timely Provided Proof of the Requisite Stock Ownership

Pfizer argues it may exclude our Proposal because we did not satisfy the ownership requirements of Rule 14a-8(b). That rule requires in relevant part that we:

[S]ubmit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you 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.¹

We have satisfied our obligations under this rule by submitting a timely letter from Wells Fargo Advisors (“Wells Fargo Letter”), which Pfizer received November 22, 2023. Pfizer’s arguments to the contrary are unavailing.

A. The Staff Has Established the Proof of Ownership That May Be Required of Proponents; it Does Not Include Any Communications from past Record Holders, and Such a Requirement May Not Now Be Invented and Retroactively Applied.

Pfizer’s position finds no support in the text of Rule 14a-8(b). As we have just noted, the rule is that proponents must submit a statement from “the ‘record’ holder of [our] securities” confirming the relevant value of our ownership over the relevant period. Rule 14a-8(b) (emphasis added). It nowhere adds an additional obligation on proponents that they also provide redundant proof of ownership letters from *former* record holders of the stock – holders with whom the proponents presumably no longer have a business relationship and who therefore have neither motivation nor interest in writing such letters.

For the Staff suddenly to conjure such an additional obligation now, one that should have been included in the express terms of 14a-8(b) if intended, or at least (if perhaps inappropriately) added as an additional requirement in a Staff Legal Bulletin for application after the issuance of such a bulletin, would provide a clear instance of the Staff acting not in fidelity to the rules that it and the Commission have developed, but in an arbitrary, capricious and *ex post* manner. We and others have argued in the past that such behavior is already impermissibly embedded in the no-action review process, which grants the Staff an impermissible amount of opportunity for the application of bias on the basis of the personal policy preferences of the Staff.²

Such a decision would undermine the no-action review process in another fundamental way. In recent court filings SEC counsel has argued that the Commission’s no-action review process, overseen by unelected and unappointed Staff members without much opportunity for Commissioner review and input, is within the statutory remit of the SEC despite there being no statutory language that either

¹ Rule 14a-8(b)(2)(ii)(A).

² Brief for Petitioners at 31-32, Nat’l Ctr. for Pub. Pol’y Res. v. SEC, No. 23-60230 (5th Cir. July 14, 2023), ECF No. 62-1.

establishes or even hints at such a process.³ SEC counsel, though, then pivots to say that while the review process is statutorily appropriate, it is so informal as to allow the Staff to issue opinions without explanation or for any reliable route to meaningful review of the decisions to be available.⁴ It makes this claim even though the SEC (and its Staff) appears never to have itself treated its no-action decisions as “informal,” in that it has never issued a no-action letter but then brought action against a company for having omitted a proposal. A reasonable response to these interlocking but contradictory claims is that the review process is not merely informal; it is *ultra vires*, with the Commission and its staffers not only illegally establishing this process but also themselves treating it not as informal but as binding on all parties and on itself, with rejected proponents facing no option but to incur the vast expense of litigation under often impossible time constraints. And then it compounds the improper nature of its unlawful proceedings by pretending that it treats its unauthorized procedures as informal to excuse the fact that it does not conduct these “informal” procedures with the rigor, regularity, and transparency required of government functions that *actually are authorized*.

This is, to err by delicacy, an attenuated argument that drags in its wake eye-catching implications, such as that if an agency makes up a power not granted to it and so not constrained by any statutory text, it can then apply that unlawful power without safeguards such as those established by the Administrative Procedures Act (“APA”), thereby freeing the unauthorized powers illegally seized by federal agencies to be wielded with the least constraint and therefore potentially for purposes the most inimical to our free republic of constrained and limited government. That is a position that may well give our judicial authorities pause, and perhaps be used as evidence that agencies really ought not to be trusted with any deference whatever in determining their own powers or the constraints on those powers.

Were the Staff to agree here with Pfizer it would illustrate the fundamental incoherency of the SEC’s silently authorized (by the Securities Exchange Act)/statutorily unconstrained (by the APA), formal and final (as to practical effect)/informal and nonbinding (by nominal pretext) position. While the Staff requires shareholder proponents to provide proof of ownership letters from record holders to corporations, it has refused to require those record holders to provide the ownership letters to the proponents in the first instance. Apparently unauthorized powers not granted by statutory rescript can only run so far – far enough to constrain usually not-terribly-well-funded shareholders, but *not* to constrain giant banks and investment houses with large legal staffs and legal budgets, who might long ago have challenged the whole cobbled-together no-action process had the Staff made demands of them.

Among a variety of other problems, this half-way and certainly novel articulation of Staff authority effectively hands to record holders veto power over which proponents may file and which may not. As we have seen repeatedly in recent years, banks and investment houses have shown no shyness whatever in making profound business decisions that appear explicable only as expressions of the personal policy preferences of the corporations’ executives (or the executives of the corporations who act as stewards of other people’s investments but who arrogate to themselves the power of those clients’ money to “force behaviors” that match their political and personal inclinations on companies

³ Brief for SEC at 56-61, Nat’l Ctr. for Pub. Pol’y Res. v. SEC, No. 23-60230 (5th Cir. Sept. 13, 2023), ECF No. 79-1.

⁴ Id. at 27-29.

their clients have invested heavily in).⁵ While the Staff's unwillingness or incapacity to require record holders to issue ownership letters has resulted in proponents regularly facing an often frustrating and time-consuming process to get them, it is reasonable given background financial industry company behavior to consider it probable that some record holder might refuse to issue proof of ownership letters because the company's executives (or whomever held the specific decision-making authority) objected to the concerns that animated the relevant shareholder proponent. In fact, we at NCPPR have significant reason to believe that it has already happened to us.

Were the Staff to take Pfizer's position, then it would have established that in the shareholder proposal submission process, (1) proponents must provide proof-of-ownership letters issued by parties that themselves have no obligation to issue such letters, giving the issuers arbitrary control over citizens' abilities to exercise statutorily or regulatory explicated civil rights; (2) proponents must also provide proof-of-ownership letters from *former* record holders for a period of years, thus depriving proponents who have been deprived by private issuers of civil rights on partisan grounds even the minimal self-help opportunity of switching record holders, as letters that the initial record holder has already refused to provide on policy grounds will still be required *after* change of record holders; and that (3) this wholly arbitrary and unregulated private restriction on civil rights arises *even though there exists not the slightest legitimate concern that the proof-of-ownership letters issued by the new record holder lack even a soupcon of reliability*, as we will establish in the following section.

It would take some invention to come up with a decision that the Staff could reach that would more elegantly demonstrate systemic arbitrariness, capriciousness, potential for impermissible bias and the fundamental illegitimacy of the whole statutorily unauthorized no-action review process. Too, as a general matter, a regulatory agency that has the power to force A to provide a letter from B to C also enjoys the power to compel B to produce the letter in the first place. The Staff's tacit admission that the SEC lacks the authority to require production of the proof-of-ownership letters *ab initio* appears to provide significant weight to the conclusion that despite its justificatory dance of the butterflies, it does not legally possess any of the powers that it wields in this process, and is in fact a wholly unwonted interloper in the shareholder-proposal process.

B. The Language in Proponent's Proof-Of-Ownership Letter Is Clear and Fully Evidences Our Requisite Minimum Ownership

Pfizer cites three no-action letters for the proposition that the SEC has permitted exclusion of a proposal where the proponent "failed to supply any evidence of eligibility."⁶ Obviously, those letters are irrelevant here because we provided substantial evidence of eligibility.

⁵ See, e.g., <https://www.commerce.senate.gov/2023/9/sen-cruz-s-investigation-leads-intuit-to-end-discriminatory-policy-against-firearms-businesses> ; <https://www.dailysignal.com/2023/06/21/kentuckys-daniel-cameron-scores-win-threat-banks-cutting-conservatives/> ; <https://www.breitbart.com/politics/2023/03/03/donald-trump-jr-wins-pnc-bank-reverses-course-blames-cutting-ties-mxm-news-good-faith-error/> ; <https://www.washingtonexaminer.com/opinion/beltway-confidential/2748853/why-is-bank-of-america-canceling-the-accounts-of-religious-organizations/> ; <https://www.zerohedge.com/markets/bank-america-other-companies-share-customer-records-fbi-without-warrant-all-time-director> ; <https://www.newsweek.com/stop-troubling-trend-politically-motivated-debanking-opinion-1787639>.

⁶ Pfizer's no-action request (Dec. 12, 2023) (emphasis added).

Pfizer next argues that the Wells Fargo Letter “failed to provide sufficient evidence of the Proponent’s eligibility.”⁷ However, the Wells Fargo Letter provided in relevant part that: “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 Johnson & Johnson common stock.”⁸ Wells Fargo could not and would not make such an affirmation without a sound basis for doing so, and of course it had such a basis. When investment accounts change hands between brokerages, the holdings are accompanied by “cost basis” information, information that includes both the date of purchase and the size of the initial purchase and any subsequent alterations. This information transfers in the ordinary course of business, and it did so in this case. The whole financial sector relies on this ordinary-course information transfer to be correct and trustworthy, and the federal government, particularly in aid of its taxing power, similarly relies on it.⁹ Pfizer has provided no evidence, nor even a credible suggestion, that this normal-course information transfer either did not happen in this instance or that anything happened to cast the slightest doubt on its effectiveness and veracity. And certainly, Wells Fargo would not have placed itself in danger of committing fraud by issuing its proof of ownership letters containing the relevant information if it had borne the slightest concern about the correctness of the cost-basis information it relied on, which had been received by them in the entirely expected manner in the ordinary course of business.

Except in specially articulated circumstances, shareholder proponents are not even permitted to inquire through the proposal process about corporate actions arising in the ordinary course of business. Here, Pfizer claims that it may refuse to rely upon information generated in the ordinary course of business, even if it can point to no evidence suggesting any irregularity of any kind in that regular business procedure or the merest sigh of doubt about the proper conduct of that business and the veracity of its product. And in fact, Pfizer persists in its increasingly meretricious position even in the face of an additional letter from UBS confirming, with regard to every single holding transferred from UBS to Wells Fargo, that the information that Wells Fargo now has, and relies on in its letters, is exactly the same as the information UBS maintained and then transferred to Wells Fargo.¹⁰ This supplemental letter was in no way required under Rule 14a-8(b), as we have seen, but we procured it for Pfizer in order to foreclose even the faintest possibility that Pfizer could in honesty and good faith retain the slightest doubt about the correctness and completeness of the Wells Fargo proof-of-ownership letter. As the lacuna in its no-action letter reveal, we were successful in that attempt.

The Staff has previously noted that some companies “apply an overly technical reading of proof of ownership letters as a means to exclude a proposal,” but that the Staff “generally do[es] not find arguments along these lines to be persuasive.”¹¹ Specifically, “companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used

⁷ Id.

⁸ Wells Fargo Letter (Nov. 20, 2023).

⁹ Cf. “The Cost Basis Reporting Service (CBRS) is an automated system that gives financial firms the ability to transfer customer cost basis information from one firm to another on any asset transfer.”

<https://www.dtcc.com/clearing-services/equities-clearing-services/cbrs>

¹⁰ The file name for this letter, which was visible as part of the email sent to Pfizer, is “ACAT Cost Basis Confirmation Letter.” The “Automated Customer Account Transfer Service (ACATS) is a system that automates and standardizes procedures for the transfer of assets in a customer account from one brokerage firm and/or bank to another.” <https://www.dtcc.com/clearing-services/equities-clearing-services/acats> .

¹¹ SLB 14L.

in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.”¹² Here, Pfizer should have no honest doubt whatever about our holding the appropriate amount of stock throughout the appropriate period in light of (1) the foregoing guidance, (2) the routine nature of the transfers Pfizer claims to be perplexed by, and (3) Wells Fargo’s clear conclusion that we have held “continuously since November 13, 2020 more than \$2,000 of Johnson & Johnson common stock.”¹³ Rather, Pfizer is simply asking the Staff to declare in contravention of the regulations and guidance governing this no-action process that we were bound by a never-before-articulated requirement to provide yet another piece of paper that it can add to the already complete, regular and inarguably trustworthy demonstration of proof of ownership.

In short, the Wells Fargo Letter itself fully satisfies our obligation under Rule 14a-8(b), and having fully satisfied our duty we then in the fullness of politesse provided another letter, this one indeed from UBS, confirming that absolutely no possibility of doubt about the propriety of our ownership as averred by Wells Fargo remained.

Pfizer nevertheless feigned a remnant of doubt because the Wells Fargo Letter “contained an ambiguous representation as to the Proponent’s continuous ownership.” This is simply false. Again, there is nothing ambiguous about Wells Fargo’s representation that we hold and have held “continuously since November 13, 2020 more than \$2,000 of Johnson & Johnson common stock.” While Pfizer claims to have been thrown into confusion by the fact that our account with Wells Fargo was established within the past year, it is again difficult to take this claim seriously in light of the ubiquity of stock transfers – particularly given the sophistication of Pfizer and its counsel. Beyond that, the supplementary UBS letter to which Pfizer had no regulatory entitlement, as we have seen, only further undermines any claims to honest doubt. In addition to the confirmation that Wells Fargo’s information was the same as UBS’s, it essentially restated what is obvious from the Wells Fargo Letter: That we transferred stock to Wells Fargo and that Wells Fargo obtained the requisite cost basis information in connection with that transfer to affirm our relevant ownership, as is routine.

Pfizer’s argument isn’t merely empty of material import or good faith; it is fundamentally premised on suggesting that Wells Fargo and UBS are willing to risk their reputations and potentially additional grave consequences to help us to misstate our ownership, or at very least with reckless disregard about the veracity of their assurances about the size and nature of our holdings with them – which would be a particularly bad look for *two banks*. And in this very no-action request, as we will consider below, the Company had the temerity to make arguments based on the proposition that shareholder owners who are not involved in the day-to-day conduct of a business have no business wading into it or doubting the averments of the Company employees who do know those ordinary business procedures intimately. Yet here it stands, insisting that the SEC Staff, on no grounds whatever, assume the unreliability of business procedures that are the whole root and core of a bank’s business, which is transferring assets and the information about those assets correctly. If Pfizer, with no relationship to Wells Fargo and UBS in this context can, with no whisper of grounds for concern, pretend to doubt the efficacy of those ordinary business procedures such as to allow it to require proponents to provide additional heretofore unspecified pieces of paper that will add nothing whatever to the state of anyone’s knowledge or the reliability of that knowledge, then *it* certainly has no business trying to stop stockholders of Pfizer –

¹² *Id.*

¹³ Wells Fargo Letter (Nov. 20, 2023).

owners of the Company – from doubting absolutely every averment Pfizer makes about its ordinary business practices and procedures, and to make any proposals they want about any of it.

And, *ipso facto*, if the Staff concurs with Pfizer in this matter it will have, like Pfizer, adopted directly contradictory positions about the propriety of outsider intrusion into or distrust of ordinary business procedures, given their lack of intimate knowledge. And it would have adopted these directly contradictory positions as justification for weaving out of whole cloth and applying retroactively a new requirement implicitly foreclosed by the language of Rule 14a-8(b): that proponents provide a completely meaningless piece of paper from a business with which it likely no longer has a business relationship, which the Staff does not and presumably cannot require the business itself to provide, thereby allowing private parties to control government-granted civil rights according to their private lights.

The SEC by its Staff should not and truly cannot follow Pfizer into its tangle of pettifogging and contradiction. In addition to everything else, were the SEC to conclude that the Wells Fargo Letter here was insufficient proof of ownership, it would be undermining market efficiency, which includes myriad such transfers on a daily basis, thus violating the core mission of the SEC.

II. The Proposal Does Not Seek to Micromanage the Company or Otherwise Improperly Implicate the Company’s Ordinary Business; The Company’s Argument that the Proposal’s Reference to Specific Organizations in the Supporting Statement Justifies Exclusion Fails as Improper Viewpoint Discrimination; The Proposal Focuses on a Significant Policy Issue that Transcends Ordinary Business

A. The Proposal Does Not Seek to Micromanage the Company or Otherwise Improperly Implicate the Company’s Ordinary Business

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.”¹⁴ Specifically, it “permits a company to exclude a proposal that ‘deals with a matter relating to the company’s ordinary business operations.’” SLB 14L notes that the purpose of the exception is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”

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.”¹⁵ 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

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

¹⁵ Quoting Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

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.”¹⁶ 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.”

Here, the Proposal does not implicate ordinary business problems that are “impracticable for shareholders to decide how to solve ... at an annual shareholders meeting.” Nor does the Proposal require shareholders to 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.” Rather, the Proposal merely asks shareholders to vote in favor of increasing transparency when it comes to the Company’s charitable donations.

Finally, the SEC has 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.”¹⁷ In light of this, granting the Company’s no-action request here would raise a specter of bias, as discussed below in Part III.A.

B. The Company’s Argument that the Proposal’s Reference to Specific Organizations in the Supporting Statement Justifies Exclusion Fails as Improper Viewpoint Discrimination

Pfizer argues our Proposal may be excluded because the Proposal focuses on “contributions made to specific organizations or types of organizations.”¹⁸

As an initial matter, the substance of our resolution is neutral. When proposals to require charitable-contribution reporting are neutrally drawn and not intended to create a “referendum on donations to particular charities or types of charities,” *McDonald’s Corporation* (avail. Feb. 28, 2017), they are non-excludable. Our proposal is wholly neutral in application and mentions current controversies solely for the purpose of establishing the importance and saliency of charitable-giving concerns.

The supporting statement of our Proposal explains, as well it should, the concerns that animated our submission. Pfizer objects, relying on various previous Staff decisions to suggest that the Staff had established that proposals can be omitted if they make reference to specific organizations or types of organizations. Pfizer first cites *Netflix, Inc.* (Apr. 9, 2021) for the proposition that the Staff there

¹⁶ Emphasis added.

¹⁷ *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.”).

¹⁸ Pfizer no-action request (Dec. 18, 2023).

concluded with the conclusion that a proposal “focused primarily on the company’s contributions to organizations that support social justice movements” was “therefore related to the company’s ordinary business operations and was excludable.”¹⁹ However, it is unclear how Pfizer can know the SEC’s rationale for permitting exclusion, which is even more opaque than usual given that the Staff decision was issued without a letter, because Netflix provided at least two grounds for exclusion: (1) “The Proposal may be excluded because it relates to the ordinary business matter of the Company’s charitable contributions to specific types of organizations,” and (2) “The Proposal may be excluded because it seeks to micromanage the Company.”²⁰

Further doubt is cast on Pfizer’s conclusion 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 about its charitable giving, or its lobbying activities, or anything else, 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 notion 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.

Pfizer then proceeds to cite an additional eight no-action letters in further support of a “specific organizations” basis for excluding a proposal as impermissibly interfering with ordinary business. Accepting *arguendo* that this is the “holding” of these decisions, then they collectively, along with other Staff decisions, demonstrate a plain history of viewpoint discrimination by the Staff through many years. In addition to the previously discussed *Netflix, Inc.* (Apr. 9, 2021) (“social justice movements”), Pfizer’s own summaries of five of the remaining eight decisions reveal an anti-conservative application of this exclusion. To wit, the specific organizations being protected from investigation by the SEC were all left-leaning (the one summary mentioning a right-leaning organization involved a proposal seeking to ensure that organization’s eligibility for contributions). Reviewing the remaining three cited no-action letters, a similar pattern of biased viewpoint discrimination emerges. See *JPMorgan Chase & Co.* (Feb. 28, 2018) (“the Southern Poverty Law Center, Planned Parenthood and the Clinton Foundation”); *Starbucks Corp.* (Jan. 4, 2018) (“targets specific organizations which support abortion and same-sex marriage”); *PG&E Corp.* (Feb. 4, 2015) (“solicit feedback on the effect of anti-traditional family political and charitable contributions”). Thus, all eight of the no-action letters cited by Pfizer in support of its request to exclude our Proposal because it identifies specific organizations omitted proposals animated by a desire to pull

¹⁹ *Id.*

²⁰ *Netflix, Inc.* (Apr. 9, 2021).

companies away from left-partisan, anti-fiduciary engagement and expenditures. In other contexts, this extent of one-sided disparate impact creates a presumption of illegal discrimination. Here it suggests that the Staff's concern is not with a focus in the supporting statement on specific organizations or types of organizations, but rather a focus on specific organizations or types of organizations that support agendas that the Staff, or the decision-making members thereof, personally approve of.

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 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 did not seek charitable contribution review or disclosure. Rather, their purpose was 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 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, but even if there were some other explanation, the haphazard application of this 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.

C. The Proposal Focuses on a Significant Policy Issue that Transcends Ordinary Business

The Company cites three no-action letters (*PetSmart, Inc.* (Mar. 24, 2011), *CIGNA Corp.* (Feb. 23, 2011), and *Capital One Financial Corp.* (Feb. 3, 2005)) in support of its argument that the Proposal does not implicate social policy issues that transcend the Company's ordinary business. We note that all three of these decisions pre-date SLB 14L.

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.”²¹

The Proposals’ supporting statement makes clear the significant social policy issues raised by the Company’s charitable giving, which quite obviously transcend the Company’s ordinary business:

Pfizer donat[es] untold sums of money to promote divisive agendas outside its fiduciary remit. For instance, Pfizer is listed on the Human Rights Campaign’s (HRC) website as a “Platinum Partner.” The HRC indoctrinates children as young as 5-years-old with radical gender ideology and instruction on sexual orientation by pushing books and lesson plans in schools. Pfizer also “generously” funds the HRC’s “Healthcare Equality Index” (HEI). To earn a perfect HEI score, “hospitals must display LGBT symbols, solicit and use patients’ preferred pronouns, and conduct trainings on LGBT issues.” They must also “provide the same treatments for gender dysphoria that they provide for other medical conditions—meaning a hospital that uses puberty blockers to treat precocious puberty cannot withhold the drugs from children who say they’re transgender.”

The Staff has many, many times found that issues of this sort do “transcend” ordinary business. In fact, it has engaged in viewpoint discrimination to privilege these issues over other concerns, as by finding them to transcend ordinary-business considerations for proposals that sought LGBT-related anti-discrimination protections, while refusing to find the same transcendence for proposals that sought viewpoint anti-discrimination protections. *See, e.g., BlackRock, Inc.* (Apr. 4, 2022; *reconsid. denied* May 2, 2022). As noted elsewhere in this letter brief, that Staff viewpoint discrimination has resulted in a suit challenging the legitimacy of the entire no-action review process. For the Staff now to conclude that these same issues that carry privileged transcendence when raised by some proponents to achieve Staff-favored ends lose that transcendence when raised by other proponents to achieve Staff-disfavored ends would gratuitously stack impermissible Staff bias upon impermissible Staff bias.

Part III. 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. Pfizer is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.

²¹ Quoting the 1998 Release.

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.²² This principle prevents governments from regulating speech “because of the speaker’s specific motivating ideology, opinion, or perspective.”²³ And the Supreme Court defines “the term ‘viewpoint’ discrimination in a broad sense.”²⁴ This is because “[v]iewpoint discrimination is a poison to a free society.”²⁵

The rule against viewpoint discrimination prevents allowing speech based on one “political, economic, or social viewpoint” while disallowing other views on those same topics.²⁶ It also prohibits excluding views that the government deems “unpopular”²⁷ or because of a perceived hostile reaction to the views expressed.²⁸

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.”²⁹

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 The Trevor Project and 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

²² *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019).

²³ *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 820 (1995).

²⁴ *Matal*, 137 S. Ct. at 1763.

²⁵ *Iancu*, 139 S. Ct. at 2302 (Alito, J., concurring).

²⁶ *Rosenberger*, 515 U.S. at 831.

²⁷ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995).

²⁸ *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

²⁹ *PepsiCo, Inc.*, *supra*.

on viewpoint through subjective and unclear terms.³⁰ 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 Pfizer’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 Pfizer 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 set aside.³¹ The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”³² 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.³³

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.³⁴

Given the Staff’s prior precedent on charitable contributions and political expenditures, issuing relief to Pfizer 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 Pfizer no-action relief. Pfizer 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.”³⁵ While this authority might be read “broadly,” “it is not seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”³⁶ The purpose of Section 14(a) was to ensure that investors had “adequate knowledge” about the “financial

³⁰ Forsyth Cnty., Ga., 505 U.S. at 131.

³¹ 5 U.S.C. § 706(2)(A).

³² 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).

³³ See FCC, 141 S. Ct. at 1160.

³⁴ FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

³⁵ 15 U.S.C. § 78n(a)(1).

³⁶ Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders' meetings."³⁷

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.³⁸ 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."³⁹ 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.⁴⁰ A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders' power to adopt.⁴¹

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

Conclusion

The Wells Fargo Letter states clearly that: "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 Johnson & Johnson common stock." This satisfies our proof of ownership obligations. The Company's argument that proponents must provide letters from every record holder covering the relevant holding period is unsupported by the relevant regulatory text and furthermore so unworkable as to undermine market efficiency in way contrary to the purposes of the Securities Exchange Act.

Our Proposal seeks only a disclosure of readily available charitable contributions, not in any way the micromanagement of the Company. Furthermore, the Proposal implicates issues of significant social policy that transcend the ordinary business of the Company. 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

³⁷ S. Rep. No. 792 at 12 (1934).

³⁸ Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

³⁹ Id.

⁴⁰ See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).

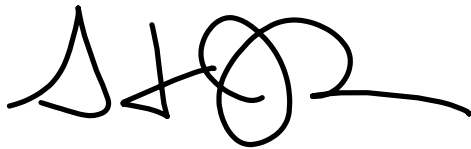
⁴¹ Id. at 232.

hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Shepard
FEP Director
National Center for Public Policy Research

A handwritten signature in black ink, appearing to read "Stefan Padfield". The signature is more stylized and angular than the one above, with a large loop and a long horizontal stroke.

Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Margaret M. Madden ([REDACTED])



January 22, 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: No-Action Request from Pfizer Regarding Shareholder Proposal by the National Center for Public Policy Research (Amended)¹

Ladies and Gentlemen:

This correspondence is in response to the letter of Margaret M. Madden on behalf of Pfizer Inc. (the “Company” or “Pfizer”) dated December 18, 2023, 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 contributions to third-party public policy or nonprofit organizations of \$5,000 or more on Pfizer’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 2024 Proxy Materials pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because it claims Proponent failed to timely provide proof of the requisite stock ownership, and Rule 14a-8(i)(7) because it claims the subject matter of the Proposal directly concerns the Company’s ordinary business operations.

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

¹ This reply amends Proponent’s previous reply dated January 16, 2024. The only changes are as follows: Four incorrect references to “Johnson & Johnson” have been replaced with “Pfizer Incorporated.”

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.

I. The Proponent Timely Provided Proof of the Requisite Stock Ownership

Pfizer argues it may exclude our Proposal because we did not satisfy the ownership requirements of Rule 14a-8(b). That rule requires in relevant part that we:

[S]ubmit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you 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.²

We have satisfied our obligations under this rule by submitting a timely letter from Wells Fargo Advisors (“Wells Fargo Letter”), which Pfizer received November 22, 2023. Pfizer’s arguments to the contrary are unavailing.

A. The Staff Has Established the Proof of Ownership That May Be Required of Proponents; it Does Not Include Any Communications from past Record Holders, and Such a Requirement May Not Now Be Invented and Retroactively Applied.

Pfizer’s position finds no support in the text of Rule 14a-8(b). As we have just noted, the rule is that proponents must submit a statement from “the ‘record’ holder of [our] securities” confirming the relevant value of our ownership over the relevant period. Rule 14a-8(b) (emphasis added). It nowhere adds an additional obligation on proponents that they also provide redundant proof of ownership letters from *former* record holders of the stock – holders with whom the proponents presumably no longer have a business relationship and who therefore have neither motivation nor interest in writing such letters.

For the Staff suddenly to conjure such an additional obligation now, one that should have been included in the express terms of 14a-8(b) if intended, or at least (if perhaps inappropriately) added as an additional requirement in a Staff Legal Bulletin for application after the issuance of such a bulletin, would provide a clear instance of the Staff acting not in fidelity to the rules that it and the Commission have developed, but in an arbitrary, capricious and *ex post* manner. We and others have argued in the past that such behavior is already impermissibly embedded in the no-action review process, which grants the Staff an impermissible amount of opportunity for the application of bias on the basis of the personal policy preferences of the Staff.³

Such a decision would undermine the no-action review process in another fundamental way. In recent court filings SEC counsel has argued that the Commission’s no-action review process, overseen by unelected and unappointed Staff members without much opportunity for Commissioner review and

² Rule 14a-8(b)(2)(ii)(A).

³ Brief for Petitioners at 31-32, Nat’l Ctr. for Pub. Pol’y Res. v. SEC, No. 23-60230 (5th Cir. July 14, 2023), ECF No. 62-1.

input, is within the statutory remit of the SEC despite there being no statutory language that either establishes or even hints at such a process.⁴ SEC counsel, though, then pivots to say that while the review process is statutorily appropriate, it is so informal as to allow the Staff to issue opinions without explanation or for any reliable route to meaningful review of the decisions to be available.⁵ It makes this claim even though the SEC (and its Staff) appears never to have itself treated its no-action decisions as “informal,” in that it has never issued a no-action letter but then brought action against a company for having omitted a proposal. A reasonable response to these interlocking but contradictory claims is that the review process is not merely informal; it is *ultra vires*, with the Commission and its staffers not only illegally establishing this process but also themselves treating it not as informal but as binding on all parties and on itself, with rejected proponents facing no option but to incur the vast expense of litigation under often impossible time constraints. And then it compounds the improper nature of its unlawful proceedings by pretending that it treats its unauthorized procedures as informal to excuse the fact that it does not conduct these “informal” procedures with the rigor, regularity, and transparency required of government functions that *actually are authorized*.

This is, to err by delicacy, an attenuated argument that drags in its wake eye-catching implications, such as that if an agency makes up a power not granted to it and so not constrained by any statutory text, it can then apply that unlawful power without safeguards such as those established by the Administrative Procedures Act (“APA”), thereby freeing the unauthorized powers illegally seized by federal agencies to be wielded with the least constraint and therefore potentially for purposes the most inimical to our free republic of constrained and limited government. That is a position that may well give our judicial authorities pause, and perhaps be used as evidence that agencies really ought not to be trusted with any deference whatever in determining their own powers or the constraints on those powers.

Were the Staff to agree here with Pfizer it would illustrate the fundamental incoherency of the SEC’s silently authorized (by the Securities Exchange Act)/statutorily unconstrained (by the APA), formal and final (as to practical effect)/informal and nonbinding (by nominal pretext) position. While the Staff requires shareholder proponents to provide proof of ownership letters from record holders to corporations, it has refused to require those record holders to provide the ownership letters to the proponents in the first instance. Apparently unauthorized powers not granted by statutory rescript can only run so far – far enough to constrain usually not-terribly-well-funded shareholders, but *not* to constrain giant banks and investment houses with large legal staffs and legal budgets, who might long ago have challenged the whole cobbled-together no-action process had the Staff made demands of them.

Among a variety of other problems, this half-way and certainly novel articulation of Staff authority effectively hands to record holders veto power over which proponents may file and which may not. As we have seen repeatedly in recent years, banks and investment houses have shown no shyness whatever in making profound business decisions that appear explicable only as expressions of the personal policy preferences of the corporations’ executives (or the executives of the corporations who act as stewards of other people’s investments but who arrogate to themselves the power of those clients’ money to “force behaviors” that match their political and personal inclinations on companies

⁴ Brief for SEC at 56-61, Nat’l Ctr. for Pub. Pol’y Res. v. SEC, No. 23-60230 (5th Cir. Sept. 13, 2023), ECF No. 79-1.

⁵ Id. at 27-29.

their clients have invested heavily in).⁶ While the Staff's unwillingness or incapacity to require record holders to issue ownership letters has resulted in proponents regularly facing an often frustrating and time-consuming process to get them, it is reasonable given background financial industry company behavior to consider it probable that some record holder might refuse to issue proof of ownership letters because the company's executives (or whomever held the specific decision-making authority) objected to the concerns that animated the relevant shareholder proponent. In fact, we at NCPPR have significant reason to believe that it has already happened to us.

Were the Staff to take Pfizer's position, then it would have established that in the shareholder proposal submission process, (1) proponents must provide proof-of-ownership letters issued by parties that themselves have no obligation to issue such letters, giving the issuers arbitrary control over citizens' abilities to exercise statutorily or regulatory explicated civil rights; (2) proponents must also provide proof-of-ownership letters from *former* record holders for a period of years, thus depriving proponents who have been deprived by private issuers of civil rights on partisan grounds even the minimal self-help opportunity of switching record holders, as letters that the initial record holder has already refused to provide on policy grounds will still be required *after* change of record holders; and that (3) this wholly arbitrary and unregulated private restriction on civil rights arises *even though there exists not the slightest legitimate concern that the proof-of-ownership letters issued by the new record holder lack even a soupcon of reliability*, as we will establish in the following section.

It would take some invention to come up with a decision that the Staff could reach that would more elegantly demonstrate systemic arbitrariness, capriciousness, potential for impermissible bias and the fundamental illegitimacy of the whole statutorily unauthorized no-action review process. Too, as a general matter, a regulatory agency that has the power to force A to provide a letter from B to C also enjoys the power to compel B to produce the letter in the first place. The Staff's tacit admission that the SEC lacks the authority to require production of the proof-of-ownership letters *ab initio* appears to provide significant weight to the conclusion that despite its justificatory dance of the butterflies, it does not legally possess any of the powers that it wields in this process, and is in fact a wholly unwonted interloper in the shareholder-proposal process.

B. The Language in Proponent's Proof-Of-Ownership Letter Is Clear and Fully Evidences Our Requisite Minimum Ownership

Pfizer cites three no-action letters for the proposition that the SEC has permitted exclusion of a proposal where the proponent "failed to supply any evidence of eligibility."⁷ Obviously, those letters are irrelevant here because we provided substantial evidence of eligibility.

⁶ See, e.g., <https://www.commerce.senate.gov/2023/9/sen-cruz-s-investigation-leads-intuit-to-end-discriminatory-policy-against-firearms-businesses> ; <https://www.dailysignal.com/2023/06/21/kentuckys-daniel-cameron-scores-win-threat-banks-cutting-conservatives/> ; <https://www.breitbart.com/politics/2023/03/03/donald-trump-jr-wins-pnc-bank-reverses-course-blames-cutting-ties-mxm-news-good-faith-error/> ; <https://www.washingtonexaminer.com/opinion/beltway-confidential/2748853/why-is-bank-of-america-canceling-the-accounts-of-religious-organizations/> ; <https://www.zerohedge.com/markets/bank-america-other-companies-share-customer-records-fbi-without-warrant-all-time-director> ; <https://www.newsweek.com/stop-troubling-trend-politically-motivated-debanking-opinion-1787639>.

⁷ Pfizer's no-action request (Dec. 12, 2023) (emphasis added).

Pfizer next argues that the Wells Fargo Letter “failed to provide sufficient evidence of the Proponent’s eligibility.”⁸ However, the Wells Fargo Letter provided in relevant part that: “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 Pfizer Incorporated common stock.”⁹ Wells Fargo could not and would not make such an affirmation without a sound basis for doing so, and of course it had such a basis. When investment accounts change hands between brokerages, the holdings are accompanied by “cost basis” information, information that includes both the date of purchase and the size of the initial purchase and any subsequent alterations. This information transfers in the ordinary course of business, and it did so in this case. The whole financial sector relies on this ordinary-course information transfer to be correct and trustworthy, and the federal government, particularly in aid of its taxing power, similarly relies on it.¹⁰ Pfizer has provided no evidence, nor even a credible suggestion, that this normal-course information transfer either did not happen in this instance or that anything happened to cast the slightest doubt on its effectiveness and veracity. And certainly, Wells Fargo would not have placed itself in danger of committing fraud by issuing its proof of ownership letters containing the relevant information if it had borne the slightest concern about the correctness of the cost-basis information it relied on, which had been received by them in the entirely expected manner in the ordinary course of business.

Except in specially articulated circumstances, shareholder proponents are not even permitted to inquire through the proposal process about corporate actions arising in the ordinary course of business. Here, Pfizer claims that it may refuse to rely upon information generated in the ordinary course of business, even if it can point to no evidence suggesting any irregularity of any kind in that regular business procedure or the merest sigh of doubt about the proper conduct of that business and the veracity of its product. And in fact, Pfizer persists in its increasingly meretricious position even in the face of an additional letter from UBS confirming, with regard to every single holding transferred from UBS to Wells Fargo, that the information that Wells Fargo now has, and relies on in its letters, is exactly the same as the information UBS maintained and then transferred to Wells Fargo.¹¹ This supplemental letter was in no way required under Rule 14a-8(b), as we have seen, but we procured it for Pfizer in order to foreclose even the faintest possibility that Pfizer could in honesty and good faith retain the slightest doubt about the correctness and completeness of the Wells Fargo proof-of-ownership letter. As the lacuna in its no-action letter reveal, we were successful in that attempt.

The Staff has previously noted that some companies “apply an overly technical reading of proof of ownership letters as a means to exclude a proposal,” but that the Staff “generally do[es] not find arguments along these lines to be persuasive.”¹² Specifically, “companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used

⁸ Id.

⁹ Wells Fargo Letter (Nov. 20, 2023).

¹⁰ Cf. “The Cost Basis Reporting Service (CBRS) is an automated system that gives financial firms the ability to transfer customer cost basis information from one firm to another on any asset transfer.”

<https://www.dtcc.com/clearing-services/equities-clearing-services/cbrs>

¹¹ The file name for this letter, which was visible as part of the email sent to Pfizer, is “ACAT Cost Basis Confirmation Letter.” The “Automated Customer Account Transfer Service (ACATS) is a system that automates and standardizes procedures for the transfer of assets in a customer account from one brokerage firm and/or bank to another.” <https://www.dtcc.com/clearing-services/equities-clearing-services/acats> .

¹² SLB 14L.

in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.”¹³ Here, Pfizer should have no honest doubt whatever about our holding the appropriate amount of stock throughout the appropriate period in light of (1) the foregoing guidance, (2) the routine nature of the transfers Pfizer claims to be perplexed by, and (3) Wells Fargo’s clear conclusion that we have held “continuously since November 13, 2020 more than \$2,000 of Pfizer Incorporated common stock.”¹⁴ Rather, Pfizer is simply asking the Staff to declare in contravention of the regulations and guidance governing this no-action process that we were bound by a never-before-articulated requirement to provide yet another piece of paper that it can add to the already complete, regular and inarguably trustworthy demonstration of proof of ownership.

In short, the Wells Fargo Letter itself fully satisfies our obligation under Rule 14a-8(b), and having fully satisfied our duty we then in the fullness of politesse provided another letter, this one indeed from UBS, confirming that absolutely no possibility of doubt about the propriety of our ownership as averred by Wells Fargo remained.

Pfizer nevertheless feigned a remnant of doubt because the Wells Fargo Letter “contained an ambiguous representation as to the Proponent’s continuous ownership.” This is simply false. Again, there is nothing ambiguous about Wells Fargo’s representation that we hold and have held “continuously since November 13, 2020 more than \$2,000 of Pfizer Incorporated common stock.” While Pfizer claims to have been thrown into confusion by the fact that our account with Wells Fargo was established within the past year, it is again difficult to take this claim seriously in light of the ubiquity of stock transfers – particularly given the sophistication of Pfizer and its counsel. Beyond that, the supplementary UBS letter to which Pfizer had no regulatory entitlement, as we have seen, only further undermines any claims to honest doubt. In addition to the confirmation that Wells Fargo’s information was the same as UBS’s, it essentially restated what is obvious from the Wells Fargo Letter: That we transferred stock to Wells Fargo and that Wells Fargo obtained the requisite cost basis information in connection with that transfer to affirm our relevant ownership, as is routine.

Pfizer’s argument isn’t merely empty of material import or good faith; it is fundamentally premised on suggesting that Wells Fargo and UBS are willing to risk their reputations and potentially additional grave consequences to help us to misstate our ownership, or at very least with reckless disregard about the veracity of their assurances about the size and nature of our holdings with them – which would be a particularly bad look for *two banks*. And in this very no-action request, as we will consider below, the Company had the temerity to make arguments based on the proposition that shareholder owners who are not involved in the day-to-day conduct of a business have no business wading into it or doubting the averments of the Company employees who do know those ordinary business procedures intimately. Yet here it stands, insisting that the SEC Staff, on no grounds whatever, assume the unreliability of business procedures that are the whole root and core of a bank’s business, which is transferring assets and the information about those assets correctly. If Pfizer, with no relationship to Wells Fargo and UBS in this context can, with no whisper of grounds for concern, pretend to doubt the efficacy of those ordinary business procedures such as to allow it to require proponents to provide additional heretofore unspecified pieces of paper that will add nothing whatever to the state of anyone’s knowledge or the reliability of that knowledge, then *it* certainly has no business trying to stop stockholders of Pfizer –

¹³ *Id.*

¹⁴ Wells Fargo Letter (Nov. 20, 2023).

owners of the Company – from doubting absolutely every averment Pfizer makes about its ordinary business practices and procedures, and to make any proposals they want about any of it.

And, *ipso facto*, if the Staff concurs with Pfizer in this matter it will have, like Pfizer, adopted directly contradictory positions about the propriety of outsider intrusion into or distrust of ordinary business procedures, given their lack of intimate knowledge. And it would have adopted these directly contradictory positions as justification for weaving out of whole cloth and applying retroactively a new requirement implicitly foreclosed by the language of Rule 14a-8(b): that proponents provide a completely meaningless piece of paper from a business with which it likely no longer has a business relationship, which the Staff does not and presumably cannot require the business itself to provide, thereby allowing private parties to control government-granted civil rights according to their private lights.

The SEC by its Staff should not and truly cannot follow Pfizer into its tangle of pettifogging and contradiction. In addition to everything else, were the SEC to conclude that the Wells Fargo Letter here was insufficient proof of ownership, it would be undermining market efficiency, which includes myriad such transfers on a daily basis, thus violating the core mission of the SEC.

II. The Proposal Does Not Seek to Micromanage the Company or Otherwise Improperly Implicate the Company's Ordinary Business; The Company's Argument that the Proposal's Reference to Specific Organizations in the Supporting Statement Justifies Exclusion Fails as Improper Viewpoint Discrimination; The Proposal Focuses on a Significant Policy Issue that Transcends Ordinary Business

A. The Proposal Does Not Seek to Micromanage the Company or Otherwise Improperly Implicate the Company's Ordinary Business

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."¹⁵ Specifically, it "permits a company to exclude a proposal that 'deals with a matter relating to the company's ordinary business operations.'" SLB 14L notes that the purpose of the exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."

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."¹⁶ 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

¹⁵ All quotations in this section are from SLB 14L unless otherwise indicated.

¹⁶ Quoting Release No. 34-40018 (May 21, 1998) (the "1998 Release").

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.”¹⁷ 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.”

Here, the Proposal does not implicate ordinary business problems that are “impracticable for shareholders to decide how to solve ... at an annual shareholders meeting.” Nor does the Proposal require shareholders to 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.” Rather, the Proposal merely asks shareholders to vote in favor of increasing transparency when it comes to the Company’s charitable donations.

Finally, the SEC has 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.”¹⁸ In light of this, granting the Company’s no-action request here would raise a specter of bias, as discussed below in Part III.A.

B. The Company’s Argument that the Proposal’s Reference to Specific Organizations in the Supporting Statement Justifies Exclusion Fails as Improper Viewpoint Discrimination

Pfizer argues our Proposal may be excluded because the Proposal focuses on “contributions made to specific organizations or types of organizations.”¹⁹

As an initial matter, the substance of our resolution is neutral. When proposals to require charitable-contribution reporting are neutrally drawn and not intended to create a “referendum on donations to particular charities or types of charities,” *McDonald’s Corporation* (avail. Feb. 28, 2017), they are non-excludable. Our proposal is wholly neutral in application and mentions current controversies solely for the purpose of establishing the importance and saliency of charitable-giving concerns.

The supporting statement of our Proposal explains, as well it should, the concerns that animated our submission. Pfizer objects, relying on various previous Staff decisions to suggest that the Staff had established that proposals can be omitted if they make reference to specific organizations or types of organizations. Pfizer first cites *Netflix, Inc.* (Apr. 9, 2021) for the proposition that the Staff there

¹⁷ Emphasis added.

¹⁸ *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.”).

¹⁹ Pfizer no-action request (Dec. 18, 2023).

concluded with the conclusion that a proposal “focused primarily on the company’s contributions to organizations that support social justice movements” was “therefore related to the company’s ordinary business operations and was excludable.”²⁰ However, it is unclear how Pfizer can know the SEC’s rationale for permitting exclusion, which is even more opaque than usual given that the Staff decision was issued without a letter, because Netflix provided at least two grounds for exclusion: (1) “The Proposal may be excluded because it relates to the ordinary business matter of the Company’s charitable contributions to specific types of organizations,” and (2) “The Proposal may be excluded because it seeks to micromanage the Company.”²¹

Further doubt is cast on Pfizer’s conclusion 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 about its charitable giving, or its lobbying activities, or anything else, 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 notion 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.

Pfizer then proceeds to cite an additional eight no-action letters in further support of a “specific organizations” basis for excluding a proposal as impermissibly interfering with ordinary business. Accepting *arguendo* that this is the “holding” of these decisions, then they collectively, along with other Staff decisions, demonstrate a plain history of viewpoint discrimination by the Staff through many years. In addition to the previously discussed *Netflix, Inc.* (Apr. 9, 2021) (“social justice movements”), Pfizer’s own summaries of five of the remaining eight decisions reveal an anti-conservative application of this exclusion. To wit, the specific organizations being protected from investigation by the SEC were all left-leaning (the one summary mentioning a right-leaning organization involved a proposal seeking to ensure that organization’s eligibility for contributions). Reviewing the remaining three cited no-action letters, a similar pattern of biased viewpoint discrimination emerges. See *JPMorgan Chase & Co.* (Feb. 28, 2018) (“the Southern Poverty Law Center, Planned Parenthood and the Clinton Foundation”); *Starbucks Corp.* (Jan. 4, 2018) (“targets specific organizations which support abortion and same-sex marriage”); *PG&E Corp.* (Feb. 4, 2015) (“solicit feedback on the effect of anti-traditional family political and charitable contributions”). Thus, all eight of the no-action letters cited by Pfizer in support of its request to exclude our Proposal because it identifies specific organizations omitted proposals animated by a desire to pull

²⁰ *Id.*

²¹ *Netflix, Inc.* (Apr. 9, 2021).

companies away from left-partisan, anti-fiduciary engagement and expenditures. In other contexts, this extent of one-sided disparate impact creates a presumption of illegal discrimination. Here it suggests that the Staff's concern is not with a focus in the supporting statement on specific organizations or types of organizations, but rather a focus on specific organizations or types of organizations that support agendas that the Staff, or the decision-making members thereof, personally approve of.

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 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 did not seek charitable contribution review or disclosure. Rather, their purpose was 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 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, but even if there were some other explanation, the haphazard application of this 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.

C. The Proposal Focuses on a Significant Policy Issue that Transcends Ordinary Business

The Company cites three no-action letters (*PetSmart, Inc.* (Mar. 24, 2011), *CIGNA Corp.* (Feb. 23, 2011), and *Capital One Financial Corp.* (Feb. 3, 2005)) in support of its argument that the Proposal does not implicate social policy issues that transcend the Company's ordinary business. We note that all three of these decisions pre-date SLB 14L.

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.”²²

The Proposals’ supporting statement makes clear the significant social policy issues raised by the Company’s charitable giving, which quite obviously transcend the Company’s ordinary business:

Pfizer donat[es] untold sums of money to promote divisive agendas outside its fiduciary remit. For instance, Pfizer is listed on the Human Rights Campaign’s (HRC) website as a “Platinum Partner.” The HRC indoctrinates children as young as 5-years-old with radical gender ideology and instruction on sexual orientation by pushing books and lesson plans in schools. Pfizer also “generously” funds the HRC’s “Healthcare Equality Index” (HEI). To earn a perfect HEI score, “hospitals must display LGBT symbols, solicit and use patients’ preferred pronouns, and conduct trainings on LGBT issues.” They must also “provide the same treatments for gender dysphoria that they provide for other medical conditions—meaning a hospital that uses puberty blockers to treat precocious puberty cannot withhold the drugs from children who say they’re transgender.”

The Staff has many, many times found that issues of this sort do “transcend” ordinary business. In fact, it has engaged in viewpoint discrimination to privilege these issues over other concerns, as by finding them to transcend ordinary-business considerations for proposals that sought LGBT-related anti-discrimination protections, while refusing to find the same transcendence for proposals that sought viewpoint anti-discrimination protections. *See, e.g., BlackRock, Inc.* (Apr. 4, 2022; *reconsid. denied* May 2, 2022). As noted elsewhere in this letter brief, that Staff viewpoint discrimination has resulted in a suit challenging the legitimacy of the entire no-action review process. For the Staff now to conclude that these same issues that carry privileged transcendence when raised by some proponents to achieve Staff-favored ends lose that transcendence when raised by other proponents to achieve Staff-disfavored ends would gratuitously stack impermissible Staff bias upon impermissible Staff bias.

Part III. 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. Pfizer is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.

²² Quoting the 1998 Release.

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.²³ This principle prevents governments from regulating speech “because of the speaker’s specific motivating ideology, opinion, or perspective.”²⁴ And the Supreme Court defines “the term ‘viewpoint’ discrimination in a broad sense.”²⁵ This is because “[v]iewpoint discrimination is a poison to a free society.”²⁶

The rule against viewpoint discrimination prevents allowing speech based on one “political, economic, or social viewpoint” while disallowing other views on those same topics.²⁷ It also prohibits excluding views that the government deems “unpopular”²⁸ or because of a perceived hostile reaction to the views expressed.²⁹

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.”³⁰

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 The Trevor Project and 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

²³ *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019).

²⁴ *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 820 (1995).

²⁵ *Matal*, 137 S. Ct. at 1763.

²⁶ *Iancu*, 139 S. Ct. at 2302 (Alito, J., concurring).

²⁷ *Rosenberger*, 515 U.S. at 831.

²⁸ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995).

²⁹ *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

³⁰ *PepsiCo, Inc.*, *supra*.

on viewpoint through subjective and unclear terms.³¹ 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 Pfizer’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 Pfizer 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 set aside.³² The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”³³ 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.³⁴

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.³⁵

Given the Staff’s prior precedent on charitable contributions and political expenditures, issuing relief to Pfizer 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 Pfizer no-action relief. Pfizer 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.”³⁶ While this authority might be read “broadly,” “it is not seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”³⁷ The purpose of Section 14(a) was to ensure that investors had “adequate knowledge” about the “financial

³¹ Forsyth Cnty., Ga., 505 U.S. at 131.

³² 5 U.S.C. § 706(2)(A).

³³ FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1158 (2021); see also Motor Vehicle Mfgs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50 (1983).

³⁴ See FCC, 141 S. Ct. at 1160.

³⁵ FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

³⁶ 15 U.S.C. § 78n(a)(1).

³⁷ Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders' meetings."³⁸

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.³⁹ 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."⁴⁰ 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.⁴¹ A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders' power to adopt.⁴²

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

Conclusion

The Wells Fargo Letter states clearly that: "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 Pfizer Incorporated common stock." This satisfies our proof of ownership obligations. The Company's argument that proponents must provide letters from every record holder covering the relevant holding period is unsupported by the relevant regulatory text and furthermore so unworkable as to undermine market efficiency in way contrary to the purposes of the Securities Exchange Act.

Our Proposal seeks only a disclosure of readily available charitable contributions, not in any way the micromanagement of the Company. Furthermore, the Proposal implicates issues of significant social policy that transcend the ordinary business of the Company. 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

³⁸ S. Rep. No. 792 at 12 (1934).

³⁹ Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

⁴⁰ Id.

⁴¹ See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).

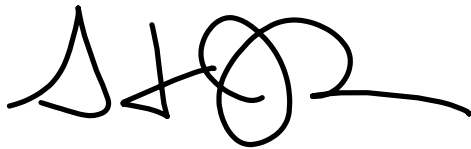
⁴² Id. at 232.

hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Shepard
FEP Director
National Center for Public Policy Research

A handwritten signature in black ink, appearing to read "Stefan Padfield". The signature is more stylized and angular than the one above, with a large loop and a long horizontal stroke.

Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Margaret M. Madden ([REDACTED])