



DIVISION OF
CORPORATION FINANCE

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

March 13, 2025

James J. Killerlane III
American Express Company

Re: American Express Company (the "Company")
Incoming letter dated December 20, 2024

Dear James J. Killerlane III:

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

The Proposal requests that the board of directors' Compensation and Benefits Committee revisit its incentive guidelines for executive pay to identify and consider eliminating discriminatory DEI goals from compensation inducements.

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

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In our view, the Company has not substantially implemented the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Luke Perlot
National Legal and Policy Center

December 20, 2024

Via Online Shareholder Proposal Form

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

Re: Shareholder Proposal Submitted by the National Legal and Policy Center

Dear Sir or Madam:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), American Express Company, a New York corporation (the “Company”), hereby gives notice of the Company’s intention to exclude from its proxy statement for its 2025 annual meeting of shareholders (the “2025 Proxy Statement”) a shareholder proposal (the “Proposal”) submitted by the National Legal and Policy Center (the “Proponent”). A copy of the Proposal, together with the supporting statement included in the Proposal, is attached hereto as Exhibit A.

The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if the Company excludes the Proposal from the 2025 Proxy Statement pursuant to Rule 14a-8(i)(10) under the Exchange Act because the Company has substantially implemented the Proposal and Rule 14a-8(i)(3) under the Exchange Act because the Proposal is impermissibly vague and indefinite so as to be materially false or misleading.

In accordance with Rule 14a-8(j), we are submitting this letter to the Commission no later than 80 calendar days before the Company expects to file its definitive 2025 Proxy Statement with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (Nov. 7, 2008) and related Staff guidance, we have submitted this letter and its attachments to the Commission electronically through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), a copy of this submission is being forwarded simultaneously to the Proponent. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal from the 2025 Proxy Statement to be proper.

The Company intends to file its definitive 2025 proxy materials on March 14, 2025, and print shortly thereafter.

THE PROPOSAL

The proposed resolution included in the Proposal provides as follows:

Resolved: Shareholders request the Board of Directors’ Compensation and Benefits Committee to revisit its incentive

guidelines for executive pay, to identify and consider eliminating discriminatory DEI goals from compensation inducements.

BASIS FOR EXCLUSION

In accordance with Rule 14a-8, the Company hereby respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the 2025 Proxy Statement for the following reasons:

- A. The Proposal may be excluded pursuant to Rule 14a-8(i)(10) under the Exchange Act, because the Company has substantially implemented the Proposal; and
- B. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) under the Exchange Act, because the Proposal is impermissibly vague and indefinite so as to be materially false and misleading.

ANALYSIS

A. Under Rule 14a-8(i)(10), the Proposal may be excluded because the Company has already substantially implemented the Proposal.

1) Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if it has already substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission stated in 1976 that the exclusion is “designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.” Exchange Act Release No. 12598 (Jul. 7, 1976). Originally, the Staff narrowly interpreted the predecessor to Rule 14a-8(i)(10) to allow exclusion of a proposal only if the proposal had been “fully effected” by the company. SEC Release No. 34-19135 (Oct. 14, 1982). In 1983, however, the Commission recognized that this “formalistic” application of the rule “defeated its purpose” and therefore revised its interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” See SEC Release No. 34-20091 (Aug. 16, 1983) (“1983 Release”). The Commission subsequently codified this revised interpretation in SEC Release No. 34-400 I 8 (May 21, 1998). Accordingly, the actions requested by a proposal need not be “fully effected” by the company to be excluded; rather, to be excluded, they need only have been “substantially implemented” by the company. See 1983 Release.

Applying this standard, the Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (Mar. 28, 1991). Differences between a company's action's and a shareholder proposal are permitted where the company's actions satisfactorily address the proposal's essential objectives. See, e.g., *Best Buy Co., Inc.* (Apr. 22, 2022); *BlackRock, Inc.* (Apr. 2, 2021); *JPMorgan Chase & Co.* (Mar. 9, 2021); *Devon Energy Corp.* (Apr. 1, 2020); *Johnson & Johnson* (Jan. 31, 2020); *Pfizer Inc.* (Jan. 31, 2020); *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019);

United Cont'l Holdings, Inc. (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); and *Wal-Mart Stores, Inc.* (Mar. 16, 2017).

In addition, the Staff has concurred that, when substantially implementing a shareholder proposal, companies can address aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. The Staff has concurred that proposals may be excluded when the company has implemented the proposal's purported goals, even if somewhat differently than the proposal requests. *See Exxon Mobil Corp.* (Mar. 20, 2024) (concurring in the exclusion of a shareholder proposal seeking to amend the company's incentive pay recoupment policy to a higher standard than that already implemented by the company); *Progressive Corp.* (Mar. 5, 2021) (concurring in the exclusion of a shareholder proposal which requested the disclosure of "director ideologies" when the company had already disclosed significant biographical information on its directors); *Apple Inc.* (Dec. 11, 2014) (concurring in the exclusion of a proposal that requested the establishment of a Public Policy Committee where the company had existing systems and controls, including an audit and finance committee, designed to oversee the matters listed in the proposal); and *Entergy Corp.* (Feb. 14, 2012) (concurring in the exclusion of a proposal that requested establishment of a committee to conduct a special review of certain nuclear matters when the company had an existing nuclear committee responsible for the proposed matters).

- 2) *The Proposal may be excluded because the Company has already substantially implemented the proposal through the Company's annual review of incentive executive compensation.*

The language in the Proposal asks that the Company "revisit" certain executive incentive pay guidelines, "identify" certain diversity, equity and inclusion ("DEI") goals related to "compensation inducements" and "consider eliminating" such goals. As discussed below, the Company has already substantially implemented the Proposal through its annual review of its Annual Incentive Award ("AIA") goals, and the Proposal's essential objective has thereby been satisfied.

As disclosed in the Company's proxy statement for its 2024 annual meeting of shareholders (the "2024 Proxy Statement"), the Compensation and Benefits Committee is responsible for assisting the Board in its oversight responsibilities related to executive compensation programs, including setting the annual performance goals for each of the Company's executive officers, including the Chief Executive Officer. The Compensation and Benefits Committee charter requires that the Committee review "strategic, financial and operational goals and payout schedules for the purpose of annual and longer-term incentive pay."

In connection with its annual review and approval of the Company's AIA goals, the Compensation and Benefits Committee (i) periodically examines pay practices and pay data among peer companies to better understand the competitiveness of its compensation program and its various elements, (ii) engages an independent compensation consultant to provide counsel on various compensation-related matters, including peer group selection and competitive market assessment, market insights and trends in executive compensation and proposed levels of compensation, and (iii) considers feedback from shareholder engagement. Additionally, as

required by the Compensation and Benefits Committee charter, the Compensation and Benefits Committee considers “applicable regulations on the design and operation of incentive compensation programs in determining the compensation of executive officers and key employees of the Company.”

As a result of the above process, the Compensation and Benefits Committee already annually revisits whether the inclusion of the goals in the AIA remains appropriate and in the best interest of shareholders, taking into account peer and general market practice, shareholder input and any applicable regulatory developments. This annual review considers *all* goals, not just those that could be construed as “DEI,” as well as the weighting amongst the goals. For example, as an initial response to the 2023 Say-on-Pay vote and shareholder engagement inputs, and to enhance the Company’s compensation practices, the Compensation and Benefits Committee in early 2024 increased the weighting of the Shareholder quadrant of the AIA (i.e., financial objectives) from 45% to 60%, increasing the weight towards quantifiable financial objectives, and decreased the Colleague quadrant, from 15% to 10%. At the same time, the Compensation and Benefits Committee removed representation-related goals that were previously referenced within the Colleague quadrant for awards made pertaining to 2024 performance.

While the Proposal merely requests that the Compensation and Benefits Committee “revisit” its guidelines for executive pay (which, as noted above, the Committee already does as part of its regular review and approval of AIA goals), the supporting statement reflects the Proponent’s desired outcome from this revisitation to be the removal of DEI goals from the AIA. As noted above, the Staff has allowed exclusion of proposals even if the company addresses aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. In this instance, the Company may exclude the Proposal because it had already undertaken the requested process and made changes prior to receiving the Proposal.

In light of the Staff’s decisions cited above regarding substantial implementation and the annual review by the Compensation and Benefits Committee of the Company’s executive compensation policies, including compensation inducements, engagement with stakeholder feedback and responding to shareholder concerns through changing incentive executive compensation policies, it is unnecessary to submit the Proposal to shareholders for their consideration as the Proposal has already been substantially implemented.

B. Under Rule 14a-8(i)(3), the Proposal may be excluded because it is impermissibly vague and indefinite so as to be materially false and misleading.

1) Rule 14a-8(i)(3) Background

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” The Staff has determined that shareholder proposals may be excluded pursuant to Rule 14a-8(i)(3) where “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or

measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB No. 14B”). The Staff has recognized that exclusion is permitted pursuant to Rule 14a-8(i)(3) if “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” See SLB No. 14B; see also *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”).

The Staff has noted that a proposal may be excludable when the “meaning and application of terms and conditions...in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations” such that “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal.” See *Fuqua Industries, Inc.* (Mar. 12, 1991). The Staff has also noted that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal contains only general or uninformative references regarding the steps to be taken, or otherwise fails to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. See, e.g., *The Walt Disney Co. (Grau)* (Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) as vague and indefinite a proposal that requests a prohibition on communications by or to cast members, contractors, management or other supervisory groups within the Company of “politically charged biases regardless of content or purpose,” where the Staff stated that “in applying this proposal to the [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests”); *Apple Inc.* (Dec. 6, 2019) (permitting exclusion of a proposal seeking to “improve guiding principles of executive compensation” that neither provided an explanation of the key term “improve” nor sufficiently described for the company or shareholders what actions to implement it); *eBay Inc.* (Apr. 10, 2019) (permitting exclusion of a proposal requesting that the company “reform the company’s executive compensation committee” because “neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the ‘reform’ the [p]roposal is requesting,” and that, therefore, “the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading”); *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board “not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action,” where it was unclear what board actions would “prevent the effectiveness of [a] shareholder vote”); and *General Electric Co.* (Jan. 21, 2011) (allowing exclusion of a proposal requesting implementation of more long-term incentives because it was impermissibly vague in explaining how the program would work in practice, including the “[f]inancial [m]etric(s)” that would be used in implementing the proposal).

The courts have also ruled on this issue, finding that “[s]hareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote” (*New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992)).

2) *The Proposal may be excluded because it is impermissibly vague and misleading.*

As described above, the Compensation and Benefits Committee regularly revisits the Company's incentive executive compensation policies and goals. Part of this assessment includes understanding and weighting various metrics of executive incentive compensation. The Proposal requests that the Company "revisit" its executive pay policies. Like the Staff's decisions in *Apple Inc.* and *eBay Inc.*, the Proposal here does not provide specific guidance on what "revisit" means, particularly in the context of the Compensation and Benefits Committee's regular review of its executive incentive compensation, including any performance metrics. Shareholders could interpret "revisit" as a formal, one-time assessment for permanent adoption or as an additional ordinary, periodic and regular review. In either case, the Compensation and Benefits Committee Charter and compensation policies already require "revisiting" of total executive compensation, including incentive pay.

The Proposal also merely requests the revisitation of the incentive guidelines and the "consideration" of eliminating DEI goals. The word "consideration" is an important part of the Proposal yet is inherently vague and subject to an unknown number of interpretations as to what constitutes "consideration" for this purpose. The language of the Proposal and the supporting statement provides neither a clear standard nor adequate detail for the Compensation and Benefits Committee to implement the Proposal, especially when the Compensation and Benefits Committee, as discussed above, already conducts a regular review of the Company's executive compensation policies. The failure of the Proposal to provide guidance as to what type of "consideration" would be required under the Proposal leaves the Company and shareholders uncertain of exactly why the Company's existing review of the Company's executive compensation policies is insufficient and what further "consideration" is requested by the Proposal. Moreover, in light of the language used, it is possible that shareholders could mistakenly believe they are voting for the elimination of the DEI goals altogether rather than simply the procedural step of "revisit[ing]" them, as the Proposal actually requests. This Proposal would therefore impermissibly mislead shareholders by asking them to vote for a proposal which does not clearly explain what additional action the Company would be compelled to take if it were approved.

Based on the Staff's decisions cited above regarding materially false, misleading or impermissibly vague and indefinite statements, the Company's regular review of its incentive executive compensation policies and the Proposal's unclear language on what it asks for the Company to do due to its regular review of its compensation policies, it is unnecessary to submit the Proposal to shareholders for their consideration as the Proposal contains impermissibly vague or misleading statements.

CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal from its 2025 Proxy Statement.

If you have any questions or require additional information, please do not hesitate to contact James J. Killerlane at (212) 640-2000 or corporatesecretarysoffice@aexp.com. If the Staff is unable to agree with our conclusions without additional information or discussions, we

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respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "James J. Killerlane III".

James J. Killerlane III
Corporate Secretary and Chief Governance Officer

Attachments

cc: Luke Perlot, via email at [REDACTED]
Francesca L. Odell, Cleary Gottlieb Steen & Hamilton LLP
Lillian Tsu, Cleary Gottlieb Steen & Hamilton LLP

Exhibit A

The Proposal

See attached.



November 15, 2024

James J. Killerlane III
Corporate Secretary and Chief Governance Officer
American Express Company
200 Vesey Street,
New York, NY 10285

VIA UPS & EMAIL: [REDACTED]

Dear Mr. Killerlane/Corporate Secretary:

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the American Express Company’s (“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 U.S. Securities and Exchange Commission’s proxy regulations.

National Legal and Policy Center (NLPC) is the beneficial owner of 19.716 shares of the Company’s common stock with a value exceeding \$2,000, which shares have been held continuously for more than three years prior to this date of submission. NLPC intends to hold the shares through the date of the Company’s next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Director’s Compensation and Benefits Committee to revisit its incentive guidelines for executive pay, to identify and consider eliminating discriminatory DEI goals. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative can meet with the Company via teleconference to discuss the proposal on December 3 at 10 a.m. or December 5 at 10 a.m., in the Eastern Time Zone (U.S.). While we can potentially accommodate other dates and times that would align with Company representatives’ schedules, NLPC will *not* be able to meet with the Company outside the time window of 10 to 30 days from the date of the Proposal’s submission, as specified by SEC guidelines. I can be reached at [REDACTED] or at [REDACTED].

Nat’l Headquarters: [REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a “no-action” letter should be forwarded to me via email or sent to my attention at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "L Perlot". The signature is fluid and cursive, with the first name "L" being particularly prominent.

Luke Perlot
Associate Director
Corporate Integrity Project

Enclosure: “Revisit DEI Goals in Executive Pay
Incentives” proposal

Revisit DEI Goals in Executive Pay Incentives

Resolved: Since the June 2023 U.S. Supreme Court decision in *Students for Fair Admissions v. Harvard College*,¹ hundreds of higher education institutions have shuttered their diversity, equity and inclusion (DEI) programs and positions.²

Consequently, “there has been a sharp uptick in litigation challenging corporate DEI programs and initiatives, alleging that they require unlawful employment and contracting decisions to be made on the basis of race, in violation of Title VII of the Civil Rights Act of 1964...”³

Corporate compliance lawyers now advise clients that “DEI initiatives and programs that are not open to all applicants or those that apply an explicit race- or gender-based focus will likely face continued and heightened scrutiny.” Also: “We also expect to see ongoing scrutiny of perceived hiring quotas and set asides, particularly those that may appear to be incentivized by bonuses for management or company leadership.”⁴

Further, “companies, and their management teams and boards, should be prepared for increased employment-related litigation including litigation that seeks to hold executive officers and directors personally liable for purported breaches of their fiduciary duties in connection with the corporation’s DEI policies.”⁵

Many corporations dramatically reduced or eliminated their DEI programs,⁶ and companies face retribution for their discrimination. For example, Starbucks was the subject of a \$28.3 million judgment after a former worker claimed she was fired for being white.⁷

Supporting Statement: The American Express Company (“Amex” or “Company”) favors certain groups over others. The Company has an explicit goal to increase spending with suppliers owned by minorities, LBGT, women, veterans, and other “underrepresented” groups.⁸

Pay for the Company’s executive officers include annual cash incentives subjectively awarded by the Compensation and Benefits Committee. This annual award is 15% weighted for “colleague,” which includes 33% for “culture” and 33% for “diversity representation.” According to the Compensation Discussion & Analysis included in the Company’s 2024 Proxy Statement, Amex aims to increase “underrepresented segments across the Company.”⁹

¹ https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf

² <https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei>

³ <https://www.wilmerhale.com/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa>

⁴ <https://www.skadden.com/insights/publications/2023/12/2024-insights/esg/the-supreme-courts-affirmative-action-opinion>

⁵ <https://corpgov.law.harvard.edu/2024/02/14/how-boards-should-be-thinking-about-the-supreme-courts-sffa-affirmative-action-decision/>

⁶ <https://nypost.com/2024/09/03/us-news/how-robbey-starbuck-is-prompting-brands-like-ford-to-ditch-dei/>

⁷ <https://www.cnn.com/2023/08/17/business/starbucks-payment-racial-discrimination-white/index.html>

⁸ https://www.americanexpress.com/content/dam/amex/en-us/newsroom/pdfs/AXP_2023_2024_ESG_Report.pdf

⁹ https://s26.q4cdn.com/747928648/files/doc_financials/2023/ar/2024-Proxy-Statement.pdf

These discriminatory initiatives leave Amex ripe for regulatory, reputational and litigation risk. Its attempt to cram DEI's non-GAAP nature into the proxy statement's compensation discussion demands either a legally dubious quota regime, or it fails SEC compliance.¹⁰ The Council of Institutional Investors' general counsel stated that research shows "companies are engaging in an opportunistic use of non-GAAP earnings to justify higher executive pay."

FTI Consulting advises there is a "heightened focus" on "litigation risk," which "has transitioned from being merely an operational concern to becoming a strategic priority for the highest levels of corporate governance."¹¹

Resolved: Shareholders request the Board of Directors' Compensation and Benefits Committee to revisit its incentive guidelines for executive pay, to identify and consider eliminating discriminatory DEI goals from compensation inducements.

¹⁰ <https://tax.thomsonreuters.com/news/council-of-institutional-investors-again-urges-sec-to-close-loophole-on-non-gaap-in-executive-pay/>

¹¹ <https://www.fticonsulting.com/insights/articles/de-risking-litigation-exposure-conflict-management-integral-business-administration>



February 17, 2025

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

Re: *The American Express Company*
Shareholder Proposal of the National Legal and Policy Center (“NLPC”)
Securities Exchange Act of 1934—Rule 14a-8

SUBMITTED THROUGH THE SEC ONLINE SHAREHOLDER PORTAL

Ladies and Gentlemen:

This letter responds to the letter dated December 20, 2024, from James J. Killerlane III of The American Express Company (“Amex” or “Company”), requesting that the Division of Corporation Finance (“Staff”) take no action if the Company excludes our shareholder proposal (“Proposal”) from its proxy materials (“Proxy”) for its 2025 annual shareholder meeting.

The Company’s request provides insufficient justification for exclusion and should be denied no-action relief.

The Proposal requests the “Board of Directors’ Compensation and Benefits Committee to revisit its incentive guidelines for executive pay, to identify and consider eliminating discriminatory DEI goals from compensation inducements.”

Amex’s request to exclude the Proposal—on the grounds that it has been “substantially implemented” under Rule 14a-8(i)(10) and is “impermissibly vague and indefinite” under Rule 14a-8(i)(3)—is insufficient and should be denied. Contrary to the Company’s arguments, the Proposal has not been meaningfully addressed by its existing compensation review processes, nor does it mislead or confuse shareholders about what it requires. Therefore, as explained more fully below, the Proposal is eligible for inclusion in the Proxy, and the Staff should recommend enforcement action if Amex omits it.

To address the Company’s no-action request, I will address the Company’s “Analysis” of its points of objection to the Proposal submission as presented in its December 20 letter.

Nat’l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: (571) 749-5085 | Email: lperlot@nlpc.org

The Proposal has not been “substantially implemented,” and therefore the Proposal should NOT be excluded from its Proxy under Rule 14a-8(i)(10)

The Company’s argument in favor of no-action relief under Rule 14a-8(i)(10) relies on the notion that the Proposal has already been “substantially implemented,” citing the Board of Directors’ Compensation and Benefits Committee’s (“Committee”) existing annual review of executive compensation. Specifically, Amex seizes on the word “revisit” in the Proposal’s resolved clause to claim the Committee automatically satisfies the Proposal’s request by virtue of its ordinary, year-to-year executive pay assessments.

Under that reasoning, no shareholder proposal addressing any executive pay matter could ever survive, because the Company could simply say the Committee already “revisits” its compensation practices. By this logic, shareholders would lose the ability to voice concerns about any issue within the board’s purview – which should be everything – on the grounds that boards already have authority over it. Such a result would directly undermine the rights of shareholders as contemplated under the federal securities laws. Indeed, executive compensation is routinely subject to shareholder scrutiny and input, as reflected by the long-standing statutory requirement of “Say-on-Pay.”¹ If it is the board’s fiduciary duty to represent the will and interests of shareholders, then shareholders must be allowed the opportunity to highlight the board’s shortcomings and encourage changes when necessary.

Moreover, it is precisely because the Committee’s routine annual review has not adequately addressed investor concerns that the Proposal calls for reexamination of executive compensation incentives that hinge on Diversity, Equity & Inclusion (“DEI”) goals. The Company’s objection reads as though the Proposal demanded *only* that the Committee “look at the issue again.” In fact, the Proposal urges the Committee to consider eliminating what shareholders view as discriminatory goals from executive compensation, placing a sharper focus on whether these goals are actually aligned with the best interests of the Company and its shareholders.

If the Proponent had instead drafted the Proposal to *require* the Committee to remove DEI criteria, the Company would almost certainly argue that it impermissibly micromanages “ordinary business” under Rule 14a-8(i)(7). In short, the Proponent carefully structured its request – “to revisit...identify and consider eliminating discriminatory DEI goals from compensation inducements” – in a way that allows the Company maximum flexibility to implement it, while remaining true to the Proposal’s concerns.

¹ David C. Lee and Brian D. O’Neill. “Dodd-Frank’s “Say-on-Pay” Provisions,” Insights, Gibson Dunn, October 2010. <https://www.gibsondunn.com/wp-content/uploads/documents/publications/Lee-ONeill-DoddFranksSayonPayProvisions.pdf>

Allowing Amex to exclude the Proposal on a “substantial implementation” basis would leave shareholders no avenue to request change in areas boards habitually review. That would set a dangerous precedent. A board’s or committee’s routine processes should meaningfully address the same essential objective of the proposal for a company to claim it has been “substantially implemented.”

Here, however, the Company never acknowledges the crux of the Proposal: the serious concern that DEI-based compensation metrics may be inherently discriminatory and should be reevaluated. The Company instead asserts that it is entitled to omit the Proposal simply because it has an ongoing compensation review process. While it notes that it has removed some of its “representation-related goals that were previously referenced within the Colleague quadrant,” it has not conducted a review or fully removed its DEI-based compensation components. The requested action – “revisit...identify and consider eliminating discriminatory DEI goals from compensation inducements – has not been taken, so the Company cannot claim that the Proposal has been substantially implemented. Absent a genuine, standalone review that specifically weighs whether those DEI metrics and quotas are consistent with the Company’s fiduciary obligations, the requested action has not been taken and the Proposal has not been substantially implemented.

Accordingly, the claim that the Proposal is “substantially implemented” fails. The Committee’s standard annual compensation review is no substitute for the specific policy reexamination proposed by shareholders. Thus, the Proposal should not be excluded on the basis of Rule 14a-8(i)(10).

The Proposal is not “materially false and misleading”, and therefore the Proposal should NOT be excluded from its Proxy under Rule 14a-8(i)(3)

Amex contends that the Proposal is so “vague and indefinite” that shareholders and the Company cannot discern what it requires, thus rendering it “materially false and misleading.” This argument fails on both the law and the facts. The Proposal’s central request is clear: The Compensation and Benefits Committee should revisit its executive incentive guidelines with an eye toward *identifying and considering* the removal of discriminatory DEI goals from compensation metrics. That single, straightforward purpose leaves little room for confusion or “false” impressions.

If the Proponent had prescribed the outright removal of DEI-based incentives – i.e., “remove any DEI criteria from executive compensation” – Amex would likely claim the Proposal impermissibly micromanages ordinary business matters under Rule 14a-8(i)(7). In other words – as previously noted in regards to Rule 14a-8(i)(10) – the Proponent carefully sought to avoid an overly prescriptive approach while maintaining a clear objective—namely, that the Company should specifically evaluate the continued appropriateness of DEI-related goals in executive pay.

Further, the Proposal does not use ambiguous language that leaves the Company adrift in implementing it. The Company insists the phrase “revisit its incentive guidelines” means nothing more than the Committee’s routine, annual review. But this reading overlooks the critical portion of the Proposal—namely, “consider eliminating discriminatory DEI goals.” In other words, the Proposal explicitly raises concern that certain DEI-based inducements in executive pay may be inconsistent with the Company’s fiduciary interests and urges the Board to weigh removing them. This is not some cryptic or impenetrable demand. It is a narrowly tailored request that any shareholder could readily understand, and that the Company could just as readily evaluate.

Additionally, while the Proposal allows for flexibility, it in no way muddies the underlying objective. Rule 14a-8(i)(3) is designed to exclude proposals so hopelessly indefinite that neither management nor shareholders would be sure what they are voting on. That is plainly inapplicable here. Shareholders know the precise action requested—take a closer look at these DEI-based incentives, and if they pose legal, reputational, or performance risks, consider doing away with them. The Company may disagree on the merits, but that disagreement does not render the Proposal misleading.

By giving the Board latitude to analyze DEI-linked incentives—without demanding any specific policy outcome—the Proposal strikes an appropriate balance. It is not so rigid as to micromanage executive pay decisions, nor is it so vague that shareholders cannot grasp its intent.

Consequently, Amex’s claim that the Proposal is “materially false and misleading” should be rejected. Under Rule 14a-8, proposals that specify a coherent policy request, tethered to clear concerns, are squarely permissible. Shareholders deserve the chance to vote on the issue identified in the Proposal, and the Company’s effort to characterize it as vague is simply an attempt to sidestep meaningful engagement on DEI-related incentives. The Staff should allow the Proposal to proceed to a vote, so shareholders can decide whether the Board ought to revisit and potentially remove these contested DEI metrics.

Conclusion

As outlined above in further explanatory detail and context, that was either misrepresented or omitted by the Company in its no-action request, the Proposal is fully compliant with all aspects of Rule 14a-8. For this reason, NLPC asks the Staff to recommend enforcement action should the Company omit the Proposal.

A copy of this correspondence has been timely provided to the Company. If you have any questions or need more information, please feel free to contact me via email at lperlot@nlpc.org or by telephone at (571) 749-5085.

Sincerely,

Office of Chief Counsel
Division of Corporation Finance
February 13, 2024
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