



DIVISION OF
CORPORATION FINANCE

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

February 2, 2024

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

Re: Johnson & Johnson (the "Company")
Incoming letter dated December 1, 2023

Dear Marc S. Gerber:

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

The Proposal requests the board of directors to issue a report about compensation and health benefit gaps, which should include how they address dysphoria and detransitioning care across gender classifications.

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 transcends 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: Paul Chesser
National Legal and Policy Center

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MUNICH
PARIS
SÃO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
202-371-7233
DIRECT FAX
202-661-8280
EMAIL ADDRESS
MARC.GERBER@SKADDEN.COM

VIA STAFF ONLINE FORM

December 1, 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: Johnson & Johnson – 2024 Annual Meeting
Omission of Shareholder Proposal of
National Legal and Policy Center

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Johnson & Johnson, a New Jersey corporation, to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Johnson & Johnson’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Legal and Policy Center (the “Proponent”) from the proxy materials to be distributed by Johnson & Johnson 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 Johnson & Johnson’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 Johnson & Johnson.

I. The Proposal

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

RESOLVED: Shareholders request the board of directors issue a report by March 31, 2025 about compensation and health benefit *gaps*, which should include how they address dysphoria and detransitioning care across gender classifications, including associated reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary and private information, litigation strategy and legal compliance information, and should be published on the Company's website.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in Johnson & Johnson's view that it may exclude the Proposal from the 2024 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to Johnson & Johnson's ordinary business operations.

III. Background

On October 17, 2023, Johnson & Johnson received the Proposal, accompanied by a cover letter dated October 13, 2023. On October 24, 2023, Johnson & Johnson sent a letter to the Proponent requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent had beneficially owned the requisite number of shares of Johnson & Johnson common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal, to which the Proponent satisfactorily responded. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.¹

¹ Exhibit A omits correspondence between Johnson & Johnson and the Proponent that is irrelevant to this request, such as the aforementioned deficiency letter and subsequent response. See the Staff's "Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to Johnson & Johnson’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).”). In addition, in Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the “subject matter to which the risk pertains or that gives rise to the risk” in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. *See, e.g., Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

The Staff has consistently permitted companies to exclude shareholder proposals under Rule 14a-8(i)(7) when, viewed in their entirety, those proposals focused primarily

Submissions and Related Materials” (Dec. 17, 2021), available at <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217>.

on management of a company's workforce. *See* 1998 Release (excludable matters "include the management of the workforce, such as the hiring, promotion, and termination of employees"); *see also, e.g., Apple Inc.* (Jan. 3, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the effects of the company's return-to-office policy on employee retention and the company's competitiveness); *Intel Corp.* (Mar. 18, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the impact of the company's public display of the pride flag on current, past and prospective employees' view of the company as a desirable place to work); *Walmart, Inc.* (Apr. 8, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board prepare a report evaluating discrimination risk from the company's policies and practices for hourly workers taking absences from work for personal or family illness, noting that the proposal "relates generally to the [c]ompany's management of its workforce").

More specifically, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of proposals that relate to general employee benefits. For example, in *Exelon Corp.* (Feb. 21, 2007), the Staff permitted the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company implement rules and regulations forbidding executives from establishing incentive bonuses that would require a reduction to employee retiree benefits. The company argued in part that "issues involving general employee and retiree benefits are perhaps one of the most fundamental employee issues companies . . . deal with on a day-to-day basis" and that "to the extent that the [p]roposal can be characterized as a request that [the company] and its subsidiaries provide a specified level of benefits to their respective retirees, this is exactly the sort of intrusion into the day-to-day authority of the [b]oard that is properly excluded under Rule 14a-8(i)(7)." In permitting the exclusion of the proposal, the Staff noted that "the thrust and focus of the proposal is on the ordinary business matter of general employee benefits." *See also, e.g., Dollar Tree, Inc.* (May 2, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "analyze and report on risks to its business strategy in the face of increasing labor market pressure," including, among other things, "how the [c]ompany's forward-looking strategy and incentives will enable competitive employment standards, including wages, benefits, and employee safety"); *McDonald's Corp.* (Feb. 19, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the "feasibility of extending the paid sick leave policy adopted in response to COVID19 [sic] . . . as a standard employee benefit"); *Walmart Inc.* (Mar. 12, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the company to study the "feasibility of providing two weeks of paid sick leave" as a standard employee benefit not limited to COVID-19); *ConocoPhillips* (Feb. 2, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal to eliminate pension plan offsets as "relating to [the company's] ordinary business operations (i.e., employee benefits)"); *International Business Machines Corp.* (Jan. 13, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a

report “examining the competitive impact of rising health insurance costs” including, among other things, “steps or policy options the [b]oard has adopted, or is currently considering” to reduce employee healthcare costs paid by the company, noting that the proposal relates to “[the company’s] ordinary business operations (i.e., employee benefits)”; *International Business Machines Corp.* (Jan. 2, 2001) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting cost of living allowances to the company’s retiree pensions as “relating to [the company’s] ordinary business operations (i.e., employee benefits)”). As demonstrated in these letters, a proposal focused primarily on general employee benefits is excludable under Rule 14a-8(i)(7).

In this instance, the Proposal, viewed in its entirety with the supporting statement, focuses on Johnson & Johnson’s management of its workforce along with general employee benefits, both of which are ordinary business matters. Specifically, the Proposal’s resolution requests a report about alleged gaps in Johnson & Johnson’s employee health benefits relating to gender reassignment surgery. The supporting statement claims that Johnson & Johnson “provides health benefits to employees who suffer gender dysphoria/confusion,” citing Johnson & Johnson’s provision of employee benefits that cover “surgery to change the sex of any employee diagnosed with gender identity disorder,” but that “appears to offer no . . . insurance coverage in its employee benefits” for “detransitioners” or “restorative health care.” Moreover, the resolution asks a report addressing, among other things, “risks related to recruiting and retaining diverse talent” based on Johnson & Johnson’s employee health benefits policy. The Proposal thus focuses on how Johnson & Johnson manages its workforce and, specifically, the types of health benefits and aspects of coverage within those benefits that are available to Johnson & Johnson employees.

The Proposal’s supporting statement contains assertions related to transgender care generally, but these statements relate only to the Proposal’s focus on general employee benefits. Decisions with respect to Johnson & Johnson’s policies for managing its sizable and global workforce are at the heart of Johnson & Johnson’s business as a global healthcare products company and are so fundamental to Johnson & Johnson’s day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. In this regard, specific employee benefits and coverage considerations for Johnson & Johnson’s large global workforce, which the Proposal focuses on, are precisely the types of employee management decisions that are fundamental to Johnson & Johnson’s ordinary business operations. Therefore, consistent with the precedent described above, the Proposal is excludable under Rule 14a-8(i)(7).

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; SLB 14E. The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. As discussed above, in *Walmart Inc.* (Apr. 8, 2019), the excluded proposal requested that the board prepare a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal related generally to the company's management of its workforce and "[did] not focus on an issue that transcends ordinary business matters." *See also, e.g., Amazon.com, Inc.* (Apr. 8, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's workforce turnover rates and the effects of labor market changes that have resulted from the COVID-19 pandemic, noting that the proposal "relates to ordinary business matters and does not focus on significant social policy issues"); *JPMorgan Chase & Co.* (Mar. 25, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on pay and total estimated compensation for each role with certain specific break-downs and ranges, noting that the proposal "relates to ordinary business matters and does not focus on sufficiently significant social policy issues"); *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).

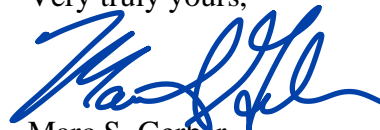
Here, the Proposal's overwhelming concern with Johnson & Johnson's management of its workforce and general employee benefits demonstrates that the Proposal's focus is on ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

Accordingly, the Proposal should be excluded from Johnson & Johnson's 2024 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Johnson & Johnson's ordinary business operations.

V. Conclusion

Based upon the foregoing analysis, Johnson & Johnson respectfully requests that the Staff concur that it will take no action if Johnson & Johnson 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 Johnson & Johnson's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Marc Larkins
Worldwide Vice President, Corporate Governance & Corporate Secretary
Johnson & Johnson

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center

EXHIBIT A

(see attached)



NATIONAL LEGAL AND POLICY CENTER

October 13, 2023

Office of the Corporate Secretary
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

VIA UPS:

Dear Corporate Secretary:

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in Johnson & Johnson’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 27 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 Directors to produce a report on Gender-Based Compensation Gaps and Associated Risks. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the proposal any business day Monday through Friday between October 23 and November 14, between the hours of 9:00 a.m. and 5:00 p.m. in the Eastern Time Zone (U.S.). I can be reached at [REDACTED] or at [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 at [REDACTED].

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

Phone: [REDACTED] Email: [REDACTED]

Sincerely,

A handwritten signature in black ink that reads "Paul Chesser". The signature is written in a cursive style with a large, looping initial "P".

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Gender-Based Compensation Gaps and
Associated Risks" proposal

Gender-Based Compensation Gaps and Associated Risks

WHEREAS: Compensation and benefits inequities persist across employee gender categories, and pose substantial risk to companies and society at large.

The United States Department of Labor states that “equal pay” is required if persons of different genders “perform equal work in the same workplace,” and that “all forms of compensation are covered, meaning not only pay, but also benefits.”¹ The U.S. Equal Employment Opportunity Commission adds:²

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs.

SUPPORTING STATEMENT: Johnson & Johnson (“Company”) provides health benefits to employees who suffer gender dysphoria/confusion, and who seek medical, chemical, and/or surgical treatments, offering “coverage for surgery to change the sex of any employee diagnosed with gender identity disorder.”³ The Company boasts about its 100 percent score on the Human Rights Campaign’s Corporate Equality Index (“CEI”) and HRC’s designation as a “Best Places to Work for LGBTQ+ Equality.”⁴

Company policy *affirms* it is possible for dysphoria sufferers to transition to a different sex. Yet an increasing body of scientific evidence shows no benefits result from such treatments.⁵ In the United States and Europe, the medical community is increasingly cautious about transitioning therapies and surgeries.^{6 7}

Victims report transition treatments and surgeries are harmful. Examples include long-lasting or permanent outcomes like chronic pain, sexual dysfunction, unwanted hair loss or hair gain, menstrual irregularities, urinary problems, and other complications.⁸ Rather than resolve health problems, “gender affirming” therapies often exacerbate them.⁹ In such instances, those who

¹ <https://www.employer.gov/EmploymentIssues/pay-and-benefits/Equal-pay/>

² <https://www.eeoc.gov/prohibited-employment-policiespractices>

³ <https://www.careers.jnj.com/careers/what-makes-johnson-johnson-a-global-leader-in-diversity-inclusion>.

⁴ <https://belong.jnj.com/2022/>

⁵ <https://www.foxnews.com/politics/crenshaw-grills-dem-witness-failure-name-one-study-citing-benefits-surgeries-trans-kids>

⁶ <https://www.wsj.com/articles/second-thoughts-on-gender-affirming-care-american-academy-pediatrics-doctors-review-medicine-a7173276>

⁷ <https://www.wsj.com/articles/u-s-becomes-transgender-care-outlier-as-more-in-europe-urge-caution-6c70b5e0>

⁸ <https://www.dailymail.co.uk/health/article-11629421/Half-trans-surgery-patients-suffer-extreme-pain-sexual-issues-years-later.html>

⁹ <https://www.dailymail.co.uk/femail/article-12250695/I-trans-surgery-woman-19-four-years-later-Im-man.html>

desire to “detransition” cannot find medical care or insurance coverage, and are permanently mutilated.¹⁰ Many of these sufferers litigate against those who misled or harmed them.^{11 12}

HRC contemplates no accommodations for detransitioners or restorative health care for such individuals – instead, it denies there is need for such care.¹³ Hence, the CEI-perfect Company appears to offer no such insurance coverage in its employee benefits – only for so-called “gender-affirming care,” which includes a medical travel benefit.¹⁴ Detransitioners are protected under “gender identity” and “sexual orientation” EEOC categories and therefore cannot be discriminated against.

RESOLVED: Shareholders request the board of directors issue a report by March 31, 2025 about compensation and health benefit *gaps*, which should include how they address dysphoria and detransitioning care across gender classifications, including associated reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary and private information, litigation strategy and legal compliance information, and should be published on the Company’s website.

¹⁰ <https://thefederalist.com/2023/02/10/detransitioners-are-being-abandoned-by-medical-professionals-who-devastated-their-bodies-and-minds/>

¹¹ <https://public.substack.com/p/why-this-detransitioner-is-suing>.

¹² <https://www.dailymail.co.uk/news/article-12310887/Young-North-Carolina-woman-sues-doctors-testosterone-age-17-saying-needed-therapy-not-double-mastectomy-latest-blockbuster-detransition-lawsuit.html>

¹³ <https://www.hrc.org/resources/myths-and-facts-battling-disinformation-about-transgender-rights>

¹⁴ <https://www.jnj.com/innovation/employee-benefits-that-help-make-johnson-johnson-a-great-company>



December 20, 2023

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

Re: *Johnson & Johnson*
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 1, 2023 from Marc S. Gerber of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for Johnson & Johnson (“Company”), requesting that the Division of Corporation Finance (“Staff”) take no action if the Company excludes our shareholder proposal (“Proposal”) from its 2024 proxy materials (“Proxy”) for its 2024 annual shareholder meeting.

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

The Company’s excuse to exclude our Proposal from the Proxy – because it allegedly fails to address a “significant policy issue” that transcends the Company’s “ordinary business operations” – is erroneous. Indeed, our Proposal *fully* addresses a *significant* policy issue (as opposed to Mr. Gerber’s assertion that it merely “touches upon” a policy issue) that transcends ordinary business – one that has been addressed multiple times in scores of proposals at other companies, as we will explain.

Nonetheless, if the Staff determines to issue the Company relief, that act would raise significant constitutional and administrative law issues, as well as concerns about equitable treatment of proposal submissions.

Should the Staff find our Proposal omissible, we intend to seek reconsideration of that decision from the SEC Commissioners. We ask that the Staff reach its conclusions and notify us promptly, in sufficient time for potential appeal in advance of the Company’s proxy materials printing schedule.

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

Phone: (703) 237-1970 Email: pchesser@nlpc.org

Relatedly, we ask that any information pertinent to this proceeding, conveyed between the Company and the Staff by any means whatever, promptly be conveyed to us as well, as required by Section G.9 of SLB No. 14.¹ This particularly applies to any communications by the Company or any representative of the Company to the Staff of its plans or schedule for printing proxy materials, and includes phone calls, which cannot be used to evade the transparency requirements and are generally discouraged by SEC Staff under section G.10.²

Also, in anticipation of a potential adverse decision by Staff for the Company, Mr. Gerber concluded his no-action pleading by requesting “the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff’s response.” Should any communications be conducted between the Staff and Mr. Gerber or his firm under those circumstances, we as the proponent demand that they be done *in writing* and copies of such correspondence be *immediately supplied to NLPC*, as part of the ongoing proceedings regarding this matter.

Finally, we ask the Staff to render its no-action determination in light of our stated intention to seek reconsideration, and to issue it with sufficient timeliness to avoid functionally denying us a reconsideration opportunity that is facially a part of this review system.

As to the Company’s no-action request, following I address Mr. Gerber’s “Basis for Exclusion” analysis of our Proposal submission.

NLPC’s proposal DOES focus on a “significant policy issue” that transcends the Company’s “ordinary business operations,” and therefore the Proposal should NOT be excluded from its Proxy under Rule 14a-8(i)(7).

NLPC’s Proposal, contrary to the Company’s claims, addresses issues of ***discrimination*** under gender identity and sexual orientation ***categories*** that indisputably transcend “ordinary business operations” – in fact, there may be no more hotly debated or contested social policy issue in the United States than that of transgenderism, and related gender rights, equality and discrimination issues.

Defining terms

The Proposal begins by stating, “Compensation and benefits inequities persist across employee gender categories, and pose substantial risk to companies and society at

¹ <https://www.sec.gov/pdf/cfs1b14.pdf>; <https://www.sec.gov/corpfin/staff-legal-bulletin-14d-shareholder-proposals>; <https://www.sec.gov/interps/legal/cfs1b14.htm>.

² <https://www.sec.gov/interps/legal/cfs1b14.htm>.

large.” We then point out factual cases in which gender dysphoria sufferers have been provided “care” of one type – similar to that provided by the Company – that *only affirms* humans’ capabilities to “transition” from one gender to another, only for many gender dysphoria sufferers to learn after such treatments that their health has been permanently damaged as a result of such treatments. The “Resolved” paragraph of the Proposal states:

Shareholders request the board of directors issue a report by March 31, 2025 about compensation and health benefit gaps, which should include how they address dysphoria and detransitioning care across gender classifications, including associated reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary and private information, litigation strategy and legal compliance information, and should be published on the Company’s website.

The U.S. Department of Labor states that “equal pay” is required if persons of different genders “perform equal work in the same workplace,” and that “*all forms* (emphasis added) of compensation are covered, meaning not only pay, but also benefits.”³ Also, according to the U.S. Equal Employment Opportunity Commission (“EEOC”):⁴

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs.

Clearly in the eyes of the federal government, “pay” and/or “compensation” includes health benefits coverage, for the purpose of determining discrimination and fairness in employment. Employment laws in many U.S. states treat such issues similarly. Without question this makes compensation *and* benefits disparities, and possible discrimination, including health insurance coverage, a “significant social policy issue.” The Proposal goes *to the heart* of this issue, as opposed to merely “touch(ing) upon” it, as the Company characterizes it in its no-action request.

³ “Equal pay,” U.S. Dept. of Labor. See <https://www.employer.gov/EmploymentIssues/pay-and-benefits/Equal-pay/>.

⁴ “Prohibited Employment Policies/Practices,” U.S. Equal Employment Opportunity Commission. See <https://www.eeoc.gov/prohibited-employment-policiespractices>.

Previous analogous proposals at other companies

Looking back, shareholder proponents have sponsored scores of proposals that ask boards for reports or analyses of company policies and compensation practices, perceived or real “gaps” or disparities, and their effects upon equitable treatment of workers’ between races and/or genders. *All* of the following listed proposals advanced to company proxies because they obviously addressed “significant social policy issues” that transcended ordinary business. For example, proposals with the following titles or topics have been presented for shareholder votes over the past ten years:⁵

- “Report on Compensation for Women”
- “Report on Gender Pay”
- “Report on Gender Pay Gap”
- “Report on Gender Pay Equity”
- “Gender Pay Equity”
- “Racial and Gender Pay Gaps”
- “Report on Whether Gender Pay Gap Exists”
- “Report on Pay Equity”
- “Report on Global Median Gender Pay Gap”
- “Report on Global Median Gender/Racial Pay Gap”
- “Report on Gender/Racial Pay Equity”
- “Gender/Racial Pay Equity”
- “Report on Promotion Data”
- “Report Assessing Inclusion in the Workplace”
- “Report if Company Policies or Norms Reinforce Racism in Company Culture”
- “Racial/Civil Rights Audit”
- “Report on Race & Gender Median Pay Gaps”
- “Report on Implement on Elimination of Employment Racial Discrimination”
- “Report on Median Pay Gaps across Race & Gender”
- “Report on Racial Justice Goals & Starting Wages”
- “Report on Worker Health and Safety Racial & Gender Disparities”
- “Report on Costs of Low Wages and Inequality”
- “Report on Alignment of Racial Justice Goals and Starting Wages”
- “Pay Equity Disclosure”
- “Third-Party Racial Equity Audit”
- “Racial and Gender Layoff Diversity Report”

⁵ ProxyMonitor.org

Examples of language from a few of the above proposals show the approach in NLPC's Proposal is not dissimilar from those considered in past years by shareholders at other companies:

- Proposal 5 on the 2022 Proxy Statement for Lowe's Companies, Inc., began almost identically to our Proposal for Johnson & Johnson:⁶ "Pay inequities persist across race and gender and pose substantial risk to companies and society." Like NLPC's Proposal, the "Whereas" clause in Proposal 5 at Lowe's then highlighted a series of facts and statistics related to compensation for gender and race categories. Finally, the "ask" or "Resolved" clause was very similar to NLPC's for Johnson & Johnson: "Shareholders request Lowe's report on *unadjusted* median and *adjusted* pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent." The only significant difference is that NLPC's proposal asks for a report "about compensation and health benefit *gaps*, which should include how they address dysphoria and detransitioning care across gender classifications," as opposed to a report on "unadjusted median and adjusted pay gaps...." The bottom line is both address *gaps* in forms of pay/compensation categories as outlined by the U.S. Dept. of Labor and the Equal Employment Opportunity Commission.
- Proposal No. 5 on the 2020 proxy statement for Oracle Corporation sought a "Pay Equity Report,"⁷ and the "Whereas" clause began, "The median income for women working full time in the U.S. is 80% of that of their male counterparts. Women of all racial and ethnic groups earn less than men of the same group. Differences in experience, education, role, etc. may account for some of this gap, but an analysis by Glassdoor finds that even controlling for these factors, an unexplained gap of 4.9% remains between men and women in the U.S., and the adjusted gender pay gap for women in the technology industry is higher than average, at 5.4%." Thus the "Resolved" clause of this proposal asked "that Oracle report annually

⁶ "Proposal 5: Shareholder Proposal – Report on Racial and Gender Pay Gaps," 2022 Notice of Annual Meeting of Shareholders & Proxy Statement, Lowe's Companies, Inc. April 14, 2022. See https://www.sec.gov/Archives/edgar/data/60667/000119312522105006/d301898ddef14a.htm#toc301898_128, Page 67.

⁷ "Proposal No. 5: Stockholder Proposal Regarding Pay Equity Report," 2020 Definitive Proxy Statement, Oracle Corporation, Sept. 18, 2020. See https://www.sec.gov/Archives/edgar/data/1341439/000119312520249194/d78987ddef14a.htm#altoc78987_43, Page 72.

to the board and shareholders, identifying whether there exists a gender/racial pay gap among its employees, and if so, outline the steps being taken to reduce the gap and support advancement opportunities for women and minorities.”

- A proposal that requested a “Report on Promotion Data” at Amazon.com, Inc. in 2021 (Item 7 on the company’s proxy statement⁸) stated in its “Whereas” clause, “Institutionalized sexism, compounded by racism, has become an undeniable, visible, widespread, and multifaceted problem in the tech industry.” Citing specific examples from news articles, the proponent noted consequences of disparities in various companies’ treatment between genders that include employee dissatisfaction, job walk-offs, discrimination lawsuits, costs related to poor retention, insufficient advancement opportunities, and other negative outcomes for workers. Similarly, NLPC’s Proposal for Johnson & Johnson requests a report on “compensation and health benefit *gaps*, which should include how they address dysphoria and detransitioning care across gender classifications,” that analyzes possible effects for the Company “including associated policy, reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent.”

The Company’s mistaken evaluation of the Proposal

In its no-action request, the Company contends that NLPC’s Proposal falls under the purview of “ordinary business operations” that are simply matters that management decides in its discretion:

The Proposal thus focuses on how Johnson & Johnson manages its workforce and, specifically, the types of health benefits and aspects of coverage within those benefits that are available to Johnson & Johnson employees.

The Proposal’s supporting statement contains assertions related to transgender care generally, but these statements relate only to the Proposal’s focus on general employee benefits. Decisions with respect to Johnson & Johnson’s policies for managing its sizable and global workforce are at the heart of Johnson & Johnson’s business as a global healthcare products company and are so fundamental to

⁸ “Item 7 – Shareholder Proposal Requesting a Report on Promotion Data,” Notice of 2021 Annual Meeting of Shareholders & Proxy Statement, Amazon.com, Inc., April 15, 2021. See https://www.sec.gov/Archives/edgar/data/1018724/000110465921050333/tm2035374-1_def14a.htm#tSHPR, Page 36.

Johnson & Johnson's day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. In this regard, specific employee benefits and coverage considerations for Johnson & Johnson's large global workforce, which the Proposal focuses on, are precisely the types of employee management decisions that are fundamental to Johnson & Johnson's ordinary business operations.

The Company is mistaken in its simplistic characterization of the Proposal. Like many of the examples from the past ten years cited above, the Proposal seeks a report that analyzes and evaluates *gaps* in the benefits it offers across *categories* or *classes* of its employees as it pertains to gender. Contrary to the Company's contention, the Proposal is not granular in specific health care benefits it does or does not provide, but instead seeks greater insights into the disparities of its general offerings between the needs of those who suffer gender dysphoria and/or seek "transition treatments," versus those who have *had* such treatments, have found themselves injured, disfigured or mutilated and regret such therapies, yet have no insurance-covered recourse to attempt restoration of their bodily health or previous conditions.

A "de-transitioning" individual is not merely some otherwise unclassified person seeking a specific type of treatment or health insurance coverage. A "de-transitioner" fits into Dept. of Labor- and EEOC-protected categories of prohibited discrimination, which include "sex" – specifically incorporating "gender identity" and "sexual orientation." Arguably, for a "de-transitioner," the protected categories of "disability" and/or "genetic information" could *also* be cited as possible bases for discrimination.

Why this significant social policy issue transcends ordinary business

As the Proposal states in its Supporting Statement, the Company "provides health benefits to employees who suffer gender dysphoria/confusion, and who seek medical, chemical, and/or surgical treatments, offering 'coverage for surgery to change the sex of any employee diagnosed with gender identity disorder.'⁹ The Proposal also states that "the Company boasts about its 100 percent score on the Human Rights Campaign's Corporate Equality Index ("CEI") and HRC's designation as a 'Best Places to Work for LGBTQ+ Equality,'"¹⁰ which are only attainable by companies that provide employees with gender "reassignment" benefits. This positions Johnson & Johnson firmly on one side of the transgender/gender transition debate, as its published materials and associated policies show.

While many advocates and various companies – who aspire for the approval of

⁹ <https://www.careers.jnj.com/careers/what-makes-johnson-johnson-a-global-leader-in-diversity-inclusion>.

¹⁰ <https://belong.jnj.com/2022/>

groups like HRC – would like to advance the narrative that there is no rational or reasoned opposition to the affirmation of transgenderism, real-world facts tell otherwise.

Public opinion

Public opinion on the issue is deeply divided. A Gallup poll conducted in May 2023 found that 69 percent of people believe transgender athletes should only compete on sports teams that correspond to their birth sex, and 55 percent consider “changing one’s gender” to be “morally wrong.”¹¹ A *Washington Post*-KFF survey taken in November 2022 discovered that 57 percent of adults believe gender is determined by biology at birth, not “identity,” and that 77 percent of respondents believe it is inappropriate for teachers to discuss transgender identity with children in kindergarten through third grade in public schools, and nearly as many said the same about fourth and fifth grades.¹² These survey examples, among many that have been conducted in recent years, are only cited here to illustrate how sharply divided and vigorously debated the issue is.

As should be expected, therefore, laws around the country that address various aspects of the issue reflect these divisions in opinion. As of June, 19 states have laws that restrict treatments for gender transitioning.¹³ Twenty-three states only allow participation in school sports by athletes based upon their biological sex.¹⁴ Several states have enacted laws that limit use of public bathroom facilities according to an individual’s birth gender.¹⁵ Other states have laws that require treatments and oppose discrimination against “gender-affirming care.” Legislation addressing transgender-related issues has been considered in the U.S. Congress as well.¹⁶

¹¹ Laviertes, Matt. “Most Americans oppose including trans athletes in sports, poll finds,” NBC News, June 12, 2023. See <https://www.nbcnews.com/nbc-out/out-news/americans-oppose-inclusion-trans-athletes-sports-poll-finds-rcna88940>.

¹² Meckler, Laura & Clement, Scott. “Most Americans support anti-trans policies favored by GOP, poll shows,” *Washington Post*, May 5, 2023. See <https://www.washingtonpost.com/education/2023/05/05/trans-poll-gop-politics-laws/>.

¹³ Choi, Annette & Mullery, Will. “19 states have laws restricting gender-affirming care, some with the possibility of a felony charge,” CNN, June 6, 2023. See <https://www.cnn.com/2023/06/06/politics/states-banned-medical-transitioning-for-transgender-youth-dg/index.html>.

¹⁴ Barnes, Katie. “Transgender athlete laws by state: Legislation, science, more,” ESPN.com, Aug. 24, 2023. See https://www.espn.com/espn/story/_/id/38209262/transgender-athlete-laws-state-legislation-science.

¹⁵ Dura, Jack; Hanna, John; & Murphy, Sean. “In some states with laws on transgender bathrooms, officials may not know how they will be enforced,” Associated Press, June 26, 2023. See <https://apnews.com/article/transgender-bathroom-laws-enforcement-e96e94b8935eb6bd23a42562cdeec6c>.

¹⁶ Karni, Annie. “House Passes Bill to Bar Transgender Athletes From Female Sports Teams,” *New York Times*, April 20, 2023. See <https://www.nytimes.com/2023/04/20/us/politics/transgender-athlete-ban-bill.html>.

Treatment outcomes are iffy at best

Major insurance companies rarely provide coverage for untested, experimental treatments of *any type*, especially those that consistently result in negative health outcomes for patients. Yet medical care that aids in the effort to “transition” from one gender to another regularly produces poor – and even harmful – results, and such therapies are *still* included in insurance plans. Some evidence:

- A study by the Women’s College Hospital in Ontario, Canada, found that 55 percent of men who undergo vaginoplasty surgery report being in so much pain that they need medical attention, even a year post-operation. Patients, who are often unaware of potential side effects, have suffered bleeding (43 percent), sexual function concerns (34 percent), and vaginal discharge (32.5 percent).^{17 18} One sufferer “in constant discomfort and pain” sought to be euthanized, in vain.¹⁹
- Daniel Black was given hormonal treatment after only a 30-minute consultation, had his penis removed surgically, but after only a year he regretted his decision and began the de-transitioning process. “The surgery destroyed my life. I cannot orgasm, have children or lead a normal sex life and I miss my genitals every day,” he said.²⁰ Internet searches easily turn up countless similar testimonies.
- Several European countries now urge caution in the employment of medical interventions for transgender minors, including the use of puberty blockers, “stressing a lack of evidence that the benefits outweigh the risks,” reported the *Wall Street Journal*.²¹ This summer the American

¹⁷ Leonard, Meike. “The hidden dangers of ‘gender-affirming care’...”, DailyMail.com, Jan. 16, 2023. See <https://www.dailymail.co.uk/health/article-11629421/Half-trans-surgery-patients-suffer-extreme-pain-sexual-issues-years-later.html> .

¹⁸ Potter, Emery, et al. “Patient reported symptoms and adverse outcomes seen in Canada’s first vaginoplasty postoperative care clinic,” *Neurourology and Urodynamics*, Jan. 11, 2023. See <https://onlinelibrary.wiley.com/doi/10.1002/nau.25132>.

¹⁹ Reinl, James. “Trans indigenous Canadian slams doctors for denying her euthanasia request...”, DailyMail.com, July 28, 2023. See <https://www.dailymail.co.uk/news/article-12349523/Trans-indigenous-Canadian-slams-doctors-denying-euthanasia-request-saying-death-free-agony-surgically-built-vagina.html>.

²⁰ Stone, Iwan. “I was a confused teenage boy who had transgender surgery to become a woman aged 19, it ‘destroyed’ my life...”, DailyMail.com, July 2, 2023. See <https://www.dailymail.co.uk/femail/article-12250695/I-trans-surgery-woman-19-four-years-later-Im-man.html>.

²¹ Sapsford, Jathon & Armour, Stephanie. “U.S. Becomes Transgender-Care Outlier as More in Europe Urge Caution,” *Wall Street Journal*, June 19, 2023. See <https://www.wsj.com/articles/u-s-becomes-transgender-care-outlier-as-more-in-europe-urge-caution-6c70b5e0>.

Academy of Pediatrics said it will order a systematic review of the evidence for “pediatric sex-trait modification.”²²

- A group of 3,000 doctors and medical professionals is suing the U.S. Department of Health and Human Services over a mandate that they say would force physicians who see Medicaid patients or receive federal funding to provide “gender-affirming” care to children who want to transition to the opposite sex, even if they think it’s medically wrong for the patient or if it goes against their religious beliefs.²³
- A pro-transgender treatment professor at the Yale School of Medicine could not cite a single study that concluded there is strong evidence of benefits for minor patients who undergo transgender surgeries, in testimony before a U.S. House committee.²⁴

Litigation and other risks

Gender dysphoria sufferers who were “affirmed” in their beliefs that they could chemically and/or surgically “transition” to the opposite sex, then came to regret undergoing such treatments, are becoming increasingly litigious. A few examples:

- Two young women, Prisha Mosley of North Carolina and Soren Aldaco of Texas, are suing their care providers who recommended they undergo gender transitions. Mosley’s court-filed complaint says of her doctors, “They lied when they told Mosley she was actually a boy. They lied when they told her that injecting testosterone into her body would solve her numerous, profound mental and psychological health problems. They lied by omission, withholding critical information from her about the long-term adverse health consequences and permanent damage these treatments would cause her....”²⁵ Aldaco’s lawsuit says interventions by her medical

²² Sapir, Leor. “Second Thoughts on ‘Gender-Affirming Care,’” *Wall Street Journal*, Aug. 6, 2023. See <https://www.wsj.com/articles/second-thoughts-on-gender-affirming-care-american-academy-pediatrics-doctors-review-medicine-a7173276>.

²³ Burg, Jacob. “Thousands of Doctors Take Legal Action Against Transgender Mandate,” *The Epoch Times*, Dec. 20, 2023. See <https://www.theepochtimes.com/article/thousands-of-doctors-take-legal-action-against-transgender-mandate-5544903>.

²⁴ Morris, Kyle. “Crenshaw grills Dem witness over failure to name one study citing benefits of surgeries for trans kids,” *FoxNews.com*, June 15, 2023. See <https://www.foxnews.com/politics/crenshaw-grills-dem-witness-failure-name-one-study-citing-benefits-surgeries-trans-kids>.

²⁵ Reinl, James. “Young North Carolina woman sues the doctors who put her on testosterone at age 17...,” *DailyMail.com*, July 18, 2023. See <https://www.dailymail.co.uk/news/article-12310887/Young-North->

care providers led to her “permanent disfigurement and profound psychological scarring.”²⁶

- Michelle Zacchigna had her uterus and breasts removed, and is suing the eight providers who treated her over their “recklessness.”²⁷ “Distress related to my gender was treated to the exclusion of other serious mental health issues which went undiagnosed for years. Blind affirmation of my stated identity closed the door to alternative treatment options. What happened to me should never happen again.”
- Those who desire to “de-transition” cannot find needed treatment, whether from providers or insurance companies.²⁸ The aforementioned Prisha Mosley said every primary care physician, endocrinologist, obstetrician, and gynecologist she’s approached on her insurance list has turned her away or said they can’t help. “I could call and be rejected every single day.” Chloe Cole said, “I reached out to every physician, every therapist who is involved with this, and I haven’t really gotten any help at all.” Cat Cattinson said, “Because of the experimental nature of gender medicine, doctors know very little about the long-term effects of medical transition and even less about the health-care needs of those who detransition.”
- LGBT pressure group Human Rights Campaign, whose Corporate Equality Index scorecard Johnson & Johnson eagerly boasts about, has a similar grading system for hospitals called the Healthcare Equality Index.²⁹ Funded by Pfizer and a pharmaceutical industry lobbying association, health care systems are docked points for any behavior HRC deems “discriminatory,” and poor scores can invite litigation from

[Carolina-woman-sues-doctors-testosterone-age-17-saying-needed-therapy-not-double-mastectomy-latest-blockbuster-detransition-lawsuit.html](#).

²⁶ Prestigiacomo, Amanda. “‘No One Has A Right To Sterilize A Child’: Two Detransitioners Sue Doctors Over Medical Interventions,” The Daily Wire, July 26, 2023. See <https://www.dailywire.com/news/no-one-has-a-right-to-sterilize-a-child-two-detransitioners-sue-doctors-over-medical-interventions>.

²⁷ Shellenberger, Michael. “Why This Detransitioner Is Suing Her Health Care Providers,” Public.substack.com, March 22, 2023. See <https://public.substack.com/p/why-this-detransitioner-is-suing>.

²⁸ Bolar, Kelsey. “‘Detransitioners’ Are Being Abandoned By Medical Professionals Who Devastated Their Bodies And Minds,” The Federalist, Feb. 10, 2023. See <https://thefederalist.com/2023/02/10/detransitioners-are-being-abandoned-by-medical-professionals-who-devastated-their-bodies-and-minds/>.

²⁹ Sibarium, Aaron. “How A Left-Wing Activist Group Teamed Up With Big Pharma To Push Radical Gender Ideology on American Hospitals,” Washington Free Beacon, May 15, 2023. See <https://freebeacon.com/latest-news/how-left-wing-activist-group-teamed-up-with-big-pharma-to-push-radical-gender-ideology-on-american-hospitals/>.

likeminded activist groups. These types of hostility and threats drives decision-making in the health care and corporate world.

As to the no-action request's citations of precedents in decisions that ended in Staff-endorsed exclusions, the details of those cases are quite different from this present case, most of which do not come close to our case presented here with Johnson & Johnson. Just because a Company's lawyers cite their colleagues', or their own, arguments in pursuit of no-action decisions in past cases, does not mean the decisions rendered by Staff in those cases were reached *because of* those arguments. We are certain many factors go into such decisions, many of which do not depend upon lawyerly arguments. Individual arguments within a proposal no-action pleading can be disagreed with by Staff reviewers and still end in decisions that run counter to those arguments.

The bottom line is, in this present case with Johnson & Johnson, the evidence is overwhelming that NLPC's Proposal addresses a significant social policy issue that transcends ordinary business.

Conclusion

As outlined above with voluminous evidence and explanatory details omitted in the Company's 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 pchesser@nlpc.org or by telephone at 662-374-0175.

Sincerely,



Paul Chesser
Director
Corporate Integrity Project

Cc: Marc Larkins, Johnson & Johnson
Marc S. Gerber & Ryan J. Adams, Skadden, Arps, Slate, Meagher & Flom LLP