

September 13, 2023

VIA E-MAIL

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

Re: *Visa Inc.*
Stockholder Proposal of the National Legal and Policy Center
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Visa Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the “2024 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from the National Legal and Policy Center (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

Resolved: Shareholders request the board of directors issue a report by Dec. 31, 2024 about benefits and health program gaps as they address dysphoria and de-transitioning care, including associated policy, 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 information, litigation strategy and legal compliance information.

In addition, the Supporting Statement focuses on the Company's "health plan through Cigna" and "Company policy," including "covered expenses" and "health benefits," as well as recognitions the Company has received that "are only attainable by companies that provide employees with [certain] benefits."

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's "ordinary business operations" and does not focus on a "significant social policy issue" (as defined by the Commission and the Staff); and
- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the Company with an adequate written statement regarding its ability to meet with the Company to discuss the Proposal.

BACKGROUND

On August 3, 2023, the Proposal was submitted to the Company via email by Paul Chesser. See Exhibit A. The accompanying cover letter stated: "I am able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal," and "I am available Monday through Friday from 9am to 5pm, Eastern Time."

Accordingly, the Company sent the Proponent a deficiency notice. Specifically, on August 11, 2023, the Company sent the Proponent a letter via email and FedEx identifying

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two deficiencies, notifying the Proponent of the requirements of Rule 14a-8, and explaining how the Proponent could cure the procedural deficiencies (the “Deficiency Notice”). As relevant here, the Deficiency Notice, attached hereto as Exhibit B,¹ provided detailed information regarding the requirements for the written statement pursuant to Rule 14a-8(b)(1)(iii), and attached a copy of Rule 14a-8. The Deficiency Notice stated the following regarding the written statement requirement:

Rule 14a-8(b)(1)(iii) of the Exchange Act requires a stockholder to provide the company with a written statement that it is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the stockholder proposal, including the stockholder’s contact information and the business days and specific times during the company’s regular business hours that such stockholder is available to discuss the proposal with the company. In this regard, we believe the general statement you provided that you are “able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal” is not adequate because the statement does not include the *specific* dates and times you are available to meet.

The Deficiency Notice also included instructions on how to remedy the deficiency. FedEx records confirm delivery of the Deficiency Notice at 10:57 a.m. local time on August 14, 2023, within 14 calendar days of the Company’s receipt of the Proposal. *See Exhibit C*. The deadline for the Proponent to transmit any response to the Deficiency Notice was at the latest August 28, 2023, based on the August 14, 2023 delivery date of the Deficiency Notice in hard copy (and August 25, 2023, based on the date the Deficiency Notice was emailed to the Proponent).

The Company received a response to the Deficiency Notice for the Proponent via email from Paul Chesser on August 22, 2023, which attached a letter. *See Exhibit D*. In the letter, the Proponent “disagree[d] that there was any ‘deficiency’ regarding” the engagement availability provided, asserting that “many” of the hours provided “overlap with the Pacific time zone business hours, where Visa is located” and that the availability “meant a representative of our organization could be made available to discuss [the] proposal *any time* during those time windows.” As of the date of this letter, the Company has not received any further correspondence from the Proponent.

¹ The Company also identified a procedural defect under Rule 14a-8 concerning proof of ownership. Correspondence related to this deficiency alone, including the Proponent’s August 21, 2023 response to the ownership deficiency raised in the Deficiency Notice, has been omitted.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company's Ordinary Business Operations.

The Proposal seeks a report regarding the health plan benefits offered to Company employees; specifically, the requested report is to address certain “benefits and health program gaps” and related risks to the Company arising from the health benefits offered and expenses covered by the Company’s health plan. As discussed below, the Proposal may be omitted under Rule 14a-8(i)(7) as it relates to general employee benefits and does not focus on a significant social policy issue that transcends the Company’s ordinary business operations.

A. Rule 14a-8(i)(7) Background.

Pursuant to Rule 14a-8(i)(7), a stockholder proposal may be excluded if it “deals with a matter relating to the company’s ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” refers to matters that are not necessarily “ordinary” in the common meaning of the word, but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. As relevant here, one of these considerations is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* Examples of such tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees.” *Id.*

A stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983).

Also relevant to the Proposal is the discussion in Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”) where the Staff explained how it evaluates proposals relating to risk:

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[R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

Consistent with its positions in SLB 14E, the Staff has repeatedly concurred with the exclusion under Rule 14a-8(i)(7) of stockholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See, e.g., McDonald's Corp.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal asking the company to “disclose the economic risks” it faced from “campaigns targeting the [c]ompany over concerns about cruelty to chickens” because it “focuse[d] primarily on matters relating to the [c]ompany’s ordinary business operations”); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on “environmental, social, and economic challenges associated with the oil sands,” which involved ordinary business matters); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state, and local taxes and provide a report to stockholders on the assessment).

B. The Proposal Is Excludable Because It Relates To General Employee Benefits.

The Proposal’s requested report focuses on the health plan benefits that the Company offers its employees, including covered expenses, and seeks a discussion of certain “benefits and health program gaps” and related risks to the Company arising from those benefits and expense coverages. As a result, the Proposal directly relates to the ordinary business matter of the general employee benefits provided by the Company as an employer of a large, global workforce.

Notably, the Staff has consistently and repeatedly concurred with the exclusion of stockholder proposals under Rule 14a-8(i)(7) that relate to various employee benefits. In *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of topics that involve a company’s ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): “*employee health benefits, general compensation issues*

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not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation” (emphasis added). More recently, in *McDonald’s Corp.* (avail. Feb. 19, 2021), the Staff concurred with the exclusion of a proposal requesting a report on the “feasibility of extending the paid sick leave policy adopted in response to COVID19 . . . as a standard employee benefit” as relating to ordinary business matters. In *Exelon Corp.* (avail. Feb. 21, 2007), the proposal requested that rules and regulations be implemented that would forbid the company’s executives from establishing incentive bonuses requiring the reduction of employees’ retiree benefits in order for the executives to meet their incentive bonus goals. Such restrictions were not to be lifted until certain “promised benefits to the retirees [were] reinstated.” The company asserted 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 the Commission “has long recognized that shareholder proposals concerning the structuring, coverage, and analyses for such general employee and retiree health plans, including both cost, insurance, coverage and other issues relating thereto, . . . all relate to the ordinary business operations of a corporation.” The Staff concurred with the exclusion noting that the proposal “relat[es] to [the company’s] ordinary business operations (i.e., general employee benefits)” and that “although the proposal mention[ed] executive compensation, the thrust and focus of the proposal [was] on the ordinary business matter of general employee benefits.” *See also Dollar Tree, Inc.* (avail. May 2, 2022) (concurring with the exclusion 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 “how the [c]ompany’s . . . incentives will enable competitive employment standards, including wages, benefits, and employee safety”); *Walmart, Inc.* (avail. Apr. 8, 2019) (concurring with the exclusion of a proposal that requested that the board evaluate the risk of discrimination that may result from [the company’s] policies and practices of hourly workers taking absences from work for personal or family illness, as relating to “management of [the company’s] workforce”); *ConocoPhillips* (avail. Feb. 2, 2005) (concurring with the exclusion of a proposal to eliminate pension plan offsets as ordinary business operations relating to employee benefits); *International Business Machines Corp.* (avail. Jan. 13, 2005) (concurring with the exclusion of a proposal requesting a “report examining the competitive impact of rising health insurance costs” including “steps or policy options the [b]oard has adopted, or is currently considering, to reduce these costs”); *International Business Machines Corp. (Jaracz)* (avail. Jan. 2, 2001) (concurring with the exclusion of a proposal requesting cost of living allowances to the company’s retiree pensions as ordinary business operations relating to employee benefits).

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In accordance with SLB 14E, discussed above, in analyzing the Proposal under Rule 14a-8(i)(7), it is necessary to examine whether “the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.” As with the proposals in the foregoing precedents, the Proposal is directly concerned with certain employee benefits available to the Company’s workforce under the Company health plan and risks thereof. The Proposal asks for a report that would require the Board of Directors to report on and consider the Company’s benefit-related actions, programs, policies, and issues and risks related to employee health benefits. The Company’s policies and practices relating to employees’ health benefits are ordinary business matters as they concern Company management’s determinations with respect to the overall benefits available to its employees under its general compensation and benefits packages. In this regard, the Proposal touches on the Company’s relationship with its more than 26,500 employees who comprised the Company’s global workforce as of its fiscal year end 2022. Moreover, these decisions are multifaceted, complex, and based on a range of considerations that are integral to managing the Company’s day-to-day operations. Such determinations should not be subject to stockholder oversight because stockholders are not in a position to determine the appropriateness of employees’ benefits in the context of the local, regional, national, and international labor markets; the circumstances of the Company’s business; the roles that various Company employees perform; and employees’ overall compensation packages. The Company’s decisions regarding its employee benefits and health plan relate to the Company’s general workforce compensation decisions, which means that the Proposal addresses matters relating to the day-to-day operation of the Company’s business. For these reasons, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the management of the Company’s workforce.

C. The Proposal Does Not Focus On A “Significant Social Policy Issue” That Transcends The Company’s Ordinary Business Operations.

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters, specifically the benefits provided by the Company to employees and, therefore, is excludable under Rule 14a-8(i)(7). In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the “ordinary business” provision that the Commission had initially articulated in Exchange Act Release No. 12999 (Nov. 22, 1976) (the “1976 Release”). In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that “focus on” significant social policy issues. The Commission stated, “proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would

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be appropriate for a shareholder vote.” 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

In Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff stated that it “will realign its approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.” As such, the Staff stated that it will focus on the issue that is the subject of the stockholder proposal and determine whether it has “a broad societal impact, such that [it] transcend[s] the ordinary business of the company,” and noted that proposals “previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7).”

In contrast, proposals that refer to topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). For example, in *Walmart Inc.* (avail. Apr. 8, 2019), the Staff concurred with the exclusion of a proposal requesting 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 because it related “generally to the [c]ompany’s management of its workforce, and [did] not focus on an issue that transcends ordinary business matters.” *See also Apple Inc. (D. Rahardja)* (avail. Jan. 3, 2023) (concurring with the exclusion of a proposal requesting a report assessing “the effects of [the company’s] return-to-office policy on employee retention and [the company’s] competitiveness,” noting it “relate[d] to, and [did] not transcend, ordinary business matters”); *Amazon.com, Inc. (AFL-CIO Reserve Fund)* (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting a report on the company’s workforce turnover rates and labor market changes resulting from the COVID-19 pandemic noting that “the [p]roposal . . . does not focus on significant social policy issues”); *Amazon.com, Inc. (McRitchie)* (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting an annual report on the distribution of stock-based incentives throughout the workforce despite referring to wealth inequality in the United States as a significant policy issue); *Intel Corp.* (avail. Mar. 18, 2022) (concurring with the exclusion of a proposal requesting a report “on whether, and/or to what extent, the public display of the pride flag has impacted . . . employees’ [*sic*] view of the company as a desirable place to work,” stating it “relates to, and does not transcend, ordinary business matters”); *Apache Corp.* (avail. Mar. 5, 2008) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requests that management “implement equal employment opportunity

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policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity,” in which the Staff noted that some of the proposed principles related to ordinary business matters).

Specifically, this distinction applies to proposals that, like the Proposal, relate to ordinary business matters that may touch, but do not focus on, significant policy issues. For example, in *AT&T Corp.* (avail. Feb. 25, 2005), the proposal requested that the company “consider discontinuing all domestic partner benefits for highly paid executives making over \$500,000 per year or, if not feasible, ask these executives to reimburse the company for these expenses.” In support, the proponent argued that “[n]ationwide healthcare costs are rising” and that providing such coverage increased the healthcare costs for employees more broadly (through higher deductibles) and could be prohibited in certain states. The company noted that the request implicated general employee benefits, not just those offered to executives, and that “[e]mployee benefits are clearly an activity that falls under the realm of the [c]ompany’s ordinary business operations.” The Staff concurred with the proposal’s exclusion, finding it focused “on the ordinary business matter of employee benefits.” The Staff has also allowed the exclusion of proposals requesting that companies adopt “principles for comprehensive health care reform” when such proposals also included a request for annual reporting on ordinary business operations. See *Wyeth* (avail. Feb. 25, 2008) and *CVS Caremark Corp.* (avail. Jan. 31, 2008, *recon. denied* Feb. 29, 2008). The *Wyeth* and *CVS* proposals asserted that health care access was “an overriding public policy issue for the health care industry” and “[b]esides the Iraqi war, the greatest public policy issue in the 2008 presidential campaign.” However, because the proposals’ supporting statements also urged each of the companies’ boards “to report annually about how it is implementing such principles,” the Staff concurred that the proposals could be excluded as relating to the companies’ ordinary business operations. Based on this reference in the proposals’ supporting statements, the *Wyeth* and *CVS* proposals were excludable under Rule 14a-8(i)(7) while several virtually identical proposals that lacked such an additional element were not. See *Exxon Mobil Corp.* (avail. Feb. 25, 2008); *The Boeing Co.* (avail. Feb. 5, 2008); *United Technologies Corp.* (avail. Jan. 31, 2008).

Like the proposals in *Wyeth* and *CVS*, the Proposal here does not focus on a significant social policy issue, such as systemic health care reform, but instead relates to the Proponent’s concerns about a select few of the countless benefits made available to employees under the Company’s health care plan. The Proposal and Supporting Statement seek to suggest that particular benefits currently offered under the Company’s health plan implicate a significant social policy issue that should be considered by the Company’s stockholders by referring to “risks related to recruiting and retaining diverse talent” and asserting that “[b]enefits and health policy inequities” related to certain care “pose substantial risk to companies and society at large.” Notwithstanding these assertions, the

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Proposal's focus is the content of the Company's health care benefits offered to employees. Accordingly, the Proposal does not focus on a significant policy issue that transcends ordinary business matters.

II. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Provide The Company With An Adequate Written Statement Regarding Its Ability To Meet With The Company.

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to comply with the procedural requirements under Rule 14a-8. Under Rule 14a-8(b)(1)(iii), as applicable to annual meetings to be held on or after January 1, 2022 (*see* Exchange Act Release No. 89964 (Sept. 23, 2020) (the "2020 Adopting Release")), a proponent must provide the company with a written statement that the proponent is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the stockholder proposal. This written statement must include the proponent's contact information as well as "business days and specific times" that the proponent is available to discuss the proposal with the company. The proponent must identify times that are within the regular business hours of the company's principal executive office. Rule 14a-8(f)(1) permits a company to exclude a stockholder proposal from the company's proxy materials if the proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent of the deficiency, and the proponent has failed to correct such deficiency within 14 calendar days of receipt of such notice.

The Staff has consistently concurred with the exclusion of proposals when proponents have failed, following a timely and proper request by a company, to timely furnish a written statement, including specific dates and times, of availability to meet with the company pursuant to Rule 14a-8(b). For example, in *Deere & Co.* (avail. Dec. 5, 2022), the proponent's submission included only one date and time range to meet with the company, which fell outside the required date range of availability, and did not include sufficient proof of ownership. In response to a timely deficiency notice, the proponent corrected the proof of ownership deficiency, but did not provide the required dates and times of availability to meet. The Staff concurred with the proposal's exclusion under Rule 14a-8(f). *See also Textron Inc.* (avail. Jan. 23, 2023) (concurring with the exclusion of a proposal pursuant to Rule 14a-8(f) when the proponent's representative failed to supply a written statement regarding the proponent's ability to meet with the company after receiving a timely deficiency notice, despite the representative's subsequent submission of materials satisfying other procedural deficiencies); *PPL Corp.* (avail. Mar. 9, 2022) (concurring with the exclusion of a proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) when the proponent failed to supply a written statement regarding the proponent's ability to meet with

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the company after receiving a timely deficiency notice); *American Tower Corp.* (avail. Feb. 8, 2022) (concurring with the exclusion of a proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) when the proponent failed to supply a written statement regarding the proponent's ability to meet with the company after receiving a timely deficiency notice, despite the proponent's subsequent submission of a letter verifying the proponent's ownership of the company's stock); *The Allstate Corp.* (avail. Feb. 8, 2022) (concurring with the exclusion of a proposal where the proponent failed to supply a written statement regarding the proponent's ability to meet with the company after receiving a timely deficiency notice, despite the proponent's subsequent submission of materials to cure other deficiencies). Here, the Proponent's response to the Deficiency Notice does not satisfy the eligibility requirements of Rule 14a-8(b) because the Proponent failed to provide specific dates of availability to meet with the Company that were within the time period expressly provided for in Rule 14a-8(b)(1)(iii).

Notably, when the Commission adopted Rule 14a-8(b)(1)(iii), it specifically rejected a commenter's suggestion "that providing a general statement of . . . availability would be preferable" to stating specific dates and times, stating:

We do not agree with [the suggestion]. While a general statement of availability could indicate a shareholder-proponent's willingness to engage, the *identification of specific dates and times* would add certainty as to the shareholder-proponent's availability, and we believe that engagement may be more likely to occur where the company knows the shareholder-proponent's availability in advance.

See 2020 Adopting Release (emphasis added). Since January 4, 2021, the effective date of amendments to Rule 14a-8, and as applicable to proposals submitted for annual meetings held on or after January 1, 2022, the Staff consistently has concurred with the exclusion of proposals when proponents have provided a general statement regarding the proponent's ability to meet with the company. For example, in *Rite Aid Corp.* (avail. Apr. 12, 2023), in response to a timely deficiency notice, the proponent's representative indicated that "[the proponent] is willing to meet with [the company]," but did not provide specific dates or times within the required range under Rule 14a-8(b)(1)(iii). The Staff concurred with the proposal's exclusion under Rule 14a-8(f). In *Tejon Ranch Co.* (avail. Mar. 15, 2023), the proponent initially provided a broad statement of availability, indicating: "I am available to meet in person, or thru teleconferencing, at a convenient time with some notice as I have Christmas and overseas travel plans over the next month." In response to a timely deficiency notice, the proponent did not provide specific dates or times he was available to meet with the company. The Staff concurred with the proposal's exclusion under Rule 14a-8(b)(1)(iii) and Rule 14a-8(f). See also *Molina Healthcare, Inc.* (avail. Jan. 17,

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2023) (concurring with the exclusion of a proposal under Rule 14a-8(f) where the proponent indicated generally that “[w]e would be pleased to discuss the issues presented by this proposal with you,” and failed to correct this and other procedural deficiencies identified in a timely deficiency notice).

Like the proponents in *Rite Aid*, *Tejon Ranch*, and *Molina Healthcare*, the Proponent here did not include with the Proposal a written statement containing *specific* dates and times regarding the Proponent’s ability to meet with the Company to discuss the Proposal. Instead, the Proponent provided a blanket statement of availability that tracked the full range of dates required under the rule (*i.e.*, being available “no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal”) and times in the Proponent’s time zone (“Monday through Friday from 9am to 5pm, Eastern Time”). See Exhibit A. The Company then properly notified the Proponent of this deficiency and how to correct it in the Deficiency Notice: “we believe the general statement you provided . . . is not adequate because the statement does not include the *specific* dates and times you are available to meet.” However, in response to the Company’s timely Deficiency Notice, the Proponent did not respond with any specific dates or times of availability, but instead asserted that the prior statement of availability “meant a representative of our organization *could be made available* to discuss [the] proposal *any time* during those time windows.” See Exhibit D (emphasis added). By providing a range of availability that tracks the full date range required under Rule 14a-8(b)(1)(iii), the Proponent substantively provided the type of general statement of availability that the Commission expressly rejected in the 2020 Adopting Release. This broad statement of when a representative “could” be made available also circumvents the purpose of requiring specific dates and times within the 10-to-30 days of submission date range to “add certainty as to the shareholder-proponent’s availability.” See 2020 Adopting Release. As a result, the Proponent is no more certainly available to meet with the Company than the proponent in *Rite Aid* who was “willing to meet” or the proponent in *Tejon Ranch* who could “meet in person, or thru teleconferencing, at a convenient time with some notice.” The Proponent therefore failed to cure this deficiency within 14 days of receipt of the Company’s timely Deficiency Notice.

Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1), the Proponent failed to supply, within 14 days of receipt of the Company’s request, an adequate written statement regarding its ability to meet with the Company, as required by Rule 14a-8(b).

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CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Simona Katcher, the Company's Senior Counsel and Assistant Secretary, at (650) 432-7945.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Paul Chesser, National Legal and Policy Center
Simona Katcher, Visa Inc.

EXHIBIT A

From: Paul Chesser [REDACTED]
Sent: Thursday, August 3, 2023 10:16:36 AM (UTC-08:00) Pacific Time (US & Canada)
To: Corporate Secretary <corporatesecretary@visa.com>
Cc: Tullier, Kelly Mahon [REDACTED]; Luke Perlot [REDACTED]
Subject: Shareholder proposal for 2024 annual meeting
Dear Ms. Mahon Tullier/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at Visa Inc.'s 2024 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]



NATIONAL LEGAL AND POLICY CENTER

August 3, 2023

Ms. Kelly Mahon Tullier
Vice Chair, Chief People and Corporate Affairs Officer & Corporate Secretary
Visa Inc.
900 Metro Center Blvd.
Foster City, CA 94404

VIA UPS & EMAIL: corporatesecretary@visa.com, [REDACTED]

Dear Ms. Mahon Tullier/Corporate Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in Visa Inc.'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 35.866 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 Policy and Benefits Gaps and Associated Risks. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I am able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal. I can be reached at [REDACTED] or at [REDACTED]. I am available Monday through Friday from 9am to 5pm, Eastern Time.

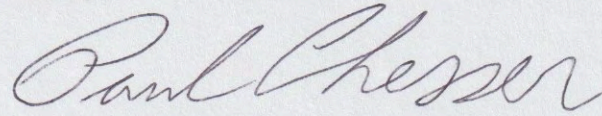
If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me at [REDACTED]

Nat'l Headquarters: [REDACTED]

Phone: [REDACTED] Email: [REDACTED]

Ms. Kelly Mahon Tullier
Visa Inc.
Page 2

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser". The signature is written in dark ink and is positioned below the word "Sincerely,".

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Report on Gender-Based Policy and
Benefits Gaps and Associated Risks" proposal

Report on Gender-Based Policy and Benefits Gaps and Associated Risks

WHEREAS: Benefits and health policy inequities persist across perceived employee gender categories, and pose substantial risk to companies and society at large.

Visa Inc. (the “Company”) provides health benefits to employees who suffer gender dysphoria/confusion, and who seek medical, chemical, and/or surgical treatments to aid their “transition” to their non-biological sex. The Company boasts about its 100 percent score on the Human Rights Campaign’s Corporate Equality Index and HRC’s designation as a “Best Place to Work for LGBT Equality,”¹ which are only attainable by companies that provide employees with gender “reassignment” benefits. According to Visa’s health plan through Cigna, covered expenses include:²

Charges made for gender reassignment surgery (male-to female or female-to-male) and related services consistent with World Professional Association for Transgender Health (WPATH) recommendations including, when applicable, hormone therapy, orchiectomy, vaginoplasty (including colovaginoplasty, penectomy, labiaplasty, clitoroplasty, vulvoplasty, penile skin inversion, repair of introitus, construction of vagina with graft, coloproctostomy), vaginectomy (including colpectomy, metoidioplasty with initial phalloplasty, urethroplasty, urethromeatoplasty), hysterectomy and salpingoophorectomy, as well as initial mastectomy or breast reduction.

Company policy affirms it is possible for dysphoria sufferers to transition to a different sex. Yet an increasing body of scientific evidence shows that no benefits result from such medical and surgical treatments.³ In contrast to the United States, the medical community in Europe is increasingly cautioning about such treatments.⁴

Multiple victims have reported that “transition” therapies and surgeries are harmful. Examples include various long-lasting or permanent outcomes like chronic pain, sexual dysfunction, unwanted hair loss and hair gain, menstrual irregularities, urinary problems, and other complications.⁵ Rather than resolve health problems, “gender affirming” therapies instead often exacerbate them. In such instances, patients who desire to “de-transition” cannot find medical or

¹ “Valuing the unique identities and contributions of all employees,” Visa Inc., accessed July 31, 2023. See <https://usa.visa.com/about-visa/diversity-inclusion.html>.

² Preferred Provider Medical Benefits, Visa Inc., accessed July 31, 2023. See <https://hrportal.ehr.com/LinkClick.aspx?fileticket=wrmqS0JuW08%3d&portalid=239>, Page 30.

³ 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>.

⁴ Sapsford, Jathon and Armour, Stephanie. “U.S. Becomes Transgender-Care Outlier as More in Europe Urge Caution,” *The 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>.

⁵ 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/>.

insurance coverage, and are permanently mutilated. Many of these sufferers litigate against those who misled or harmed them regarding the “transition” treatments.⁶

Resolved: Shareholders request the board of directors issue a report by Dec. 31, 2024 about benefits and health program gaps as they address dysphoria and de-transitioning care, including associated policy, 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 information, litigation strategy and legal compliance information.

⁶ 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>.

EXHIBIT B

From: Corporate Secretary <corporatesecretary@visa.com>

Sent: Friday, August 11, 2023 12:40:51 PM (UTC-08:00) Pacific Time (US & Canada)

To: Paul Chesser [REDACTED]; Corporate Secretary <corporatesecretary@visa.com>

Cc: Tullier, Kelly Mahon [REDACTED]; Luke Perlot [REDACTED]

Subject: RE: Shareholder proposal for 2024 annual meeting

Good afternoon, Mr. Chesser.

Please see the attached letter.

Kind regards,

Simona



August 11, 2023

VIA OVERNIGHT MAIL AND EMAIL

Paul Chesser
National Legal and Policy Center



Dear Mr. Chesser:

I am writing on behalf of Visa Inc. (the "**Company**"), which received on August 3, 2023, your stockholder proposal entitled "Report on Gender-based Policy and Benefits Gaps and Associated Risks" that you submitted via email on August 3, 2023 (the "**Submission Date**") on behalf of National Legal and Policy Center (the "**Proponent**") pursuant to Securities and Exchange Commission ("**SEC**") Rule 14a-8 for inclusion in the proxy statement for the Company's 2024 Annual Meeting of Stockholders (the "**Proposal**").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention and which you should correct as described below if the Company is to consider the Proposal as properly submitted.

1. Proof of Continuous Ownership

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a stockholder proponent must submit sufficient proof of its continuous ownership of company shares preceding and including the submission date. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or
- (3) \$25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each an "**Ownership Requirement**," and collectively, the "**Ownership Requirements**").

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received proof that the Proponent has satisfied any of the Ownership Requirements.



To remedy this defect, the Proponent must submit sufficient proof that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("**DTC**"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at <https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf>. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by

obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

2. Engagement Availability

Rule 14a-8(b)(1)(iii) of the Exchange Act requires a stockholder to provide the company with a written statement that it is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the stockholder proposal, including the stockholder's contact information and the business days and specific times during the company's regular business hours that such stockholder is available to discuss the proposal with the company. In this regard, we believe the general statement you provided that you are "able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal" is not adequate because the statement does not include the *specific* dates and times you are available to meet.¹ Accordingly, to remedy this defect, you must provide a statement of your engagement availability including the *specific* dates and times.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at P. O. Box 193243, San Francisco, California 94100. Alternatively, you may transmit any response by email to me at corporatesecretary@visa.com. Please note that the SEC has advised that you are responsible for confirming our receipt of any correspondence you transmit in response to this letter.

If you have any questions with respect to the foregoing, please contact me at [REDACTED]. For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L.

Sincerely,



Simona Katcher
Senior Managing Counsel and Assistant Secretary

Enclosures

¹ See *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, SEC Release No. 34-89964, 51 (Sept. 23, 2020) (indicating that a general statement of the shareholder-proponent's availability is insufficient for purposes of compliance with Rule 14a-8(b)(iii) and that "the identification of *specific* dates and times would add certainty as to the shareholder-proponent's availability") (emphasis added).

EXHIBIT C



August 14, 2023

Dear Customer,

The following is the proof-of-delivery for tracking number: 773028095453

Delivery Information:

| | | | |
|--------------------------|------------------------------------------|---------------------------|--------------------|
| Status: | Delivered | Delivered To: | Residence |
| Signed for by: | Signature not required | Delivery Location: | |
| Service type: | FedEx Priority Overnight | | |
| Special Handling: | Deliver Weekday; Residential Delivery | | MATTHEWS, NC, |
| | | Delivery date: | Aug 14, 2023 10:57 |

Shipping Information:

| | | | |
|-------------------------|--------------|----------------------|----------------|
| Tracking number: | 773028095453 | Ship Date: | Aug 11, 2023 |
| | | Weight: | 0.5 LB/0.23 KG |
| Recipient: | | Shipper: | |
| MATTHEWS, NC, US, | | Foster City, CA, US, | |

| | |
|--------------------------|-------------------------|
| Reference | Proxy deficiency notice |
| Purchase Order | SKatcher |
| Department Number | 18204 |

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Thank you for choosing FedEx

EXHIBIT D

From: Paul Chesser [REDACTED]
Sent: Tuesday, August 22, 2023 1:47 PM
To: Corporate Secretary <corporatesecretary@visa.com>
Cc: Tullier, Kelly Mahon [REDACTED]; Luke Perlot [REDACTED]; Katcher, Simona [REDACTED]
Subject: Re: Shareholder proposal for 2024 annual meeting

Simona/Ms. Mahon Tullier/Corporate Secretary,

Attached please find my supplemental response to your deficiency letter in the submission of our shareholder proposal sent earlier this month.

I would appreciate it if you would confirm receipt of this and of my email with attachments sent yesterday, Aug. 21.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
<https://www.nlpc.org/corporate-integrity-project/>
[REDACTED]



NATIONAL LEGAL AND POLICY CENTER

August 22, 2023

Ms. Simona Katcher
Senior Managing Counsel and Assistant Secretary
Visa Inc.
900 Metro Center Blvd.
Foster City, CA 94404

VIA EMAIL: corporatesecretary@visa.com, [REDACTED]

Dear Ms. Katcher/Ms. Mahon Tullier/Corporate Secretary:

This is a supplemental letter responding to your August 11 letter alleging a deficiency in the August 3, 2023 submission of our “Report on Gender-Based Policy and Benefits Gaps and Associated Risks” proposal for Visa Inc.’s 2024 Annual Shareholder Meeting, following up to our provision of our proof of stock ownership letter.

I just noticed you also identified an alleged “deficiency” in how we provided our times of availability to discuss our shareholder proposal with the Company. I disagree that there was any “deficiency” regarding this matter. I clearly stated that an NLPC representative would be available to discuss our proposal with the Company “in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal,” and that “I am available Monday through Friday from 9am to 5pm, Eastern Time” (many hours of which overlap with the Pacific time zone business hours, where Visa is located) – in *compliance* with Rule 14a-8(b). That meant a representative of our organization could be made available to discuss our proposal *any time* during those time windows.

I will add that your exacting-but-incorrect demands are also in bad faith, as we used the *exact same wording* to identify the days and times of our availability for discussion for our proposal submission that we submitted last year for Visa’s 2023 Annual Shareholder Meeting. Yet you – personally, as counsel for the Company – did *not* object to that same language as deficient following our submission last year.

Finally, I will add that we used precisely the same language in our Company submission that we used to outline our time availability to discuss proposals with dozens of other major corporations over the past two years. *None* of them raised any objections or alleged deficiencies regarding our expressed time availability. Rather, more than half of them in *good* faith contacted us to discuss our proposals and our concerns.

Nat’l Headquarters: [REDACTED]

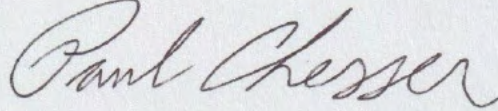
Phone: [REDACTED]

Email: [REDACTED]

Ms. Simona Katcher
Visa Inc.
Page 2

I can be reached at [REDACTED] or at [REDACTED] if you have any further questions. Further correspondence can also be sent to me at [REDACTED]
[REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser".

Paul Chesser
Director
Corporate Integrity Project