



DIVISION OF  
CORPORATION FINANCE

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

March 4, 2025

Stephen M. Leitzell  
Dechert LLP

Re: Select Medical Holdings Corporation (the "Company")  
Incoming letter dated December 12, 2024

Dear Stephen M. Leitzell:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Physicians Committee for Responsible Medicine for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the board to commission a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to the Company's ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

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

Sincerely,

Rule 14a-8 Review Team

cc: Anna Herby  
Physicians Committee for Responsible Medicine



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2929 Arch Street  
Philadelphia, PA 19104-2808  
+1 215 994 4000 Main  
+1 215 994 2222 Fax  
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**STEPHEN M. LEITZELL**  
*Partner*

stephen.leitzell@dechert.com  
+1 215 994 2621 Direct  
+1 215 994 2222 Fax

December 12, 2024

**VIA E-MAIL**

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

**Re: Select Medical Holdings Corporation – Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine**

Dear Sir or Madam:

This letter is to inform you that our client, Select Medical Holdings Corporation (the “Company”), intends to exclude from its proxy materials for its 2025 annual meeting of shareholders (the “2025 Proxy Materials”), a shareholder proposal submitted to the Company by the Physicians Committee for Responsible Medicine and by Anna Herby (Anna Herby, together with the Physicians Committee for Responsible Medicine, the “Proponents”) in a letter dated November 7, 2024 (the “2024 Shareholder Proposal”).

The Company requests confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend to the Commission that enforcement action be taken against the Company if the Company excludes the 2024 Shareholder Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that, in accordance with Rule 14a-8(i)(7) of the Exchange Act, the 2024 Shareholder Proposal deals with matters relating to the Company’s ordinary business operations.

Pursuant to the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter and the exhibits attached hereto, and is concurrently sending a copy of this correspondence to the Proponents, no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission.

Exchange Act Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff.



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Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the 2024 Shareholder 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.

### **The Shareholder Proposal**

On November 7, 2024, the Company received the following from the Proponents for inclusion in the 2025 Proxy Materials:

#### **RESOLVED:**

Select Medical Holdings Corporation is “devoted to helping others and achieving outcomes that improve quality of life.” The American Medical Association and other medical professionals recognize that plant-based diets offer patients a variety of health benefits, including lower risks of cardiovascular disease, type 2 diabetes, obesity, certain cancers, and even severe COVID-19. We urge the board to fulfill its commitment to improving quality of life by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat products.

#### **SUPPORTING STATEMENT:**

In 2017, the American Medical Association called on hospitals to improve patient health by providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars; eliminating processed meats; and providing and promoting healthful beverages. Subsequently, NYC Health + Hospitals, the country’s largest municipal health care system, began serving plant-based meals as the default lunch and dinner option for inpatients at its 11 public hospitals. In announcing the program, NYCHH’s president stressed “the importance of a healthy diet and how it can help fend off or treat chronic conditions like type 2 diabetes, high blood pressure, and heart disease.”

It is well-established that plant-based dietary patterns reduce the risk of cardiovascular disease and type 2 diabetes and are particularly effective in the prevention and treatment of overweight and obesity, as well as body weight maintenance. Large prospective cohort studies, such as the EPIC study (European Prospective Investigation into Cancer and Nutrition), the Adventist-Health Study, the Nurses’ Health Study, and the Health Professionals Follow-Up Study, have repeatedly demonstrated these benefits.

In 2015, the World Health Organization’s International Agency for Research on Cancer classified processed meat—which includes bacon, sausage, hot dogs, and other meat products preserved with additives or otherwise manipulated to alter color, taste, and durability—as carcinogenic to humans. Investigators in the EPIC study, which followed 448,568 people, relatedly discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day. In contrast, substitution studies have found that replacing one serving of processed meat per day with nuts decreased risk for disease by 19 percent and replacement with legumes decreased risk by 10 percent. IARC also classified red meat as probably carcinogenic to humans.



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Diabetes and cancer rates are on the rise. With 99,000 patients seen per day, Select Medical is positioned to improve public health nationwide. Serving healthful food helps patients get well and stay well, creating a teachable moment in which patients learn which foods help treat and prevent chronic disease.

Select Medical has the duty of, and commitment to, improving the quality of life of its patients. We urge shareholders to support this resolution for a feasibility report on serving plant-based meals as the primary option for patients.

A copy of the 2024 Shareholder Proposal from the Proponents is attached hereto as Exhibit A.

On November 2, 2023, the Proponents requested that the Company include a substantially similar proposal (the “2023 Proposal”) in its proxy materials for its 2024 annual meeting of shareholders (the “2024 Proxy Materials”). The Company subsequently informed the Staff of its intention not to include the 2023 Proposal in its 2024 Proxy Materials, and the Staff agreed that the proposal was excludable under Rule 14a-8(i)(7) as it “relates to, and does not transcend, ordinary business matters.” *Select Medical Holdings Corporation* (February 20, 2024) (hereinafter referred to as the “2024 No-Action Letter”).

The 2023 Proposal requested that the Company’s board of directors adopt the American Medical Association’s policy for healthful foods for healthcare facilities that would include “providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars, eliminating processed meat from menus, and providing and promoting healthful beverages.” The Proponents have now slightly modified the 2023 Proposal to instead request that the Company’s board of directors commission “a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings.”

The Proponents are attempting to circumvent the Staff’s ruling in the 2024 No-Action Letter by asking for the shareholders to vote to require the Company’s board of directors to commission a feasibility report on the provision of plant-based meals, as opposed to voting on simply requiring the Company to provide such meals as was requested in the 2023 Proposal. Additionally, the Proponents have attempted to frame the issue as a matter of public health in order to circumvent the appropriate basis for exclusion under Rule 14a-8(i)(7). However, regardless of how the 2024 Shareholder Proposal is altered from the 2023 Proposal, the Proponents’ true objective remains the same. The Proponents seek to mandate to the Company the specific food and beverage products being provided by the Company to patients to align with their political and moral objectives, which is a subject that the Staff agreed in the 2024 No-Action Letter related to the Company’s ordinary business operations and could thus be properly excluded from its 2024 Proxy Materials pursuant to Rule 14a-8(i)(7).

#### **Basis For Exclusion**

We respectfully request that the Staff concur in our view, as it did in the 2024 No-Action Letter, that the 2024 Shareholder Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) of the Exchange Act because the 2024 Shareholder Proposal deals with matters relating to the Company’s ordinary business operations.

#### **Analysis**

**I. The 2024 Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because it Involves Matters Related to the Company's Ordinary Business Operations.**

*A. Background*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates 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 [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Staff 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," noting that this underlying policy rests on two central considerations.

Regarding the first consideration, the Staff acknowledges 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." Examples of the tasks cited by the Staff in the 1998 Release include "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." The second consideration is the degree to which the proposal attempts to "micro-manage" the company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* Despite the two central considerations, the Staff has noted that a proposal relating to a company's ordinary business operations is not excludable if the proposal focuses on "sufficiently significant social policy issues" that "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

As outlined below, the 2024 Shareholder Proposal, although it purports to request the board of directors of the Company to commission a report, ultimately relies upon the central considerations that form the foundation of the ordinary business exclusion. The underlying subject matter of the 2024 Shareholder Proposal remains fundamental to management's ability to run the company on a day-to-day basis. The intent of the 2024 Shareholder Proposal, while purporting to only commission a report, remains to micromanage the Company by restricting its discretion in dealing with a large, complicated daily operation. Finally, regardless of how it is packaged, the 2024 Shareholder Proposal does not concentrate on any social policy issues of sufficient significance to a provider of healthcare services that would transcend day-to-day business matters. Consequently, because the 2024 Shareholder Proposal is related to, and does not transcend, the Company's ordinary business operations, it thus may be excluded from the 2025 Proxy Materials in accordance with Rule 14a-8(i)(7).

*B. The 2024 Shareholder Proposal May Be Excluded Because its Subject Matter Relates to the Company's Ordinary Business Operations.*

The 2023 Proposal requested the Company's board of directors to adopt the American Medical Association's policy for healthful foods for healthcare facilities that would include "providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars, eliminating processed meat from menus, and providing and promoting healthful beverages." The 2024 Shareholder Proposal instead requests the Company's board of directors to commission "a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings." The overarching goal of the 2024 Shareholder Proposal, like the 2023 Proposal, is to control the specific food and beverage products being provided by the Company to the patients, directly involving the Company's "ordinary business." The Company, as an operator of long-term acute care hospitals and inpatient rehabilitation hospitals, manages offered food options as a fundamental part of its day-to-day operations. The decisions regarding food and beverage service operations are made at the hospital level, with each hospital adopting a distinct approach to managing these operations. These decisions range from employing in-house staff, to engaging third-party vendors, to contracting for food services to be provided by host hospitals. Specific employee food and beverage requests are also taken into account at each hospital, as demonstrated by the diverse food and beverage operations and amenities such as kiosks, cafeterias, and self-service cafes implemented across the hospitals in response to these requests. Additionally, the Company's operations already align with standards set forth by The Joint Commission, the Academy of Nutrition and Dietetics and state and local regulatory agencies.

The hospital-level decision-making behind the food and beverage operations includes conducting nutritional screenings, creating patient-specific care plans, consulting with medical staff, addressing patient nutritional concerns, and assessing drug-nutrient interaction risks. This level of personalized care can only be effectively managed at the hospital level and cannot feasibly be dictated by shareholders. Each hospital is optimally equipped to provide food that is safe, nutritious, of high quality and tailored to each patient's unique needs, because food plays a crucial role in the recovery process for many patients. For instance, patients relearning how to eat and swallow require a dedicated dietary team and specific types and consistencies of food, determined on an individual and daily basis. A new food policy could limit food recovery options for patients struggling with eating, potentially hindering their recovery. Daily meticulous planning is required to cater to the diet prescriptions ordered by physicians as well as patient food, cultural and religious preferences to ensure their health and safety. Furthermore, the management's ability to adapt food services to changing patient needs, regulatory guidelines, and operational circumstances is crucial for the smooth running of the Company's hospitals and daily operations. The needs of each hospital can vary as well, depending on patient population and the hospital type (e.g., the dietary needs of patients in a long-term acute care hospital may be different than those at an inpatient rehabilitation hospital). Handling the operation of the food and beverage options available to employees and patients is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be



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subject to direct shareholder oversight.” 1998 Release. Asking the board of directors of the Company to commission a report on this topic does not change this fundamental reality.

The Staff has regularly allowed companies to exclude shareholder proposals relating to food options and products offered by a company. In 2023, the Staff allowed exclusion of shareholder proposals received by three healthcare companies encouraging the boards of directors of those companies to require “plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors,” noting in each case that the shareholder proposal “relates to, and does not transcend, ordinary business matters.” See *Elevance Health, Inc.* (Mar. 6, 2023); *HCA Healthcare, Inc.* (Mar. 6, 2023); *UnitedHealth Group Incorporated* (Mar. 16, 2023). All three companies emphasized that the complexity of the decision-making process involved in determining which products to offer their patients is beyond the capabilities and scope of shareholders. *Id.* Although these proposals did not explicitly demand that a report be commissioned, they were, in substance, aiming for the same outcome. In *McDonald’s Corp.* (Mar. 24, 1992), the Staff allowed the exclusion of a shareholder proposal that suggested healthier cooking practices and requested the company offer a “[low-fat] burger, switch to an all-vegetable cooking oil and offer salads . . . in keeping with enlightened medical research findings and nutritional practice.” The Staff has also allowed exclusion of menu expansion requests. For example, in *Papa John’s International, Inc.* (Feb. 13, 2015), the Staff allowed exclusion of a proposal to expand its menu options to include vegan cheese and meats.

Therefore, consistent with Staff precedent (including the 2024 No-Action Letter), the 2024 Shareholder Proposal is properly excludable under Rule 14a-8(i)(7) because the food products and options that the Company offers are ordinary business matters that only the Company can address, a fact that would not change whether or not the requested report is commissioned.

*C. Inclusion of the 2024 Shareholder Proposal Would Permit Shareholders to Micromanage the Company’s Ordinary Business Operations.*

The 2024 Shareholder 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.” SLB 14. Shareholders lack access to much of the information that the Company considers when making decisions about food operations, including but not limited to the costs and demands that vary by hospital location and type, the health conditions and needs of each patient that also vary depending on the type of hospital they are receiving care from, and allergies and other dietary restrictions of patients and employees. Instead of “providing high-level direction of the board or management,” the 2024 Shareholder Proposal could “inappropriately limit discretion of the board or management” by requiring an unnecessary report regarding the food and beverage options served to patients, which are appropriately hospital-level decisions that are part of a patient’s personalized care.

The ability of the Company to analyze ever-changing regulatory, employee and patient population-focused, dietary, and hospital-level information is crucial to the Company’s daily business operations and cannot be effectively micromanaged by shareholders or dependent upon the outcome of the requested report.

*D. The 2024 Shareholder Proposal Does Not Focus on Any Significant Social Policy Issue That Transcends the Company’s Ordinary Business Operations.*



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The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” Specifically, the Staff noted that focusing on such significant social policy issues “generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

Here, the 2024 Shareholder Proposal requests that the Company commission “a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings.” Although the Supporting Statement mentions potential health benefits from plant-based foods such as lower risks of cardiovascular disease, type 2 diabetes, and certain cancers, the Proponents are attempting to re-frame the Shareholder Proposal as a significant social issue of public health to undermine the applicability Rule 14a-8(i)(7), which is the basis in which the Staff agreed that the 2023 Proposal could be excluded from the Company’s 2024 Proxy Materials. However, the principal focus of the 2024 Shareholder Proposal, as it was in the 2023 Proposal, is on regulating the types of food and beverage products the Company provides to patients, which has been established as an ordinary business concern for management.

Additionally, even if the Proponent had raised a significant social policy issue, Staff precedent establishes that merely referencing such topics in passing does not transform an ordinary business proposal into one that transcends ordinary business, especially when these topics do not shape the actions proposed and only indirectly relate to the issues that are the central concern of the proposal. *See Wells Fargo (Harrington Investments, Inc.)* (Feb. 27, 2019); *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (Mar. 28, 2019). Further, the Staff has allowed exclusion of shareholder proposals that reference nutritional benefits when the shareholder proposal also references the products a company offers. *See McDonald’s Corp.* (Mar. 24, 1992); *Papa John’s International, Inc.* (Feb. 13, 2015).

Accordingly, the 2024 Shareholder Proposal may be excluded under Rule 14a-8(i)(7) as it is directly related to the Company’s ordinary business operations and does not transcend ordinary business operations, consistent with the precedents discussed above.

#### **Conclusion**

Following our analysis, the Company plans to omit the 2024 Shareholder Proposal from its 2025 Proxy Materials. We kindly ask for the Staff’s agreement that the 2024 Shareholder Proposal can be excluded under Rule 14a-8, consistent with its view in the 2024 No-Action Letter.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this letter. Correspondence should be sent to [stephen.leitzell@dechert.com](mailto:stephen.leitzell@dechert.com). If we can be of any further assistance in this matter, please do not hesitate to call me at 215-994-2621.





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Sincerely,

A handwritten signature in black ink that reads "Stephen M. Leitzell". The signature is written in a cursive, flowing style.

Stephen M. Leitzell

Enclosures

cc: Michael E. Tarvin, Select Medical Holdings Corporation  
Anna Herby, Physicians Committee for Responsible Medicine



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**EXHIBIT A**

2024 Shareholder Proposal

# PhysiciansCommittee

for Responsible Medicine

PCRM.ORG

5100 Wisconsin Ave. NW, Suite 400 • Washington, DC 20016 • Tel: 202-686-2210 • Fax: 202-686-2216 • pcrm@pcrm.org

November 7, 2024

Via FedEx Express

Michael E. Tarvin

Senior Executive Vice President, General Counsel and Secretary

Select Medical Holdings Corporation

4714 Gettysburg Road

Mechanicsburg, PA 17055

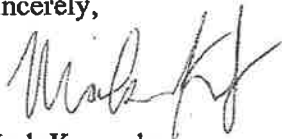
Re: Shareholder Proposal for Inclusion in the 2025 Proxy Statement

Dear Mr. Tarvin:

Enclosed with this letter is a shareholder proposal submitted by the Physicians Committee for Responsible Medicine (PCRM) for inclusion in the proxy statement for the 2025 annual meeting. Also enclosed is a letter from RBC Wealth Management, PCRM's brokerage firm, confirming PCRM's beneficial ownership of 1,323 common stock shares, acquired at least one year ago. PCRM has held at least \$25,000 worth of such shares continuously since acquisition and intends to hold at least this amount through and including the date of the 2025 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement, or if you need any further information, please contact PCRM's designated representative, Anna Herby, RD, at 5100 Wisconsin Ave., NW, Suite 400, Washington, DC 20016, 202-527-7349, or [aherby@pcrm.org](mailto:aherby@pcrm.org). Ms. Herby is available to meet via teleconference Mondays, Wednesdays, Thursdays, and Fridays—including during the regulatory period of "no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal"—during the hours of 12 noon through 3:00 p.m. ET.

Sincerely,



Mark Kennedy

Senior Vice President of Legal Affairs

Enclosures: Shareholder Proposal  
RBC Wealth Management letter

## **RESOLVED**

Select Medical Holdings Corporation is “devoted to helping others and achieving outcomes that improve quality of life.” The American Medical Association and other medical professionals recognize that plant-based diets offer patients a variety of health benefits, including lower risks of cardiovascular disease, type 2 diabetes, obesity, certain cancers, and even severe COVID-19. We urge the board to fulfill its commitment to improving quality of life by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat products.

## **SUPPORTING STATEMENT**

In 2017, the American Medical Association called on hospitals to improve patient health by providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars; eliminating processed meats; and providing and promoting healthful beverages. Subsequently, NYC Health + Hospitals, the country’s largest municipal health care system, began serving plant-based meals as the default lunch and dinner option for inpatients at its 11 public hospitals. In announcing the program, NYCHH’s president stressed “the importance of a healthy diet and how it can help fend off or treat chronic conditions like type 2 diabetes, high blood pressure, and heart disease.”

It is well-established that plant-based dietary patterns reduce the risk of cardiovascular disease and type 2 diabetes and are particularly effective in the prevention and treatment of overweight and obesity, as well as body weight maintenance. Large prospective cohort studies, such as the EPIC study (European Prospective Investigation into Cancer and Nutrition), the Adventist-Health Study, the Nurses’ Health Study, and the Health Professionals Follow-Up Study, have repeatedly demonstrated these benefits.

In 2015, the World Health Organization’s International Agency for Research on Cancer classified processed meat—which includes bacon, sausage, hot dogs, and other meat products preserved with additives or otherwise manipulated to alter color, taste, and durability—as carcinogenic to humans. Investigators in the EPIC study, which followed 448,568 people, relatedly discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day. In contrast, substitution studies have found that replacing one serving of processed meat per day with nuts decreased risk for disease by 19 percent and replacement with legumes decreased risk by 10 percent. IARC also classified red meat as probably carcinogenic to humans.

Diabetes and cancer rates are on the rise. With 99,000 patients seen per day, Select Medical is positioned to improve public health nationwide. Serving healthful food helps patients get well and stay well, creating a teachable moment in which patients learn which foods help treat and prevent chronic disease.

Select Medical has the duty of, and commitment to, improving the quality of life of its patients. We urge shareholders to support this resolution for a feasibility report on serving plant-based meals as the primary option for patients.



**Wealth  
Management**

November 7, 2024

Physicians Committee for Responsible Medicine  
Attn: Betsy Wason, Senior Vice President of Development  
5100 Wisconsin Ave NW 400  
Washington, DC 20016-4131

Re: Certification of Shareholder Ownership in Select Medical Holdings Corporation

Dear Ms. Wason:

This letter certifies that the Physicians Committee for Responsible Medicine holds 1,323 shares of Select Medical Holdings Corporation common stock and has continuously held at least \$25,000 in market value of such shares for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information please contact me at (973) 410-3375.

Sincerely,

A handwritten signature in cursive script that reads "Jenilee Hill".

Jenilee Hill, APP  
Senior Registered Client Associate  
RBC Wealth Management

Investment and insurance products offered through RBC Wealth Management are not insured by the FDIC or any other federal government agency, are not deposits or other obligations of, or guaranteed by, a bank or any bank affiliate, and are subject to investment risks, including possible loss of the principal amount invested.

RBC Wealth Management, a division of RBC Capital Markets, LLC, Member NYSE/FINRA/SIPC.

# PhysiciansCommittee

for Responsible Medicine

PCRM.ORG

5100 Wisconsin Ave. NW, Suite 400 • Washington, DC 20016 • Tel: 202-686-2210 • Fax: 202-686-2216 • pcrm@pcrm.org

January 21, 2025

## **VIA ONLINE SHAREHOLDER PROPOSAL FORM**

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

**Re: Response to “Select Medical Holdings Corporation – Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine”**

Dear Staff:

I write on behalf of the Physicians Committee for Responsible Medicine (“Physicians Committee”) pursuant to Rule 14a-8(k) in response to a request (“No-Action Request”) by Select Medical Holdings Corporation (“Company”) that the Staff of the Division of Corporation Finance concur with its view that it may exclude the Physicians Committee’s shareholder resolution and supporting statement (collectively “Proposal”) from the proxy materials to be distributed in connection with the Company’s 2025 annual meeting of shareholders. The Company seeks to exclude the Proposal pursuant to Rule 14a-8(i)(7). For the reasons set forth below, the Physicians Committee urges the Staff to deny the Company’s No-Action Request.

Pursuant to Rule 14a-8(k) and *Announcement: New Intake System for Rule 14a-8 Submissions and Related Correspondence* (Nov. 7, 2023), the Physicians Committee submits this letter electronically and concurrently submits a copy to the Company.

### **I. The Proposal**

The Proposal’s proposed resolution states,

#### **RESOLVED**

Select Medical Holdings Corporation is “devoted to helping others and achieving outcomes that improve quality of life.” The American Medical Association and other medical professionals recognize that plant-based diets offer patients a variety of health benefits, including lower risks of cardiovascular disease, type 2 diabetes, obesity, certain cancers, and even severe COVID-19. We urge the board to fulfill its commitment to improving quality of life by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat products.

The Proposal's supporting statement summarizes clinical research studies, discussed in more detail below, establishing that plant-based dietary patterns reduce the risk of cardiovascular disease and type 2 diabetes and are particularly effective in the prevention and treatment of overweight and obesity, as well as body weight maintenance.

The supporting statement also cites a report by the World Health Organization's International Agency for Research on Cancer classifying processed meat—such as bacon, sausage, hot dogs, and similarly prepared menu items—as carcinogenic to humans. The supporting statement also describes a study following 448,568 people in which investigators discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day.<sup>1</sup>

As noted in the supporting statement, leading medical professional associations and hospital systems are now investigating the public health benefits of serving plant-based meals to patients.

## **II. Because the Proposal Focuses on a Significant Social Policy Issue, the Company May Not Exclude the Proposal Pursuant to Rule 14a-8(i)(7)**

Rule 14a-8(i)(7) provides that a company may exclude a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” Only “business matters that are mundane in nature and do not involve any substantial policy or other considerations” may be omitted under this provision. 41 Fed. Reg. 52,994, 52,998 (Dec. 3, 1976).

A proposal relating to a company’s ordinary business operations is not excludable if the proposal focuses on “sufficiently significant social policy issues” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998). “In determining whether the focus of these proposals is a significant social policy issue, [Staff] consider both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). “In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” Staff Legal Bulletin No. 14L, part B.2 (Nov. 3, 2021).

According to Release No. 40018,

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such 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 be appropriate for a shareholder vote.

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. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.

Exchange Act Release No. 40018 (May 21, 1998) (footnotes omitted).

**A. The Proposal Does Not Implicate the Ordinary Business Exception**

The Proposal does not implicate Rule 14a-8(i)(7) because it does not pertain to a task that is “fundamental to management’s ability to run a company on a day-to-day basis.” The Company mischaracterizes the Proposal as “seek[ing] to mandate to the Company the specific food and beverage products being provided by the Company,” No-Action Request at 3, and “to control the specific food and beverage products being provided by the Company to the patients,” *id.* at 5. But the plain language of the Proposal speaks for itself. The Proposal requests only a “report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings.” As a result, the Staff decisions cited by the Company, *see* No-Action Request at 6, regarding proposals about specific menu item and products are inapposite.

**B. The Proposal Raises a Significant Social Policy Issue That Transcends Day-To-Day Business Matters**

In Staff Legal Bulletin No. 14C, the Staff considered proposals related to the environment and public health, which it had previously found to be significant policy considerations, and advised that “[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public’s health, we do not concur with the company’s view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7).” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Thus, there is no question that public health issues involve a “broad societal impact.” *See* Staff Legal Bulletin No. 14L, part B.2 (Nov. 3, 2021).

The Company mischaracterizes the Proposal as “merely referencing” significant social policy “topics [that] do not shape the actions proposed and only indirectly relate to the issues that are the central concern of the proposal.” No-Action Request at 7. But the Proposal’s supporting statement repeatedly cites the established scientific consensus underlying the Proposal.

The American Medical Association (“AMA”) is the nation’s largest professional association of physicians. Founded in 1847, its mission is “to promote the art and science of medicine and the betterment of public health.” AMA, *About*, <https://www.ama-assn.org/about> (last accessed Jan. 16, 2025). To achieve this mission, the AMA’s House of Delegates periodically issues policy statements to serve as guidance for physicians on healthcare issues. These “policies are based on professional principles, scientific standards and the experience of practicing physicians.” AMA,



*Developing AMA Policies*, <https://www.ama-assn.org/house-delegates/ama-policies/developing-ama-policies> (last accessed Jan. 16, 2025).

As summarized in the Proposal, AMA policy *H-150.949: Healthful Food Options in Health Care Facilities* “calls on all health care facilities to improve the health of patients, staff, and visitors by: (a) providing a variety of healthy food, including plant-based meals, and meals that are low in saturated and trans fat, sodium, and added sugars; (b) eliminating processed meats from menus; and (c) providing and promoting healthy beverages.” AMA, *Healthful Food Options in Health Care Facilities H-150.949*, <https://policysearch.ama-assn.org/policyfinder/detail/H-150.949?uri=%2FAMADoc%2FHOD.xml-0-627.xml> (last accessed Jan. 16, 2025).

As stated in the Proposal, NYC Health + Hospitals (“NYCHH”), “the country’s largest municipal health care system, began serving plant-based meals as the default lunch and dinner option for inpatients at its 11 public hospitals.” In doing so, NYCHH stated, “Scientific research has shown that plant-based eating patterns are linked to significantly lower risk of cardiovascular disease, type 2 diabetes, obesity, and certain cancers. They can also be effective for weight management as well as treatment of hypertension and hyperlipidemia.” NYCHH, *NYC Health + Hospitals Now Serving Culturally-Diverse Plant-Based Meals As Primary Dinner Option for Inpatients at All of Its 11 Public Hospitals* (Jan. 9, 2023), <https://www.nychealthandhospitals.org/pressrelease/nyc-health-hospitals-now-serving-plant-based-meals-as-primary-dinner-option-for-inpatients-at-all-of-its-11-public-hospitals/>.

Plant-based dietary patterns are particularly effective in the prevention<sup>2,3,4</sup> and treatment of overweight and obesity,<sup>5,6</sup> as well as body weight maintenance,<sup>7</sup> and reduce the risk of cardiovascular disease<sup>8,9,10</sup> and type 2 diabetes<sup>11,12</sup> at the same time. These benefits have been repeatedly demonstrated in large prospective cohort studies, such as the EPIC study (European Prospective Investigation into Cancer and Nutrition),<sup>1,13</sup> the Adventist-Health Study,<sup>10,11</sup> the Nurses’ Health Study,<sup>14,15</sup> and the Health Professionals Follow-Up Study.<sup>16,17</sup>

For type 2 diabetes in particular, the 2020 American Association of Clinical Endocrinologists and American College of Endocrinology’s consensus statement on type 2 diabetes management recommends a plant-based diet.<sup>18</sup> A study published in the *International Journal of Cancer* found that vegetarians have reduced breast cancer risk, compared to meat-eaters, most likely due to the abundance of healthful foods and avoidance of meat throughout their lives.<sup>19</sup>

Evidence suggests that the amount of animal-derived foods consumed is an independent risk factor for being overweight, and limiting their consumption is an effective strategy for weight loss and a healthy body composition, as well as for body weight maintenance. Vegetarians typically have lower body mass index values, compared with nonvegetarians.<sup>2</sup> Body mass index values tend to increase with increasing frequency of animal product consumption. In the Adventist Health Study-2, body mass index values were lowest among vegans (23.6 kg.m<sup>-2</sup>), higher in lacto-ovo-vegetarians (25.7 kg.m<sup>-2</sup>), and highest in nonvegetarians (28.8. kg.m<sup>-2</sup>).<sup>3,4,11</sup> The average individual yearly weight gain is reduced when people limit consumption of animal foods.<sup>20</sup>

In 2015, the World Health Organization’s International Agency for Research on Cancer (“IARC”) classified processed meat—which includes bacon, deli slices, sausage, hot dogs, and other meat products preserved with additives or otherwise manipulated to alter color, taste, and durability—as carcinogenic to humans.<sup>21</sup> IARC made this determination after assessing more than 800 epidemiological studies investigating the association of cancer with consumption of red meat or processed meat in many countries, from several continents, with diverse ethnicities and diets. Group 1 is the agency’s highest evidentiary classification; other Group 1 carcinogens include tobacco smoking, secondhand tobacco smoke, and asbestos.<sup>22</sup> In contrast, substitution studies have found that replacing one serving of processed meat per day with nuts decreased risk for disease by 19 percent and replacement with legumes decreased risk by 10 percent.<sup>23</sup>

In light of the overwhelming body of scientific consensus establishing the public health benefits associated with plant-based diets, the Proposal “focus[es] on sufficiently significant social policy issues (e.g., significant discrimination matters)” and “generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Exchange Act Release No. 40018 (May 21, 1998) (footnote omitted).

### **C. The Proposal Does Not Seek to Micromanage the Company**

The Company incorrectly asserts that 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.’” No-Action Request at 6. According to the Staff, a proposal might probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” Exchange Act Release No. 40018 (May 21, 1998). At the same time, the Staff “recogniz[es] that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” Staff Legal Bulletin No. 14L, part B.3 (Nov. 3, 2021).

The Proposal does not seek intricate details or to impose complex policies or any specific timeframe. Rather it asks for a feasibility report disclosing information that the Company appears to have begun compiling. For example, in its No-Action Request dated January 11, 2024, regarding a prior Physicians Committee proposal, the Company stated that it “provides plant-based and healthful food options to all patients and employees across its facilities. . . . The Company already offers a variety of vegetarian and vegan options on its menus and is also in the process of introducing a plant-based tube feeding option and supplement.”

The Company asserts that the commissioning of this single report “could ‘inappropriately limit discretion of the board or management’ by requiring an unnecessary report,” No-Action Request at 6, but such an argument, if accepted, would justify the wholesale exclusion of all shareholder proposals requesting the commissioning of a report on any subject.

#### **IV. Conclusion**

The Physicians Committee respectfully requests that the Staff decline to issue a no-action response and inform the Company that it may not exclude the Proposal in reliance on Rule 14a-8(i)(7). Should the Staff need any additional information in reaching a decision, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Kennedy", with a stylized, flowing script.

Mark Kennedy  
Senior Vice President of Legal Affairs  
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mkennedy@pcrm.org

## **SCIENTIFIC REFERENCES**

- 1 Rohrmann S, Overvad K, Bueno-de-Mesquita HB, et al. Meat consumption and mortality--results from the European Prospective Investigation into Cancer and Nutrition. *BMC Med.* 2013;11:63-75. doi:10.1186/1741-7015-11-63
- 2 Berkow SE, Barnard N. Vegetarian diets and weight status. *Nutr Rev.* 2006;64(4):175-188. doi:10.1111/j.1753-4887.2006.tb00200.x
- 3 Fraser GE. Associations between diet and cancer, ischemic heart disease, and all-cause mortality in non-Hispanic white California Seventh-day Adventists. *Am J Clin Nutr.* 1999;70(3 Suppl):532S-538S. doi:10.1093/ajcn/70.3.532s
- 4 Appleby PN, Thorogood M, Mann JI, Key TJ. The Oxford Vegetarian Study: an overview. *Am J Clin Nutr.* 1999;70(3 Suppl):525S-531S. doi:10.1093/ajcn/70.3.525s
- 5 Kahleova H, Petersen KF, Shulman GI, et al. Effect of a low-fat vegan diet on body weight, insulin sensitivity, postprandial metabolism, and intramyocellular and hepatocellular lipid levels in overweight adults: a randomized clinical trial. *JAMA Netw Open.* 2020;3(11):e2025454. doi:10.1001/jamanetworkopen.2020.25454
- 6 Barnard ND, Levin SM, Yokoyama Y. A systematic review and meta-analysis of changes in body weight in clinical trials of vegetarian diets. *J Acad Nutr Diet.* 2015;115(6):954-969. doi:10.1016/j.jand.2014.11.016
- 7 Zhu R, Fogelholm M, Poppitt SD, et al. Adherence to a plant-based diet and consumption of specific plant foods-associations with 3-year weight-loss maintenance and cardiometabolic risk factors: a secondary analysis of the PREVIEW Intervention Study. *Nutrients.* 2021;13(11):3916. doi:10.3390/nu13113916
- 8 Orlich MJ, Singh PN, Sabaté J, et al. Vegetarian dietary patterns and mortality in Adventist Health Study 2. *JAMA Intern Med.* 2013;173(13):1230-1238. doi:10.1001/jamainternmed.2013.6473
- 9 Crowe FL, Appleby PN, Travis RC, Key TJ. Risk of hospitalization or death from ischemic heart disease among British vegetarians and nonvegetarians: results from the EPIC-Oxford cohort study. *Am J Clin Nutr.* 2013;97(3):597-603. doi:10.3945/ajcn.112.044073
- 10 Kwok CS, Umar S, Myint PK, Mamas MA, Loke YK. Vegetarian diet, Seventh Day Adventists and risk of cardiovascular mortality: a systematic review and meta-analysis. *Int J Cardiol.* 2014;176(3):680-686. doi:10.1016/j.ijcard.2014.07.080
- 11 Tonstad S, Butler T, Yan R, Fraser GE. Type of vegetarian diet, body weight, and prevalence of type 2 diabetes. *Diabetes Care.* 2009;32(5):791-796. doi:10.2337/dc08-1886
- 12 Tonstad S, Stewart K, Oda K, Batech M, Herring RP, Fraser GE. Vegetarian diets and incidence of diabetes in the Adventist Health Study-2. *Nutr Metab Cardiovasc Dis.* 2013;23(4):292-299. doi:10.1016/j.numecd.2011.07.004
- 13 Vergnaud AC, Norat T, Romaguera D, et al. Meat consumption and prospective weight change in participants of the EPIC-PANACEA study. *Am J Clin Nutr.* 2010;92(2):398-407. doi:10.3945/ajcn.2009.28713
- 14 Chen Z, Drouin-Chartier JP, Li Y, et al. Changes in plant-based diet indices and subsequent risk of type 2 diabetes in women and men: three U.S. prospective cohorts. *Diabetes Care.* 2021;44(3):663-671. doi:10.2337/dc20-1636
- 15 Satija A, Malik V, Rimm EB, Sacks F, Willett W, Hu FB. Changes in intake of plant-based diets and weight change: results from 3 prospective cohort studies. *Am J Clin Nutr.* 2019;110(3):574-582. doi:10.1093/ajcn/nqz049

- 16 Satija A, Bhupathiraju SN, Rimm EB, et al. Plant-based dietary patterns and incidence of type 2 diabetes in US men and women: results from three prospective cohort studies. *PLoS Med.* 2016;13(6):e1002039. doi:10.1371/journal.pmed.1002039
- 17 Zheng Y, Li Y, Satija A, et al. Association of changes in red meat consumption with total and cause specific mortality among US women and men: two prospective cohort studies. *BMJ.* 2019;365:l2110. doi:10.1136/bmj.l2110
- 18 Garber AJ, Handelsman Y, Grunberger G, et al. Consensus statement by the American Association of Clinical Endocrinologists and American College of Endocrinology on the Comprehensive Type 2 Diabetes Management Algorithm - 2020 Executive Summary. *Endocr Pract.* 2020;26(1):107-139. doi:10.4158/CS-2019-0472
- 19 Dos Santos Silva I, Mangtani P, McCormack V, Bhakta D, Sevak L, McMichael AJ. Lifelong vegetarianism and risk of breast cancer: a population-based case-control study among South Asian migrant women living in England. *Int J Cancer.* 2002;99:238-244.
- 20 Rosell M, Appleby P, Spencer E, Key T. Weight gain over 5 years in 21,966 meat-eating, fish-eating, vegetarian, and vegan men and women in EPIC-Oxford. *Int J Obes (Lond).* 2006;30(9):1389-1396. doi:10.1038/sj.ijo.0803305
- 21 Bouvard V, Loomis D, Guyton KZ, et al. Carcinogenicity of consumption of red and processed meat. *Lancet Oncology.* Published online October 26, 2015.
- 22 International Agency for Research on Cancer, Agents Classified by the IARC Monographs, Volumes 1–122 (2018), [http://monographs.iarc.fr/ENG/Classification/List\\_of\\_Classifications.pdf](http://monographs.iarc.fr/ENG/Classification/List_of_Classifications.pdf).
- 23 Pan A, Sun Q, Bernstein AM, et al. Red meat consumption and mortality: results from 2 prospective cohort studies. *Arch Intern Med.* 2012;172(7):555-563.

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February 19, 2025

**VIA ONLINE SHAREHOLDER PROPOSAL FORM**

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

**Re:     Select Medical Holdings Corporation**  
**Shareholder Proposal of Physicians Committee for Responsible Medicine**

Dear Sir or Madam:

On behalf of Select Medical Holdings Corporation (the “Company”), we are submitting this letter to respond to the Physicians Committee for Responsible Medicine’s (the “Proponent’s”) letter response on January 21, 2025 (the “Response”), objecting to the Company’s intention, expressed in our letter to the staff of the Securities and Exchange Commission (the “Staff”) dated December 12, 2024 (the “Initial Letter”), to omit the Proponent’s shareholder proposal and supporting statement (the “Proposal”) from the Company’s proxy materials for its 2025 annual meeting of shareholders (the “2025 Proxy Materials”). We believe that the Proponent’s arguments in its Response are deficient for the reasons outlined in our Initial Letter and below and respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended, because the Proposal deals with matters relating to the Company’s ordinary business operations.

This letter has been submitted electronically, with a concurrent copy sent to the Proponent, pursuant to Rule 14a-8(k) and *Announcement: New Intake System for Rule 14a-8 Submissions and Related Correspondence* (Nov. 7, 2023).

New Staff guidance on Rule 14a-8(i)(7) provides further support for excluding the Proposal from the Company’s 2025 Proxy Materials. On February 12, 2025, the Staff published new guidance regarding the exclusion of shareholder proposals under Rule 14a-8(i)(7). *See Staff Legal Bulletin No. 14M* (February 12, 2025) (hereinafter referred to as “Staff Legal Bulletin No. 14M”). Rule 14a-8(i)(7), the “ordinary business” exclusion, permits a company to exclude from its proxy materials a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the

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.” *Staff Legal Bulletin No. 14M at C.1*. The Commission has stated that the policy underlying the “ordinary business” exclusion rests on two central considerations. The first relates to the proposal’s subject matter; the second relates to the degree to which the proposal “micromanages” the company. *Id.* *Staff Legal Bulletin No. 14M* reinstated *Staff Legal Bulletin No. 14J*, section C.2. Micromanagement (October 23, 2018) and rescinded *Staff Legal Bulletin No. 14L*. *Staff Legal Bulletin No. 14M at A and C.3*. In light of this new guidance from the Staff, it is even more clear that the Proposal may be excluded under these updated standards.

*Staff Legal Bulletin No. 14M* states that in assessing the first consideration of the “ordinary business” exclusion under Rule 14a-8(i)(7), the Staff “will take a company-specific approach in evaluating significance, rather than focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues or categories of issues are universally ‘significant.’” *Staff Legal Bulletin No. 14M at C.2*. The Staff further noted that “a policy issue that is significant to one company may not be significant to another.” *Id.* The Company is an operator of critical illness recovery hospitals, inpatient rehabilitation hospitals and outpatient rehabilitation clinics. There is no food service in the Company’s outpatient rehabilitation clinics. The Company’s critical illness recovery hospitals serve the needs of patients recovering from critical illnesses, often with complex medical needs, and the Company’s inpatient rehabilitation hospitals serve patients that require intensive physical rehabilitation care. Providing food to its patients in these settings is just one of the many services that the Company provides as part of a patient’s individualized treatment plan and is very much incidental to the primary medical services that the Company provides its patients. Additionally, the decisions regarding food and beverage service operations are made at the individual hospital level, with each hospital adopting a distinct approach to managing these operations. *Staff Legal Bulletin No. 14M* states that “[t]he Division’s analysis will focus on whether the proposal deals with a matter relating to an individual company’s ordinary business operations or raises a policy issue that transcends the individual company’s ordinary business operations.” *Id. at C.2*. As such, the policy issue raised by the Proponent regarding plant-based food served in these facilities is undeniably insignificant to the Company taken as a whole, and in no way can be seen to “transcend” the Company’s ordinary business operations.

Additionally, the updated guidance which was reinstated by *Staff Legal Bulletin No. 14M* provides that the Staff will look to the degree to which a proposal seeks to micromanage the Company’s operations. *Staff Legal Bulletin No. 14J*, section C.2 (October 23, 2018). Determinations as to excludability of proposals “will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” *Id.* Importantly, this framework “also applies to proposals that call for a study or report... a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds.” *Id.* For example, a proposal calling for a report may be excludable if the substance of the report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies. *Id.* The Proposal seeks to impose a specific method for feeding the Company’s patients in its critical illness recovery hospitals and inpatient rehabilitation hospitals, which is a complex and highly individualized matter. Dietary decisions must be

made by trained medical professionals for each individual patient in each individual facility on a case-by-case basis.

Lastly, the Response, in multiple instances relies on Staff Legal Bulletin No. 14L, section B.2 (Nov. 3, 2021) as support for the Proponent's argument that the Proposal may not be excluded because it focuses on a significant social policy issue. *Response at 2 and 3*. However, we note that Staff Legal Bulletin No. 14L was rescinded by Staff Legal Bulletin No. 14M.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this letter. Correspondence should be sent to [stephen.leitzell@dechert.com](mailto:stephen.leitzell@dechert.com). If we can be of any further assistance in this matter, please do not hesitate to call me at 215-994-2621.

Sincerely,

A handwritten signature in black ink, reading "Stephen M. Leitzell". The signature is written in a cursive, flowing style.

Stephen M. Leitzell