



DIVISION OF  
CORPORATION FINANCE

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

March 10, 2025

J. Allen Overby  
Bass, Berry & Sims PLC

Re: HCA Healthcare, Inc. (the "Company")  
Incoming letter dated December 20, 2024

Dear J. Allen Overby:

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). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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

December 20, 2024

**VIA ONLINE SHAREHOLDER PROPOSAL PORTAL**

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

**Re: HCA Healthcare, Inc. – Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine**

Dear Sir or Madam:

On behalf of our client, HCA Healthcare, Inc. (the “Company”), we respectfully submit this letter pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from the Company’s proxy materials for its 2025 annual meeting of shareholders (the “2025 Proxy Materials”) a shareholder proposal and statements in support thereof submitted to the Company by the Physicians Committee for Responsible Medicine (the “Proponent”) in a letter dated November 7, 2024 and received by the Company on November 11, 2024 (the “Shareholder Proposal”). All references to “Company,” “HCA” and “HCA Healthcare” as used throughout this document refer to HCA Healthcare, Inc. and its affiliates. The Company’s 2025 annual meeting of shareholders will be held on or about April 24, 2025. In order to timely commence mailing, the Company intends to begin printing the 2025 Proxy Materials no later than March 10, 2025 and intends to file its preliminary 2025 Proxy Materials with the Commission on or about March 4, 2025 and its definitive 2025 Proxy Materials on or about March 14, 2025.

The Company requests confirmation that the Commission’s staff (the “Staff”) will not recommend to the Commission that enforcement action be taken against the Company if the Company excludes the Shareholder Proposal from its 2025 Proxy Materials pursuant to Exchange Act:

- Rule 14a-8(i)(7), on the basis that the Shareholder Proposal relates to, and does not transcend, the Company’s ordinary business operations; and
- Rule 14a-8(i)(10), on the basis that the Company has already substantially implemented the Shareholder Proposal.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter and the exhibit attached hereto, and is concurrently sending a copy of this correspondence to the Proponent, 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. 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 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 11, 2024, the Company received the Shareholder Proposal from the Proponent for inclusion in the 2025 Proxy Materials:

#### **RESOLVED**

HCA Healthcare, Inc. is “committed to the care and improvement of human 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 human 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 more than 43 million patient encounters per year, HCA is positioned to improve public health nationwide. Serving healthful food helps patients get well and stay well over the long term, creating a teachable moment in which patients learn which foods help treat and prevent chronic disease.

HCA has the duty of, and commitment to, improving the 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.

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

### **Basis for Exclusion**

We respectfully request that the Staff concur in our view that the Shareholder Proposal may be excluded from the 2025 Proxy Materials pursuant to Exchange Act (i) Rule 14a-8(i)(7), on the basis that the Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations, and (ii) Rule 14a-8(i)(10), on the basis that the Company has substantially implemented the Shareholder Proposal.

### **Analysis**

#### **I. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because The Shareholder Proposal Relates To, And Does Not Transcend, The Company's Ordinary Business Operations.**

The Staff has long allowed companies to exclude, as relating to ordinary business operations, proposals seeking to influence management's decisions with respect to menu items and food options, because such decisions are squarely within the management function of a company and require complex analyses beyond the ability of shareholders as a group. The Staff re-confirmed this long-held view in *HCA Healthcare, Inc.* (February 21, 2024), where it allowed exclusion under Rule 14a-8(i)(7) of a proposal that requested the Company adopt the American Medical Association's policy for healthful foods for healthcare facilities and implement the program for healthful hospital food developed by the NYC Health + Hospitals system, determining that such proposal "relates to, and does not transcend, ordinary business matters." See also *Universal Health Services, Inc.* (Mar. 22, 2024); *Tenet Healthcare Corporation* (Mar. 22, 2024); *Select Medical Holdings Corporation* (Feb. 20, 2024). Further, in *HCA Healthcare, Inc.* (Mar. 6, 2023), the Staff allowed exclusion under Rule 14a-8(i)(7) of a proposal that requested the Company's board of directors to require the Company's hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeteria used by outpatients, staff and visitors, determining that such proposal "relates to, and does not transcend, ordinary business matters." See also *Elevance Health, Inc.* (Mar. 6, 2023); *UnitedHealth Group Inc.* (Mar. 16, 2023).

##### *A. Background of the Ordinary Business Exclusion.*

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from the company's proxy materials if the proposal "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 [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"). The Staff stated in the 1998 Release 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 that this underlying policy rests on two central considerations that form the basis of the Commission's application of the ordinary business exclusion.

The first consideration relates to the subject matter of the proposal. The 1998 Release recognizes 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 such 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 relates to the degree to which the proposal seeks to “micro-manage” the company by “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The Staff recently explained in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”) that it “focuses on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” The Staff continued that this approach is “consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters.”

Notwithstanding these considerations, the Staff explained in the 1998 Release that a proposal relating to a company’s ordinary business operations is nonetheless generally not excludable if the proposal focuses on “sufficiently significant social policy issues (e.g., significant discrimination matters)” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” In determining whether a proposal presents a policy issue that transcends the ordinary business of the company, the Staff noted in SLB 14L that it will focus on “whether the proposal raises issues with a broad societal impact” and on the related “social policy significance,” regardless of whether a nexus exists between the policy issue and the company.

Further, a shareholder proposal being framed in the form of a request for a report, analysis or other information 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); *Johnson Controls, Inc.* (Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”); *see also Ford Motor Co.* (Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business). A proposal’s request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. The Staff indicated in Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”), that in evaluating shareholder proposals that request a risk assessment the Staff:

[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 shareholder proposals seeking risk assessments when the subject matter concerns

ordinary business operations. *See, e.g., Shake Shack Inc.* (Apr. 23, 2024) (concurring with the exclusion, as an ordinary business matter, of a proposal seeking a risk analysis about the impacts of the company's claims that its chicken is hormone-free); *The Charles Schwab Corporation* (Mar. 27, 2024) (concurring with the exclusion, as an ordinary business matter, of a proposal requesting the board prepare a report on "reputational and financial risks" of "misalignment between proxy votes it casts on behalf of clients and its client's values and preferences" and strategies for addressing misalignments); *McDonald's Corp.* (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.* (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.* (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 shareholders on the assessment).

As discussed below, the Shareholder Proposal implicates each of the central considerations underlying the ordinary business exclusion: the subject matter of the Shareholder Proposal deals with issues that are "fundamental to management's ability to run the company on a day-to-day basis" and seeks to micromanage the Company by limiting its discretion with respect to complex, day-to-day operations. Furthermore, the Shareholder Proposal does not focus on sufficiently significant social policy issues that transcend day-to-day business matters. Accordingly, the Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations and therefore may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7).

*B. The Subject Matter of the Shareholder Proposal Relates to the Company's Ordinary Business Operations.*

The 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" and asks that such report "address the health risks" of serving certain foods to patients. At its core, the Shareholder Proposal attempts to direct the Company to regularly provide, or not provide, particular food products and therefore, involves the Company's "ordinary business."

In accordance with Exchange Act Release No. 20091 and SLB 14E, both discussed above, in analyzing the Shareholder Proposal under Rule 14a-8(i)(7), it is necessary to examine whether the underlying subject matter of the report and the risk evaluation involve matters of ordinary business. Here, the underlying subject matter of the Shareholder Proposal is directly concerned with the Company's ordinary business operations because it seeks a report relating to the feasibility of and risks involving the Company's providing, or not providing, certain food products.

The Staff has long allowed companies to exclude, as relating to ordinary business operations, proposals seeking to influence management's decisions with respect to menu items and food options, because such decisions are squarely within the management function of a company and require complex analyses beyond the ability of shareholders as a group. The Staff re-confirmed this long-held view in *HCA Healthcare, Inc.* (Feb. 21, 2024), where it allowed exclusion under Rule 14a-8(i)(7) of a proposal that requested the Company adopt the American Medical Association's policy for healthful foods for healthcare facilities and implement the program for healthful hospital food developed by the NYC Health + Hospitals system, determining that such proposal "relates to, and does not transcend, ordinary business matters." *See also Universal Health Services, Inc.* (Mar. 22, 2024); *Tenet Healthcare Corporation* (Mar.

22, 2024); *Select Medical Holdings Corporation* (Feb. 20, 2024). Further, in *HCA Healthcare, Inc.* (Mar. 6, 2023), the Staff allowed exclusion under Rule 14a-8(i)(7) of a proposal that requested the Company's board of directors to require the Company's hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeteria used by outpatients, staff and visitors, determining that such proposal "relates to, and does not transcend, ordinary business matters." See also *Elevance Health, Inc.* (Mar. 6, 2023); *UnitedHealth Group Inc.* (Mar. 16, 2023). Likewise, in *American Airlines Group Inc.* (Apr. 1, 2024), the Staff allowed exclusion under Rule 14a-8(i)(7) of a proposal seeking that all in-flight special meals be gluten-free, vegan, lactose-free, free of common allergens and meet the needs of other dietary options. See also *United Airlines Holdings, Inc.* (Apr. 1, 2024); *Delta Airlines, Inc.* (Apr. 22, 2024). Similarly, in *Papa John's International, Inc.* (Feb. 13, 2015), the Staff allowed exclusion under Rule 14a-8(i)(7) of a proposal encouraging the board of directors to expand menu offerings to include vegan cheeses and vegan meats to "advance animal welfare, reduce its ecological footprint, expand its healthier options, and meet a growing demand for plant-based foods." In *McDonald's Corp.* (Mar. 24, 1992), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requiring the company to 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 both in the U.S. and abroad," and in *McDonald's Corp.* (Mar. 9, 1990), the Staff allowed exclusion under Rule 14a-8(i)(7) of a proposal recommending that the board of directors introduce "a vegetarian entree whose means of production neither degrades the environment nor exploits other species." In each case, the applicable company emphasized the complex decision-making process involved in selecting menu items and food options.

The Staff has also consistently allowed retailers, for example, to exclude, as relating to ordinary business operations, proposals seeking to influence management's decisions whether to sell particular products. See, e.g., *The TJX Companies* (Apr. 16, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board develop an animal welfare policy applying to all of the Company's stores, merchandise and suppliers because it concerned the company's products and services for sale); *The Home Depot, Inc.* (Mar. 21, 2018) (permitting exclusion under Rule 14a-8(i)(7) of proposal encouraging the company to end sales of glue traps because it related to the products and services offered for sale by the company); *Wal-Mart Stores, Inc.* (Mar. 24, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board issue a report on the viability of Wal-Mart's U.K. cage-free egg policy); *PetSmart, Inc.* (Apr. 14, 2006) (permitting exclusion of a proposal requesting that the company's board issue a report based on the company's findings in an investigation into whether to end bird sales); *Marriott International, Inc.* (Feb. 13, 2004) (permitting exclusion under Rule 14a-8(i)(7) of a proposal prohibiting the sale of sexually explicit material at Marriott-owned and managed properties); *Albertson's, Inc.* (Mar. 18, 1999) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that the company's board take steps necessary to assure that the company no longer sells, advertises, or promotes tobacco products).

Allowing shareholders to dictate which products the Company makes available and serves to its patients and provides in all its food service settings (thus directing what is provided to all staff and visitors) would inappropriately delegate management functions to shareholders and it would not be practical to allow shareholders to oversee such decisions. As of September 30, 2024, we owned and operated 187 hospitals and approximately 2,400 ambulatory sites of care in 20 states and the United Kingdom. Purchasing decisions, which are made by our individual hospital facilities, inherently involve complex operational, business and quality of care issues requiring knowledge of ordinary business and operational matters, such as the individual dietary needs and preferences of their respective hospital populations and the varying and transient needs and demands of their respective patients, staff and visitors. In many cases, these hospital-level decisions may be affected by a hospital's respective integrated delivery network. Also, with respect to patients, we generally must adhere to the Academy of Nutrition and Dietetics Nutrition Care Manual, which each of our hospitals consults to define patient menus and other offerings

appropriate for our patients. Assessing these and the many other factors that influence purchasing decisions at the Company's hospitals requires the real-time judgment of the management and employees at each respective Company hospital and facility, which, unlike the Company's shareholders, are well-positioned—and have the necessary knowledge, information and resources—to make informed decisions on such business and operational matters.

*C. The Shareholder Proposal Would Permit Shareholders to Micromanage the Company's Ordinary Business Operations.*

The underlying subject matter of the Shareholder Proposal, like those addressed in the letters cited above, seeks to probe too deeply into matters of a complex nature that are not appropriate for shareholder determination. Numerous complex factors, many of which require analysis of constantly changing information to which the Company's shareholders do not have access, are considered by the Company's hospitals in connection with their respective purchasing decisions. These factors include, in addition to those noted in the discussion above, cost, demand, other dietary restrictions and preferences, health conditions and the needs of each patient. Additionally, instead of “providing high-level direction on large strategic corporate matters,” the Shareholder Proposal would “inappropriately limit discretion of the board or management” by usurping the day-to-day decision-making process involved with purchasing decisions at the Company's hospitals. The ability of the Company's hospitals to address constantly changing information, to which the Company's shareholders do not have access, related to individual dietary needs and preferences of their respective hospital populations and the varying and transient needs and demands of their respective patients, staff and visitors is fundamental to the Company's business operations, and cannot properly be submitted to shareholders to micromanage.

*D. The Shareholder Proposal Does Not Focus on a Sufficiently Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations.*

The Commission noted in the 1998 Release that shareholder proposals relating to ordinary business operations but “focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”

The Shareholder Proposal, however, fails to focus on a sufficiently significant social policy issue that transcends the ordinary business of the Company. *See, e.g., HCA Healthcare, Inc.* (February 21, 2024) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the Company adopt the American Medical Association's policy for healthful foods and implement the program of healthful hospital food developed by the NYC Health + Hospitals system, “in light of the marked financial benefits, the potential improvements in employee health, and the enhanced prestige that will result from these initiatives.”); *Universal Health Services, Inc.* (Mar. 22, 2024); *Tenet Healthcare Corporation* (Mar. 22, 2024); *Select Medical Holdings Corporation* (Feb. 20, 2024); *HCA Healthcare, Inc.* (Mar. 6, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the Company's board of directors require the Company's hospitals to provide plant-based food options to patients, staff and visitors, “[g]iven the impact of nutrition on a patient's recovery process and overall health”); *Elevance Health, Inc.* (Mar. 6, 2023); *UnitedHealth Group Inc.* (Mar. 16, 2023); *McDonald's Corp.* (Mar. 24, 1992) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that 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”); *Papa John's International, Inc.* (Feb. 13, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company offer vegan meats and cheeses to expand the company's healthier options).



Moreover, despite references to certain health-related impacts and public health considerations, the Shareholder Proposal is fundamentally concerned with the Company's ordinary business operations. The Staff has long distinguished between proposals that focus on a significant social policy issue and those that contain references to a significant social policy issue but are actually directed at a company's ordinary business matters. Proposals with passing references touching upon 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). *See, e.g., Amazon, Inc.* (Apr. 7, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks to the company related to staffing of its business and operations, despite the proponent's assertion that the proposal focused on human capital management); *Amazon.com, Inc.* (Apr. 8, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting reports concerning the distribution of stock-based incentives to employees and related EEO-1 employee classification data, despite the proponent's assertion that the proposal focused on wealth inequality and other equity issues).

The Staff has broadly concurred with the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(7) as matters that deal with the company's ordinary business when proposals relating to particular products, services or practices raised public health considerations related to the company but nevertheless did not transcend day-to-day business matters. For example, in *HCA Healthcare, Inc.* (Mar. 6, 2023), the proposal requested that the Company's board of directors require the Company's hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeteria used by outpatients, staff and visitors, "[g]iven the impact of nutrition on a patient's recovery process and overall health." Despite references in the proposal to public health considerations, the Staff permitted exclusion under Rule 14a-8(i)(7) because "the Proposal relates to, and does not transcend, ordinary business matters." *See also Elevance Health, Inc.* (Mar. 6, 2023); *UnitedHealth Group Inc.* (Mar. 16, 2023); *McDonald's Corp.* (Mar. 24, 1992) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that 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"); *Papa John's International, Inc.* (Feb. 13, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company offer vegan meats and cheeses to expand the company's healthier options). In *Viacom Inc.* (Dec. 18, 2015), the proposal requested that the company's board of directors issue a report assessing the company's policy responses to public concerns regarding linkages of food and beverage advertising to childhood obesity, diet-related diseases and other impacts on children's health. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because the proposal related to, and did not transcend, the company's "nature, presentation and content of advertising," which was part of its ordinary business operations. *See also McDonald's Corp.* (Mar. 12, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought to create a special board committee on food integrity because it related to the company's ordinary business operations). To the extent that the Staff has denied exclusion of health-related proposals on the ground that they raise a significant policy issue, the proposals have focused on inherent and significant hazards to human health or the prioritization of financial returns over healthcare purpose. *See, e.g., CVS Health Corp.* (Mar. 15, 2022); *Baxter International Inc.* (Mar. 1, 1999); *Universal Health Services Inc.* (Mar. 30, 1999).

The Shareholder Proposal does not transcend the Company's ordinary business operations, because as discussed above, the underlying subject matter of the Shareholder Proposal merely attempts to link potential health-related advantages of plant-based meals to the broader issue of public health while attempting to direct the Company to regularly provide, or not provide, particular products without regard to the specific dietary needs, restrictions and preferences of the diverse and transient populations of each of the Company's hospitals and other sites of care. The Shareholder Proposal attempts to address one type

of dietary option without taking into consideration the Company's existing practices and the nuanced and diverse populations that the Company employs and serves.

For the above reasons, the Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations and may be excluded from the 2025 Proxy Materials in reliance on Rule 14a-8(i)(7).

## **II. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Shareholder Proposal.**

### *A. Background of the Substantially Implemented Exclusion.*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if "the company has already substantially implemented the proposal." Under the "substantially implemented" standard, a company may exclude a shareholder proposal when the company's actions address the shareholder proposal's underlying concerns, even if the company does not implement every aspect of the shareholder proposal. *Masco Corporation* (Mar. 29, 1999) (permitting exclusion under Rule 14a-8(i)(10) where the company adopted a version of the proposal with slight modification and clarification as to one of its terms). *See also Starbucks Corp.* (Jan. 19, 2022) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting public disclosure of the company's non-discrimination and civil rights reports and training manuals where the company had already made some reports public and publicly disclosed certain information regarding employee training efforts); *AutoZone, Inc.* (Oct. 9, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the Board issue a report on sustainability to shareholders taking into consideration certain SASB standards where existing public disclosures align with the guidelines of the proposal); *MGM Resorts International* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exxon Mobil Corp. (Rossi)* (Mar. 19, 2010) (permitting exclusion under Rule 14a-8(i)(10) despite differences between a company's actions and a shareholder proposal so long as the company's actions satisfactorily address the proposal's essential objectives); *Texaco, Inc.* (Mar. 28, 1991) ("a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal"). Ultimately, the actions taken by the company must have addressed the proposal's "essential objective." *See, e.g., Freeport-McMoRan Copper & Gold, Inc.* (Mar. 5, 2003) (permitting exclusion under Rule 14a-8(i)(10) where the company had already implemented a human rights policy, even though the specific elements of the policy did not meet the shareholder proponent's objectives). The purpose of Rule 14a-8(i)(10) is to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." *See* Exchange Release No. 34-20091 (August 16, 1983); Exchange Act Release No. 34-12598 (July 7, 1976) (discussing Rule 14a-8(c)(10), the predecessor to Rule 14a-8(i)(10)).

### *B. The Company Has Substantially Implemented the Shareholder Proposal by Regularly Providing a Variety of Plant-Based Meals to Patients.*

The Shareholder Proposal requests that the Company commission a report on the feasibility of serving plant-based meals as the primary option for patients and address health risks of serving certain foods in such report. As described above, the Staff has interpreted substantial implementation under Rule 14a-8(i)(10) to require a company to have satisfactorily addressed both the proposal's underlying concern and its essential objective, not implement every aspect of the shareholder proposal. Here, the Shareholder Proposal's underlying concern is the availability and accessibility (or presumed lack thereof) of plant-

based meals at the Company's hospitals, and its essential objective is for the Company to offer plant-based meals as the primary food option for patients.

The Company has satisfactorily addressed both the Shareholder Proposal's underlying concern and essential objective because, as of the date hereof, approximately 97% of our facilities offer a variety of plant-based meals in our retail operations, and approximately 83% of our facilities offer plant-based meals in our patient operations. The Company is also enhancing its plant-based food program through two enterprise-wide initiatives. First, in connection with a software upgrade, the Company is standardizing diet orders to include vegan and vegetarian options across all facilities. These mandatory standardized orders have been implemented at 17% of the Company's facilities across five divisions, with an additional 13% expected by the end of 2025. Second, as part of its menu standardization initiative, the Company is deploying nutritional system technology which is designed to enable division-wide menus to include vegetarian and vegan options. The implementation has been successfully piloted and implemented in one of the Company's divisions, with plans to expand implementation to all divisions by 2027.

The Company offers an array of plant-based protein options to all of its hospitals, and its menu standardization initiative is designed to support a comprehensive range of plant-based options through a menu engineering platform that includes 2,905 recipes, with 675 vegan and 1,640 vegetarian choices. The initiative also plans to more than double the number of unique plant-based items included in the program. These options include plant-based and meatless protein options, such as Italian-style sausage and alternative chicken patties, strips, and nuggets, as well as "steak" tips, from leading plant-based brands such as Beyond Meat, Impossible, Morningstar Farms | Incogmeato, dr. Praegers, Happy Little Plants and Gardein. The primary brands providing these options have also broadened their offerings to include proteins from a variety of sources, along with reduced sodium and nutrient-fortified options within the meatless category. Outside of patient meals, in other food service settings, the Company is working to expand its program for vending and micromarkets and anticipates providing guidelines for retail and physician food options and plant-based and related designations for packaged vending items.

In addition, certain of the Company's hospitals are already required to provide plant-based options to patients pursuant to certain state-level initiatives. For example, in 2018, California passed Senate Bill 1138, which requires hospitals and certain other licensed healthcare facilities to make available plant-based meals to patients.<sup>1</sup>

The Company has also considered whether to serve processed meat products. The Company believes that offering these foods is justified for patients who do not have specific health contraindications, or for those who can benefit from them as a source of protein or comfort, particularly in cases of malnutrition. When deciding whether to provide these options, careful consideration is given to individual patient needs, including dietary restrictions, cardiovascular health, and risk factors for chronic conditions. The Company also strives to offer variety and choice when it is appropriate and feasible.

In summary, by making an array of plant-based meals widely available and accessible to patients at its hospitals, and by working to further enhance its plant-based food program through two company-wide initiatives, the Company has satisfactorily addressed the Shareholder Proposal's underlying concern, and by regularly serving (and working to further enhance the availability of) plant-based meals, the Company has satisfactorily achieved the Shareholder Proposal's essential objective.

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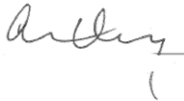
<sup>1</sup> See CA Health & Safety Code § 1265.10.

For the above reasons, the Company has substantially implemented the Shareholder Proposal, and it may be excluded from the 2025 Proxy Materials in reliance on Rule 14a-8(i)(10).

**Conclusion**

For the foregoing reasons, we respectfully request that the Staff not recommend any enforcement action from the Commission if the Company excludes the Shareholder Proposal from its 2025 Proxy Materials. Should you have any questions, or if the Staff is unable to concur in our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. If the Staff has any questions regarding this request or requires additional information, please contact the undersigned by phone at (615) 742-6211 or by email at [aoverby@bassberry.com](mailto:aoverby@bassberry.com).

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Allen Overby", with a small mark below it.

J. Allen Overby

cc: John M. Franck II, HCA Healthcare, Inc.  
The Physicians Committee for Responsible Medicine

**Exhibit A**

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

John M. Franck II

Vice President — Legal and Corporate Secretary

HCA Healthcare, Inc.

One Park Plaza

Nashville, TN 37203

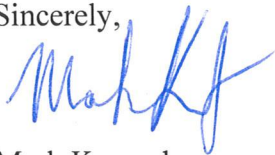
Re: Shareholder Proposal for Inclusion in the 2025 Proxy Statement

Dear Mr. Franck:

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 126 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, [REDACTED], or [REDACTED]. 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 11 a.m. through 2:00 p.m. CT.

Sincerely,



Mark Kennedy

Senior Vice President of Legal Affairs

Enclosures: Shareholder Proposal  
RBC Wealth Management letter

## **RESOLVED**

HCA Healthcare, Inc. is “committed to the care and improvement of human 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 human 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 more than 43 million patient encounters per year, HCA is positioned to improve public health nationwide. Serving healthful food helps patients get well and stay well over the long term, creating a teachable moment in which patients learn which foods help treat and prevent chronic disease.

HCA has the duty of, and commitment to, improving the 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 HCA Healthcare, Inc.

Dear Ms. Wason:

This letter certifies that the Physicians Committee for Responsible Medicine holds 126 shares of HCA Healthcare, Inc. 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 [REDACTED]

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 17, 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 “HCA Healthcare, Inc. – 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 HCA Healthcare, Inc. (“Company”) that the Staff of the Division of Corporation Finance (“Staff”) 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) and Rule 14a-8(i)(10). 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**

HCA Healthcare, Inc. is “committed to the care and improvement of human 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 human 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 benefits of serving plant-based meals in the interest of improving public health.

## **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 one that “attempts to direct the Company to regularly provide, or not provide, particular food products,” No-Action Request at 5, and as an effort by “shareholders to dictate which products the Company makes available and serves to its patients,” *id.* at 6.

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 regarding menu and product proposals cited by the Company, *see* No-Action Request at 5–6, 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 making only “passing references touching upon topics that might raise significant social policy” with at most “tangential implications for such issues.” No-Action Request at 8. But the scientific consensus underlying the Proposal is well established and cited repeatedly in the Proposal’s supporting statement.

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 probe too deeply into matters of a complex nature that are not appropriate for shareholder determination.” No-Action Request at 7. 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 already appears to be collecting. *See generally* No-Action Request at 10 (describing the Company’s plant-based food program). The Company asserts that the commissioning of this single report “would ‘inappropriately limit discretion of the board or management; by usurping the day-to-day decision-making process involved with purchasing decisions at the Company’s hospitals.’” No-Action Request at 7. This overstatement cannot be taken seriously.

### **III. Because the Company has not Substantially Implemented the Proposal, the Company May Not Exclude the Proposal Pursuant to Rule 14a-8(i)(10)**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if “the company has already substantially implemented the proposal.” “This provision is designed to avoid the

possibility of shareholders having to consider matters which already have been favorably acted upon by the management and would be applicable, for instances, whenever the management agrees prior to a meeting of security holders to implement a proponent's proposal in its entirety." 41 Fed. Reg. 29,982, 29,985 (July 20, 1976) (discussing the "Moot Proposals" predecessor to the current "substantially implemented" provision).

The determination whether a proposal that is not "fully effected" has been "substantially implemented" necessarily involves "subjectivity." *See* 48 Fed. Reg. 38,218, 38,221 (Aug. 23, 1983). "In the staff's view, a determination that the Company has substantially implemented the proposal depends upon whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). "In other words, substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have addressed the proposal's essential objective satisfactorily." *Intel Corporation* (Mar. 11, 2010).

The Proposal's essential objective is a report that the Company has not issued. To the extent that the Company ever has disclosed information that might appear in such a report, the Company appears to have done so only in this or prior No-Action Requests. But such limited statements do not "compare favorably" with the Proposal's request. Because the Company has not addressed the Proposal's essential objective satisfactorily it may not exclude the Proposal.

#### **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) or Rule 14a-8(i)(10). 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 flourish at the end.

Mark Kennedy  
Senior Vice President of Legal Affairs  
(202) 527-7315  
mkennedy@pcrm.org

## **SCIENTIFIC REFERENCES**

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