



DIVISION OF  
CORPORATION FINANCE

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

March 22, 2024

Chad Weiner  
Tenet Healthcare Corporation

Re: Tenet Healthcare Corporation (the "Company")  
Incoming letter dated January 10, 2024

Dear Chad Weiner:

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 requests that the Company implement the program for healthful hospital food developed by the NYC Health + Hospitals system.

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, and does not transcend, ordinary business matters. 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/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Mark Kennedy  
Physicians Committee for Responsible Medicine

January 10, 2024

**VIA INTERNET SUBMISSION**

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

Re: *Tenet Healthcare Corporation*  
*Shareholder Proposal of Physicians Committee for Responsible Medicine*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that Tenet Healthcare Corporation (the “Company”) intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the “2024 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from Physicians Committee for Responsible Medicine (the “Proponent”).

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

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

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal (including correspondence regarding the status of any negotiations with the Company), 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 PROPOSAL

The Proposal states:

**RESOLVED:** Tenet Healthcare Corporation shall improve patient health, achieve significant revenue savings, enrich employee health, reduce absenteeism, and enhance its image as a healthcare leader by implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, are attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

## ANALYSIS

### **The 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." 1998 Release.

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was 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 Commission 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" (emphasis added). 1998 Release.

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable," the

Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 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).

We note that, although the Staff recently issued new guidance specifically relating to its approach to evaluating certain aspects of the ordinary business exclusion, such guidance does not impact the arguments made herein. See Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”). Although SLB 14L, among other things, reverses prior Staff guidance regarding the company-specific approach to evaluating the significance of a policy issue that is the subject of a shareholder proposal for purposes of the ordinary business exclusion, this no-action request does not rely on a company-specific approach to evaluating significance and relies on precedent preceding, or not involving, the reversed prior Staff guidance. Therefore, SLB 14L is not applicable to this Proposal.

*B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers To Its Customers.*

The Proposal requests the Company “implement[] the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.” The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company’s ordinary business operations, in that it directly relates to products and services offered for sale by the Company. Decisions regarding the products and services that a company offers, including the ingredients contained in the company’s products, implicate myriad factors that must be considered by the company’s management, including the tastes and preferences of customers, the products and services offered by the company’s competitors, the laws where the company’s products and services are offered and sold, the availability of sufficient quantity and quality of products to meet demand, and the prices charged by the company’s suppliers. Balancing such interests is a complex issue and 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 subject to direct shareholder oversight.” 1998 Release.

The Staff has consistently recognized that decisions relating to the products and services offered by a company, including decisions regarding the development of certain products, are part of a company’s ordinary business operations and has concurred with their exclusion. In *HCA Healthcare, Inc. (Beyond Investing LLC)* (avail. Mar. 6, 2023) and in *Elevance Health, Inc. (Beyond Investing LLC)* (avail. Mar. 6, 2023), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal seeking a requirement that the company’s hospitals provide plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors, noting that the proposal “relate[d] to, and [did] not transcend, ordinary business matters.” In *Papa John’s International Inc.* (avail. Feb. 13, 2015), the Staff concurred with the exclusion of a proposal requesting the company’s board “have Papa John’s expand its menu offerings to include vegan cheeses and vegan meats in order to advance animal welfare, reduce its ecological footprint, expand its healthier options and meet growing demand for plant-based foods.” The *Papa John’s* supporting statement argued that offering plant-based options would “promote operations that are less detrimental to the environment, public health,

and animal welfare.” It cited studies purporting to show that vegetarians and vegans “enjoy a lower risk of death from ischemic heart disease, lower blood cholesterol levels, lower blood pressure, lower rates of hypertension and type 2 diabetes, and a lower body mass index as well as lower overall cancer rates” and that “[a]nimal agriculture is a leading contributor to climate change.” Notwithstanding these assertions, the Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting in particular that “the proposal relates to the products offered for sale by the company and does not focus on a significant policy issue.” In *Amazon.com, Inc.* (avail. Mar. 11, 2016), the Staff concurred with the exclusion of a proposal requesting that the company “issue a report addressing animal cruelty in the supply chain,” where the supporting statement requested that the report “articulate whether the company has guidelines, above and beyond legal compliance, for identifying animal cruelty associated with products sold on its website; explain inconsistencies with respect to cruel production methods in the current selection of items offered for sale; propose policy options for strengthening any existing guidelines.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting in particular that “the proposal relates to the products and services offered for sale by the company.” As the Staff further explained, “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7).”

Here, as in the precedents discussed above, the Proposal specifically relates to the Company’s decisions concerning the products and services that it offers and sells to its customers – specifically, the Proposal requests that the Company implement “the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.” The Supporting Statement underscores the Proposal’s focus on the Company’s decisions concerning the products and services it offers, noting that:

- the Company has “8.5 million patient encounters each year”;
- “[s]erving healthful food helps patients get well and stay well over the long term”;
- “plant-based foods present, on average, a 16% revenue savings”; and
- the Proposal, if adopted, would “improve patient wellness, achieve revenue savings, and boost employee health and morale with inexpensive healthful foods.”

Consistent with the precedents cited above, the Proposal is therefore excludable under Rule 14a-8(i)(7) because it focuses on the products and services the Company offers to its customers, and thus relates to the Company’s day-to-day operations. Thus, consistent with Staff precedent, the Proposal, by focusing on the food products and options that the Company offers at its healthcare facilities, addresses issues that are ordinary business matters for the Company and is properly excludable under Rule 14a-8(i)(7).

*C. The Proposal Is Excludable Because It Relates To The Company’s Management Of Its Workforce.*

The Proposal requests the Company “implement[] the innovative program for healthful hospital food developed by the NYC Health + Hospitals system” in order to, in part, “enrich employee health.” The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company’s management of its workforce, in that it directly relates to products and services

offered to the Company's employees, and therefore, the Company's management of its workforce.

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to the company's management of its workforce. As noted above, the Commission specifically recognized in the 1998 Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Similarly, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "*employee health benefits*, general compensation issues not focused on senior executives, *management of the workplace*, employee supervision, labor-management relations, employee hiring and firing, *conditions of the employment* and employee training and motivation" (emphases added).

Consistent with the 1998 Release, the Staff has recognized that a wide variety of proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). For example, in *Intel Corp.* (avail. Mar. 18, 1999), the Staff concurred with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various "protections" for the company's employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect. The Staff noted that the foregoing was excludable as "relating, in part, to Intel's ordinary business operations (i.e. management of the workforce)." *See also Amazon.com, Inc.* (avail. Apr. 1, 2020, recon. denied Apr. 9, 2020) (concurring with the exclusion of a proposal requesting a report on steps the company has taken to reduce the risk of accidents because "the [p]roposal focuses on workplace accident prevention, an ordinary business matter"); *Yum! Brands, Inc.* (avail. Mar. 6, 2019) (concurring with the exclusion of a proposal relating to adopting a policy not to "engage in any Inequitable Employment Practice" because it related "generally to the [c]ompany's policies concerning its employees and does not focus on an issue that transcends ordinary business matters"); *PG&E Corp.* (avail. Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender, or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business operations); *Apple, Inc. (Zhao)* (avail. Nov. 16, 2015) (concurring with the exclusion of a proposal asking the company's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour and wage inequality," as relating to "compensation that may be paid to employees generally"); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it "relates to procedures for hiring and training employees" and "[p]roposals concerning a company's management of its workforce are generally excludable under Rule 14a-8(i)(7)"); *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring with the exclusion of a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company's reduction-in-force review process, noting that "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)").

Here, as in the precedents discussed above, the Proposal specifically relates to the Company's management of its workforce because it concerns the products and services it offers and sells to its employees. The Proposal calls for the company to "enrich employee health" and "reduce absenteeism" by implementing the "innovative program for healthful hospital food." The Supporting Statement underscores the impact of the Proposal on the management of the workforce, noting that with "improved employee health, Tenet may lower healthcare costs, increase productivity, and significantly increase revenue" and that "[e]mployee health improves and absenteeism decreases when the food environment is improved." Moreover, the Supporting Statement highlights that one of the focuses of the proposal is to "boost employee health and morale with inexpensive healthful foods" and cites a study that "found that providing plant-based food offerings and simple educational messages improved employee health and reduced health-related productivity impairments by 40-46%."

The Proposal's suggested implementation of a new food program for employees brings it squarely within the reach of the 1998 Release. As in *Yum! Brands*, the Proposal relates "generally to the [c]ompany's policies concerning its employees" by changing the food offerings for employees, and a change in those policies would have complex consequences that would be "impracticable for shareholders to decide how to solve ... at an annual shareholders meeting." 1998 Release.

Consistent with the precedents cited above, the Proposal is therefore excludable under Rule 14a-8(i)(7) as relating to the management of the Company's workforce because it directly relates to products and services offered to the Company's workforce as well as the Company's policies concerning its employees.

*D. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations.*

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 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). Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

Here, the Proposal requests the Company implement "the innovative program for healthful hospital food developed by the NYC Health + Hospitals system," and does not focus on any

significant policy issues that transcend the Company's ordinary business operations (even if the Supporting Statement makes a passing reference to the "significant social issue of public health"). Instead, as discussed above, the Proposal's principal focus is the offering of healthful food at the Company's healthcare facilities, which will "improve patient health, achieve significant revenue savings, enrich employee health, reduce [employee] absenteeism, and enhance its image as a healthcare leader." Notwithstanding the Supporting Statement's references to "public health," the Proposal is fundamentally concerned with economic and business considerations related to the meal and food options that the Company offers to patients and to employees. Further, the Supporting Statement is focused on the economic and business considerations of the Proposal when discussing a potential cost reduction of "approximately 60 cents per food tray," and the workforce benefits of offering healthful food to employees: "providing plant-based food offerings and simple educational messages improved employee health and reduced health-related productivity impairments by 40-46%. With improved employee health, Tenet may lower healthcare costs, increase productivity, and significantly increase revenue."

Because of its focus on "healthful food" and "plant-based food," the Proposal is readily distinguishable from proposals that focused solely on negative impacts to public health related to a company's ordinary business operations. *See, e.g., Arch Coal, Inc.* (avail. Feb. 10, 2012) (unable to concur with the exclusion of a proposal requesting a report on the company's "efforts to reduce environmental and health hazards associated with" the company's mining operations); *Newmont Mining Corp.* (avail. Feb. 5, 2007) (unable to concur with the exclusion of a proposal requesting a report "on the potential environmental and public health damage resulting from the company's mining and waste disposal operations"). Here, the Proposal is focused solely on healthier food-related services and products that the Company could provide. Thus, unlike the proposals at issue in *Arch Coal* and *Newmont Mining*, the Proposal is not centrally or exclusively focused on the possible negative consequences to public health, but is more broadly focused on economic and business outcomes that could be realized by the Company's offering of healthier food-related products and services. (We also note that even if the Proposal focused on such issues, it would still be excludable under Rule 14a-8(i)(7). *See, e.g., Viacom Inc.* (avail. Dec. 18, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board issue a report assessing the company's policy responses to public concerns as to linkages of food and beverage advertising to impacts on children's health as "relat[ing] to the nature, presentation and content of advertising"); *Papa John's International Inc.* (avail. Feb. 13, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company include more vegan offerings in its restaurants, despite assertion the proposal would promote animal welfare, as related to "the products offered for sale by the company").)

Even if the Proposal were to raise a significant policy issue, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, and as discussed above, in *HCA Healthcare*, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board of directors require the company's hospitals provide plant-based food options to patients, staff and visitors. Although the proposal discussed potential health benefits from implementing the proposal, the Staff stated that the proposal "relates to, and does not transcend, ordinary business matters." Similarly, in *Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019), although



the proposal arguably touched on sustainability concerns, the proposal was broadly worded, encompassed a wide range of issues relating to the company's business and did not focus on any single issue. As a result, the Staff granted no-action relief under Rule 14a-8(i)(7), noting that "the [p]roposal relates generally to 'the community impacts' of the [c]ompany's operations and does not appear to focus on an issue that transcends ordinary business matters." As in *HCA Healthcare* and *Elevance*, because the Proposal's focus is on the food that the Company serves to patients and in its cafeterias and on its proposition that healthier food would provide health benefits to patients, as well as improve employee absenteeism and productivity, the Proposal fails to focus on any issue that might rise to the level of significance that would preclude exclusion.

As discussed above, the Proposal relates to ordinary business matters: decisions regarding the products and services that a company offers (including products and services offered to the Company's workforce) and the Company's policies concerning its employees. Accordingly, because the Proposal's request is directly related to what would constitute the Company's ordinary business operations and does not transcend those ordinary business operations, similar to the proposals in the precedents discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

### CONCLUSION

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

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Chad.Wiener@tenethealth.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (469) 893-6209, or Thomas J. Kim of Gibson, Dunn & Crutcher LLP at (202) 887-3550.

Sincerely,



Chad Weiner  
Vice President, Assistant General Counsel &  
Assistant Corporate Secretary  
Tenet Healthcare

Enclosures

cc: Thomas J. Kim, Gibson, Dunn & Crutcher LLP  
Mark Kennedy, Physicians Committee for Responsible Medicine

**EXHIBIT A**

# PhysiciansCommittee

for Responsible Medicine

PCRMC.ORG

December 12, 2023

Via FedEx Express  
Corporate Secretary  
Tenet Healthcare Corporation  
14201 Dallas Parkway  
Dallas, TX 75254

Re: Shareholder Proposal for Inclusion in the 2024 Proxy Statement

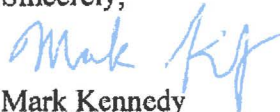
Dear Mr. Arnst:

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 2024 annual meeting. Also enclosed is a letter from RBC Wealth Management, PCRM's brokerage firm, confirming PCRM's beneficial ownership of 955 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 2024 annual 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

[REDACTED] Ms. Herby, who will appear at the annual meeting to present this proposal, 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 11:00 a.m. through 2:00 p.m. CT.

Sincerely,



Mark Kennedy  
Senior Vice President of Legal Affairs

Enclosures: Shareholder Resolution  
RBC Wealth Management letter

## **Shareholder Resolution for Improved Health and Revenue Savings**

### **RESOLVED:**

Tenet Healthcare Corporation shall improve patient health, achieve significant revenue savings, enrich employee health, reduce absenteeism, and enhance its image as a healthcare leader by implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.

### **SUPPORTING STATEMENT:**

In 2017, the American Medical Association adopted a policy calling on U.S. hospitals to improve the health of patients, staff, and visitors 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 from menus; and providing and promoting healthful beverages. These healthful changes enjoy strong support from patients. Subsequently, the NYC Health + Hospitals system implemented a program following these guidelines and improving upon them in certain ways. Patient satisfaction has been greater than 90%, staff satisfaction has been similarly high, and costs have dropped by approximately 60 cents per food tray. Media coverage has been strongly favorable, greatly boosting the system's image.

This approach addresses the significant social issue of public health, while also reducing food costs and potentially reducing medical costs. 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. 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.

Recent research shows that plant-based foods present, on average, a 16% revenue savings. When scaled to an institution level, these savings increase exponentially. Employee health improves and absenteeism decreases when the food environment is improved. A multicenter study for GEICO employees found that providing plant-based food offerings and simple educational messages improved employee health and reduced health-related productivity impairments by 40-46%. With improved employee health, Tenet may lower healthcare costs, increase productivity, and significantly increase revenue.

With 8.5 million patient encounters each year, Tenet is well positioned to improve public health nationwide. Serving food that is nutritionally, religiously, culturally, and morally acceptable to a patient is critical to providing equitable, patient-centered health care, improving the health and well-being of those served, and providing comfort and healing. When we improve patient wellness, achieve revenue savings, and boost employee health and morale with inexpensive healthful foods, everyone wins, including the shareholders who invest in our company's future.

In light of the potential improvements in patient and employee health, marked financial benefits, and enhanced prestige that will result from these initiatives, we respectfully ask shareholders to support this resolution.

# 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 23, 2024

## **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: Reference Number 484561: Tenet Healthcare Corporation's No-Action Request**

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 by Tenet Healthcare Corporation ("Company") that the Staff of the Division of Corporation Finance ("Division") concur with its view that it may exclude the Physicians Committee's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed in connection with the Company's 2024 annual meeting of shareholders ("No-Action Request"). 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 is concurrently submitting a copy to the Company.

### **I. The Proposal**

The Proposal's proposed resolution states,

#### **RESOLVED:**

Tenet Healthcare Corporation shall improve patient health, achieve significant revenue savings, enrich employee health, reduce absenteeism, and enhance its image as a healthcare leader by implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.

The Proposal's supporting statement describes the public health benefits that such a resolution would effectuate, among them that "[p]lant-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. 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."

## 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).

To the extent that the Proposal touches on the Company’s ordinary business operations, the Proposal may not be excluded because it 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.”

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. 23, 2024). 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. 23, 2024).

As summarized in the Proposal, in 2017, the AMA updated policy *H-150.949: Healthful Food Options in Health Care Facilities* by inserting additional text that “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. 23, 2024).

As stated in the Proposal, NYC Health + Hospitals (“NYCHH”) thereafter “implemented a program following these [AMA] guidelines and improving upon them in certain ways.” NYCHH is the nation’s largest municipal healthcare system, treating more than one million patients per year. 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/>. Of particular significance, NYCHH began serving plant-based meals as the default lunch and dinner option for inpatients at all of its 11 public hospitals. *Id.*

It is well-established that plant-based dietary patterns are particularly effective in the prevention<sup>1,2,3</sup> and treatment of overweight and obesity,<sup>4,5</sup> as well as body weight maintenance,<sup>6</sup> and reduce the risk of cardiovascular disease<sup>7,8,9</sup> and type 2 diabetes<sup>10,11</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>12,13</sup> the Adventist-Health Study,<sup>9,10</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>1</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>2,3,10</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>

Investigators in the EPIC study, which followed 448,568 men and women, discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day.<sup>12</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>

This overwhelming body of scientific consensus underlies the Proposal's stated aim to "improve patient health." Similarly, in announcing NYCHH's program, president and CEO, Mitchell Katz, MD, 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.” Fiona Holland, *Plant-based Food to Become the Default Meals in New York City’s Public Hospitals*, Food Matters Live, Dec. 10, 2022, <https://foodmatterslive.com/article/plant-based-meals-default-at-new-york-city-public-hospital>.

In Staff Legal Bulletin No. 14C, the Division 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 the issue of public health has a “broad societal impact.” See Staff Legal Bulletin No. 14L, part B.2 (Nov. 3, 2021).

Four of the Proposal’s supporting statement’s five paragraphs explicitly address patient health, and two do so in their entirety. The Proposal states, “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. 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.”

The Proposal continues, “With 8.5 million patient encounters each year, Tenet is well positioned to improve public health nationwide. Serving food that is nutritionally, religiously, culturally, and morally acceptable to a patient is critical to providing equitable, patient-centered health care, improving the health and well-being of those served, and providing comfort and healing.” The No-Action Request therefore is wrong to characterize the Proposal as one that “touches, or may touch, upon significant policy issues” but “does not focus on such issues.”

One paragraph of the Proposal does indeed highlight other benefits, including improvements to the health of the Company’s employees. The Company mistakenly argues that this text renders the Proposal “excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company’s management of its workforce.” Citing *United Technologies Corp.* (Feb. 19, 1993), the No-Action Request characterizes the Proposal as relating to “employee health benefits,” “management of the workplace,” and “conditions of the employment.” But unlike the no-action letters summarized in the No-Action Request, the Proposal does not seek an employment-related policy or touch on employee rights, safety, or compensation. Nor does the Proposal seek to provide contractually based benefits or to direct conditions of employment. Health improvements for staff would be expected to follow from the availability of healthful foods onsite and would in turn lead to health improvements for the Company’s millions of patients nationwide because these staff members are the very people providing the “teachable moment” noted in the Proposal.

The No-Action Request cites two times that Staff allowed exclusion under Rule 14a-8(i)(7) of a proposal to require that company “hospitals provide plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors, noting that the proposal ‘relate[d] to, and [did] not transcend, ordinary business matters.’” See *Elevance Health, Inc.* (Mar. 6, 2023); *HCA Healthcare, Inc.* (Mar. 6, 2023). However, in both instances,



the proponent, Beyond Investing LLC, opted not to respond to the companies' no-action requests, depriving the Staff of the opportunity to meaningfully consider whether significant social policy issues were involved. The No-Action Request also cites inapplicable instances in which the Staff allowed exclusion under Rule 14a-8(i)(7) of social policy proposals submitted to food establishments, *see Papa John's International, Inc.* (Feb. 13, 2015), and retailers, *see Amazon.com, Inc.* (Mar. 11, 2016). The Company is neither a fast-food restaurant chain nor a retail distributor. Its business is healthcare, not the sale and marketing of retail products.

### III. 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) because 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." 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". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark Kennedy  
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