



DIVISION OF
CORPORATION FINANCE

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

March 17, 2025

Warren J. Nimetz
Norton Rose Fulbright US LLP

Re: Universal Health Services, Inc. (the "Company")
Incoming letter dated January 2, 2025

Dear Warren J. Nimetz:

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

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

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

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

Sincerely,

Rule 14a-8 Review Team

cc: Anna Herby
Physicians Committee for Responsible Medicine



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January 2, 2025

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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: Universal Health Services, Inc. - Exclusion of Shareholder Proposal Submitted by the Physicians Committee for Responsible Medicine

Dear Sir or Madam:

We are writing this letter on behalf of our client, Universal Health Services, Inc. (the "Company"), pursuant to Rule 14a-8(j) ("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 (the "New Shareholder Proposal") 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. All references to "Company," "UHS" and "Universal Health Services" as used throughout this letter refer to Universal Health Services, Inc. and its subsidiaries.

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 New Shareholder Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) under the Exchange Act ("Rule 14a-8(i)(7)"), on the basis that the New Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Announcement – New Intake System for Rule 14a-8 Submissions and Related Correspondence (Nov. 6, 2023) (the "Staff Intake Announcement"), the Company is submitting this letter and the exhibits attached hereto to the Commission electronically, 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 2024 Proxy Materials with the Commission.

Rule 14a-8(k) under the Exchange Act ("Rule 14a-8(k)"), the Staff Intake Announcement and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are

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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 New 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), the Staff Intake Announcement and SLB 14D.

The New Shareholder Proposal

On November 11, 2024, the Company received the following shareholder proposal from the Proponent for inclusion in the 2025 Proxy Materials:

RESOLVED

Universal Health Services, Inc. aims to “change lives and transform the delivery of healthcare.” 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 transforming the delivery of healthcare 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.

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 from menus; 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 new meal 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—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 3.6 million patients served each year, UHS is well 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.

UHS seeks to change lives and transform the delivery of healthcare. We urge shareholders to support this resolution for a feasibility report on serving plant-based meals as the primary option for patients.

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

On November 30, 2023, the Proponent requested that the Company include a substantially similar proposal (the “2023 Proposal”) in its proxy materials for its 2024 annual meeting of shareholders (the “2024 Proxy Materials”). The Company subsequently informed the Staff of its intention not to include the 2023 Proposal in its 2024 Proxy Materials, and the Staff agreed that the proposal was excludable under Rule 14a-8(i)(7) as it “relates to, and does not transcend, ordinary business matters.” *Universal Health Services, Inc.* (Mar. 22, 2024) (hereinafter referred to as the “2024 No-Action Letter”).

The 2023 Proposal requested that the Company adopt the American Medical Association’s policy for healthful foods for healthcare facilities and implement the innovative program for healthful hospital food developed by the NYC Health + Hospitals system, which would require the Company to provide plant-based meals as the primary menu option at its hospitals and to otherwise serve “plant-based meals and meals that are low in fat, sodium, and added sugars,” eliminate “processed meats from menus,” and provide and promote “healthful beverages.” With slight modification, the Proponent now requests that the Company’s board of directors (the “Board”) commission “a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings.”

The Proponent is attempting to circumvent the Staff’s ruling in the 2024 No-Action Letter by asking the shareholders to vote to require the Board to commission a feasibility report on the provision of plant-based meals, as opposed to voting on simply requiring the Company to provide such meals as was requested in the 2023 Proposal. Additionally, similarly to the 2023 Proposal, the New Shareholder Proposal attempts to frame the issue as a matter of public health in order to circumvent the appropriate basis for exclusion under Rule 14a-8(i)(7). However, regardless of how the New Shareholder Proposal is modified from the 2023 Proposal, the Proponent’s true objective remains the same – the Proponent seeks to mandate the Company to regularly provide, or refrain from providing, certain food options to its patients to align with their political and moral objectives. The Staff concurred in the 2024 No-Action Letter that such objective relates to the Company’s ordinary business operations and therefore could be properly excluded from the Company’s 2024 Proxy Materials pursuant to Rule 14a-8(i)(7).

Basis for Exclusion

We respectfully request on behalf of UHS that the Staff concur with the view, as in the 2024 No-Action Letter, that the New Shareholder Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the New Shareholder Proposal relates to, and does not transcend, the Company's ordinary business operations.

Analysis

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

A. Background of the Ordinary Business Exclusion.

Rule 14a-8(i)(7) permits a company to omit 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").

In the 1998 Release, the Staff stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first consideration concerns the subject matter of the shareholder 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." Analysis of the ordinary business exception "should focus on the underlying subject matter of a proposal's request for board or committee review regardless of how the proposal is framed." See Staff Legal Bulletin No. 14H (Oct. 22, 2015).

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." In the recent Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff elaborated the approach in the 1998 Release, explaining that, in evaluating companies' micromanagement arguments, it 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." The Staff continued that "[t]his 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."

Further, framing a proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report

may be excludable under Rule 14a-8(i)(7) if the subject matter of the 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 *Sherwin-Williams Co.* (Feb. 21, 2024) (concurring in exclusion under Rule 14a-8(i)(7) of a shareholder proposal which requests that the company’s board of directors issue a public report assessing the benefits and drawbacks of permanently committing not to sell paint containing titanium dioxide sourced from the Okefenokee and assessing risks to the company associated with same, where the Staff believes the proposal seeks to micromanage the company); *MetLife, Inc.* (Apr. 24, 2023) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the risks created by company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships, on the basis that the proposal relates to, and does not transcend, ordinary business matters); *Netflix, Inc.* (Mar. 14, 2016) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal that requested a report relating to the company’s assessment and screening of “inaccurate portrayals of Native Americans, American Indians and other indigenous peoples,” in which the Staff determined that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

Notwithstanding these considerations, the Staff explained in the 1998 Release that a proposal relating to a company’s ordinary business operations are distinguishable from those “focusing on sufficiently significant social policy issues (e.g., significant discrimination matters),” which generally are not excludable under Rule 14a-8(i)(7) 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” (citing Release No. 34-12999 (Nov. 22, 1976) (the “1976 Release”).

In SLB 14L, the Staff stated that it “will realign its approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.” As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has “a broad societal impact, such that [it] transcend[s] the ordinary business of the company,” regardless of whether a nexus exists between the policy issue and the company.

As discussed below, the New Shareholder Proposal, although it is reframed as a request to the Board to commission a report, in essence still implicates each of the central considerations underlying the ordinary business exclusion under Rule 14a-8(i)(7): (i) the subject matter of the New Shareholder Proposal deals with products offered by the Company that are “fundamental to management’s ability to run the company on a day-to-day basis”, and (ii) the New Shareholder Proposal seeks to micromanage the Company by interfering with the management’s discretion with respect to complex, day-to-day operations. Furthermore, despite the slight modification from the 2023 Proposal, the New Shareholder Proposal does not focus on social policy issues of sufficient significance to transcend day-to-day business matters of the Company. Accordingly, the New 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 New Shareholder Proposal Relates to the Company’s Ordinary Business Operations.

The 2023 Proposal requested that the Company adopt “the American Medical Association policy for healthful foods for healthcare facilities” and implement “the innovative program for healthful hospital food developed by the NYC Health + Hospitals system”. To implement such proposal, the Company would be required to provide plant-based meals as the primary menu option at its hospitals and to otherwise serve “plant-based meals and meals that are low in fat, sodium, and added sugars,” eliminate “processed meats from menus,” and provide and promote “healthful beverages.” In the New Shareholder Proposal, the Proponent now requests 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, that “should also address the health risks of continuing to serve patients known carcinogens, such as processed meat.” At its core, the New Shareholder Proposal, similar to the 2023 Proposal, advocates that the Company regularly provide, or not provide, particular products to its patients and therefore directly involves the Company’s “ordinary business.”

Allowing shareholders to dictate the Company’s menu items and food options would inappropriately delegate management’s role to shareholders. Pursuant to Rule 14a-8(i)(7), the Staff has long concurred with this view in permitting exclusion of shareholder proposals, such as the 2023 Proposal and the New Shareholder Proposal, 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 are of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. The Staff recently re-affirmed this long-held view in *HCA Healthcare, Inc.* (Mar. 6, 2023), where the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested the issuer’s board of directors to require the issuer’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, on the ground that such proposal “relates to, and does not transcend, ordinary business matters.” See *Elevance Health, Inc.* (Mar. 6, 2023); *UnitedHealth Group Inc.* (Mar. 16, 2023). Similarly, in the 2024 No-Action Letter, the Staff permitted under Rule 14a-8(i)(7) the exclusion of the 2023 Proposal seeking to dictate the food options the Company serves to its patients, staff and visitors. See *Select Medical Holdings Corporation* (Feb 20, 2024); *HCA Healthcare, Inc.* (Feb 21, 2024); *Tenet Healthcare Corporation* (Mar. 22, 2024). See also *Papa John’s International, Inc.* (Feb. 13, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal encouraging the board 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”); *McDonald’s Corp.* (Mar. 24, 1992) (concurring with the 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”); *McDonald’s Corp.* (Mar. 9, 1990) (concurring with the 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”).

The Staff has also consistently recognized that decisions relating to the products and services offered by a company are part of a company’s ordinary business operations and has concurred with their exclusion. In *Papa John’s International Inc.* (Feb. 13, 2015), the supporting statement argued that offering plant-based options would “promote operations that are less detrimental to the environment, public health, and animal welfare,” citing 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.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), despite these assertions, 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.” See also *The TJX Companies* (Apr. 16, 2018) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board to 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) (concurring with the 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); *Dillard’s, Inc.* (Feb. 27, 2012) (concurring with the exclusion of a proposal requesting that the company’s board develop a plan to phase out the sale of fur from raccoon dogs).

In addition, the Staff has repeatedly permitted exclusion of proposals mandating preparation and dissemination of special reports by registrants to their shareholders, if the subject matter of such reports involve products and services offered by the registrants in their respective ordinary business. See *Wal-Mart Stores, Inc.* (Mar. 24, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board issue a report on the viability of adopting a policy of selling only eggs produced by cage-free operations in the US); *PetSmart, Inc.* (Apr. 14, 2006) (concurring with the exclusion of a proposal requesting that the company’s board issue a report based on the findings of the company’s sponsored studies, detailing whether to end bird sales); *Amazon.com, Inc.* (March 11, 2016) (permitting 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 address a number of concerns relating to the company’s policies and guidelines regarding animal cruelty associated with products sold on its website, and the Staff noted that “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)”).

As reflected by the well-established precedents discussed above, decisions with respect to food and beverage products the Company makes available and serves to its patients are squarely within the management function of the Company and require analysis of complex operational, business and quality of care issues beyond the ability of shareholders as a group. As of the date of this letter, the Company owns and/or operates 361 inpatient facilities and 49 outpatient and other facilities across 39 states, Washington, D.C., the United Kingdom and Puerto Rico. The decision-making process at each individual healthcare facility to determine the menu items and food options, many of which is made at local facility level, inevitably implicates myriad factors that must be considered, and requires industry knowledge and knowledge specific to the respective hospital population at each facility. The individual dietary needs and preferences of the patients at each facility may vary from time to time, depending on, for example, the patient population and the hospital type (e.g., the dietary needs of patients in a long-term acute care hospital may be different than those at an inpatient behavioral health care facility). As a result, each hospital is oftentimes best equipped to assess the food options and tailor the food offerings at its facility to changing patient needs. Also, the Company’s dietitians work closely with the patients and partner with their physicians to define patient menus and other offerings appropriate for patients under the Company’s care to address their nutritional concerns and avoid drug-nutrient interaction risks, as food plays a crucial role in the recovery process for many patients. It is important that the Company has the capacity to provide any diet a physician may choose for their patient while under the Company’s care and it is a policy of UHS that its hospitals do not serve patient meals without first receiving a physician’s diet order. Assessing these and many other factors that influence

decisions at the Company's facilities requires the real-time judgment of the management and employees at each respective Company facility, who, unlike the Company's shareholders, are well-positioned, and have the necessary knowledge, information and resources, to make informed and thoughtful decisions on such business and operational matters. Asking the Board to commission a report on this topic would not change the fundamental nature of this decision-making process.

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

The New Shareholder Proposal, like the 2023 Proposal and those addressed in the letters cited above, seeks to probe too deeply into matters of a complex nature which are not appropriate for shareholder determination. *See also Kroger Co.* (Apr. 25, 2023) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board take the necessary steps to pilot participation in the Fair Food Program for Kroger's tomato purchases in the Southeast United States, since this proposal seeks to micromanage the company). Evaluating the food options at each facility of the Company involves careful consideration of many factors including, in addition to those noted in the discussion above, cost, demand, other dietary restrictions and preferences, health conditions and needs of each patient, to which the Company's shareholders do not have access. Additionally, instead of "providing high-level direction on large strategic corporate matters," the New 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 facilities. The ability of the Company's facilities to address constantly changing needs and demands of their respective patients, and to maintain the capacity to provide all kinds of diets as may be chosen by our patients' physicians, plays a fundamental role in the Company's daily operations. By asking shareholders to weigh in on such decisions at the Company's facilities without the benefit of the extensive contextual knowledge, medical sophistication and day-to-day immersion that are core to such decision-making, the New Shareholder Proposal would permit shareholders to micromanage the Company's ordinary business operations.

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

While the well-established precedents set forth above demonstrate that the New Shareholder Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7), the 1998 Release further distinguishes proposals pertaining to ordinary business matters from matters involving "significant social policy issues" (citing the 1976 Release). The Commission stated that "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C (Jun. 28, 2005).

In contrast, proposals that refer to topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as

such, remain excludable under Rule 14a-8(i)(7). See, e.g., *Apple Inc.* (Jan. 3, 2023) (concurring with the exclusion of a proposal requesting a report assessing “the effects of [the company’s] return-to-office policy on employee retention and [the company’s] competitiveness,” noting it “relate[d] to, and [did] not transcend, ordinary business matters”); *Amazon. Inc.* (Apr. 7, 2022) (concurring with the 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) (concurring with the 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).

Here, the New Shareholder Proposal fails to focus on a sufficiently significant social policy issue that transcends the ordinary business of the Company. While it requests that 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,” as further discussed above, the New Shareholder Proposal’s principal focus continues to be the development and offering of specific Company products and services. Notwithstanding the Supporting Statement’s references to health considerations related to plant-based dietary patterns and processed meat, the New Shareholder Proposal is fundamentally concerned with the meal and food options that the Company offers to its patient, which has been long established as an ordinary business concern for management.

The Staff has long distinguished between proposals that focus on a significant social policy issue and those that relate to ordinary business matters that may touch, but do not focus on, significant policy issues. Specifically, this distinction applies to proposals, like the New Shareholder Proposal, relating to particular products, services or practices that raised public health considerations related to the company but nevertheless did not transcend day-to-day business matters. For example, as described in Section I.B., above, in the 2024 No-Action Letter, the 2023 Proposal requested the Company to adopt the American Medical Association’s policy for healthful foods for healthcare facilities, arguing that such policy and program will “[enhance] the health of patients and staff”, “[address] the significant social issue of public health” and “[transcend] ordinary matters of business,” “while also reducing food costs and potentially reducing medical costs and absenteeism among employees.” Despite references in the proposal to public health considerations, the Staff concurred with the exclusion under Rule 14a-8(i)(7) because “the Proposal relates to, and does not transcend, ordinary business matters.” See *Select Medical Holdings Corporation* (Feb 20, 2024); *HCA Healthcare, Inc.* (Feb 21, 2024). See also *HCA Healthcare, Inc.* (Mar. 6, 2023) (permitting the exclusion under Rule 14a-8(i)(7) of a shareholder proposal requesting the board of directors to require the company’s hospital to provide specified plant-based food options to patients, despite the references to public health considerations such “impact of nutrition on a patient’s recovery process and overall health”); *McDonald’s Corp.* (Mar. 24, 1992) (concurring with the 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) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting offering of vegan meats and cheeses to expand healthier options, despite the assertion that such proposal “promote[s] operations that are less detrimental to the environment, public health, and animal welfare”). Similarly, 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) (concurring with the 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). Because of the New Shareholder Proposal's focus on the options of food-related services and products offered by the Company in its owned and/or operated hospitals and other facilities, the New Shareholder Proposal is readily distinguishable from proposals that focused primarily on negative impacts to animal welfare, the environment and public health related to a company's ordinary business operations. *See, e. g., The TJX Companies, Inc.* (Apr. 9, 2020) (unable to concur with the exclusion of a proposal requesting a report on the "material risks of continuing operations without a company-wide animal welfare policy or restrictions on animal-sourced products associated with animal cruelty"); *Arch Coal, Inc.* (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.* (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").

The New Shareholder Proposal merely attempts to link potential health-related advantages of plant-based meals and similar healthful food and beverage options to the broader issue of public health while attempting to direct the Company to regularly provide, or not provide, particular food options, without taking into consideration the Company's existing practices and the nuanced and diverse populations that the Company employs and serves. As described above, the public health aspect of the New Shareholder Proposal is secondary to its central objective regarding the development and offering of specific Company products and services, specifically the Company's food procurement decisions at its healthcare facilities and the related economic considerations. Such issues are inherently ordinary business matters integral to the Company's business. The New Shareholder Proposal therefore fails to focus on any significant social policy issue that transcends the ordinary business of the Company.

For the above reasons, the New 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).

Conclusion

For the foregoing reasons, we respectfully request on behalf of UHS that the Staff not recommend any enforcement action from the Commission if UHS excludes the New 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 email at warren.nimetz@nortonrosefulbright.com or by phone at (212) 318-3384.

Very truly yours,

Warren J. Nimetz

Warren J. Nimetz

cc: The Physicians Committee for Responsible Medicine
Universal Health Services, Inc.

Exhibit A

New Shareholder Proposal

PhysiciansCommittee

for Responsible Medicine

PCRM.ORG

November 7, 2024

Via FedEx Express

Secretary

Universal Health Services, Inc.

Universal Corporate Center

367 South Gulph Road

P.O. Box 61558

King of Prussia, PA 19406

Re: Shareholder Proposal for Inclusion in the 2025 Proxy Statement

Dear Mr. Filton:

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 210 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 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 12:00 p.m. through 3:00 p.m. ET.

Sincerely,


Mark Kennedy

Senior Vice President of Legal Affairs

Enclosures: Shareholder Proposal
RBC Wealth Management letter

RESOLVED

Universal Health Services, Inc. aims to “change lives and transform the delivery of healthcare.” 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 transforming the delivery of healthcare 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.

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 from menus; 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 new meal 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—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 3.6 million patients served each year, UHS is well 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.

UHS seeks to change lives and transform the delivery of healthcare. We urge shareholders to support this resolution for a feasibility report on serving plant-based meals as the primary option for patients.

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 22, 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 “Universal Health Services, 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 Universal Health Services, Inc. (“Company”) that the Staff of the Division of Corporation Finance concur with its view that it may exclude the Physicians Committee’s shareholder resolution and supporting statement (collectively “Proposal”) from the proxy materials to be distributed in connection with the Company’s 2025 annual meeting of shareholders. The Company seeks to exclude the Proposal pursuant to Rule 14a-8(i)(7). For the reasons set forth below, the Physicians Committee urges the Staff to deny the Company’s No-Action Request.

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

I. The Proposal

The Proposal’s proposed resolution states,

RESOLVED

Universal Health Services, Inc. aims to “change lives and transform the delivery of healthcare.” 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 transforming the delivery of healthcare 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.

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.¹

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

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

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

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

According to Release No. 40018,

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.

The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.

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

A. The Proposal Does Not Implicate the Ordinary Business Exception

The Proposal does not implicate Rule 14a-8(i)(7) because it does not pertain to a task that is “fundamental to management’s ability to run a company on a day-to-day basis.” The Company mischaracterizes the Proposal as “seek[ing] to mandate the Company to regularly provide, or refrain from providing, certain food options,” No-Action Request at 3, and “to dictate the Company’s menu items and food options,” *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 cited by the Company, *see* No-Action Request at 6–7, regarding proposals about specific menu item and products are inapposite.

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

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

The Company mischaracterizes the Proposal as having “only tangential implications for” public health issues. No-Action Request at 8. But the Proposal’s supporting statement repeatedly cites the established scientific consensus underlying the Proposal.

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

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

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

Plant-based dietary patterns are particularly effective in the prevention^{2,3,4} and treatment of overweight and obesity,^{5,6} as well as body weight maintenance,⁷ and reduce the risk of cardiovascular disease^{8,9,10} and type 2 diabetes^{11,12} 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),^{1,13} the Adventist-Health Study,^{10,11} the Nurses’ Health Study,^{14,15} and the Health Professionals Follow-Up Study.^{16,17}

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.¹⁸ 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.¹⁹

Evidence suggests 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.² 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⁻²), higher in lacto-ovo-vegetarians (25.7 kg.m⁻²), and highest in nonvegetarians (28.8 kg.m⁻²).^{3,4,11} The average individual yearly weight gain is reduced when people limit consumption of animal foods.²⁰

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.²¹ 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.²² 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.²³

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 which are not appropriate for shareholder determination." No-Action Request at 8. 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 single feasibility report on a public health issue of interest to shareholders. The Company asserts that the commissioning of this one 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 facilities." No-Action Request at 8. This overstatement cannot be taken seriously.

IV. Conclusion

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

Sincerely,



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

SCIENTIFIC REFERENCES

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