



DIVISION OF
CORPORATION FINANCE

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

April 19, 2024

Jessica L. Lennon
Latham & Watkins LLP

Re: Caesars Entertainment, Inc. (the "Company")
Incoming letter dated February 5, 2024

Dear Jessica L. Lennon:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Trinity Health and co-filer for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the board commission and disclose a report on the potential cost savings through the adoption of a smokefree policy for Company properties.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

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: Catherine M. Rowan
Trinity Health

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February 5, 2024

Office of the Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: **Caesars Entertainment, Inc.**
Shareholder Proposal of Trinity Health and the American Nonsmokers’
Rights Foundation
Securities Exchange Act of 1934 – Rule 14a-8

To the addressee set forth above:

This letter is submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. Caesars Entertainment, Inc. (the “Company”) has received a shareholder proposal, attached hereto as Exhibit A (the “Proposal”), from Trinity Health and the American Nonsmokers’ Rights Foundation (the “Proponents”) for inclusion in the Company’s proxy statement for its 2024 annual meeting of shareholders. The Company hereby advises the staff (the “Staff”) of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2024 annual meeting (the “Proxy Materials”). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the “Commission”) if the Company excludes the Proposal pursuant to Rule 14a-8(i)(7), as the Proposal relates to the Company’s ordinary business matters.

By copy of this letter, we are advising the Proponent of the Company’s intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are submitting electronically to the Staff:

- this letter, which sets forth our reasons for excluding the Proposal; and
- the Proponents’ letters submitting the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than eighty (80) calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

The Proposal

The Proposal requests that the Company's shareholders approve the following resolution:

Resolved: Shareholders request the Board of Directors commission and disclose a report on the potential cost savings through the adoption of a smokefree policy for Caesars Entertainment properties. The report, prepared at reasonable cost and omitting confidential and proprietary information, should be published within six months following the 2024 shareholders meeting.

A copy of the Proposal and supporting statement are attached to this letter as Exhibit A.

Grounds for Exclusion

The Company intends to exclude this Proposal from its Proxy Materials, and respectfully requests that the Staff concur that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it relates to, and does not transcend, the ordinary business operations of the Company.

A. Background of the Ordinary Business Exclusion

Under Rule 14a-8(i)(7), a company may exclude a stockholder proposal from its proxy materials "[i]f the proposal deals with a matter relating to the company's ordinary business operations." The Commission has stated that the "general underlying policy of this exclusion is consistent with the policy of most state corporate laws: 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." Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Release"). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

The Commission stated in the 1998 Release that the policy underlying the ordinary business exclusion is based on two considerations:

- first, whether a proposal relates to "tasks that 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;" and
- second, whether a "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."

Notwithstanding these considerations, the Commission has distinguished between proposals involving "business matters that are mundane in nature," which are properly excluded under Rule 14a-8(i)(7), and those which have "significant policy, economic or other implications inherent in them," which are beyond the scope of the exclusion. Exchange Act Release No. 34-12999 (Nov. 22, 1976). When determining such "significant social policy issues," the Staff

reiterated in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”) that the Commission will look for “social policy significance” and “whether the proposal raises issues with a broad societal impact.”

Framing a shareholder 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) (“1983 Release”); *see also Johnson Controls, Inc.* (avail. 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)”); *Netflix, Inc.* (avail. Mar. 14, 2016) (concurring with the exclusion of a proposal for a public report describing risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other Indigenous Peoples, noting that the underlying subject matter of the requested report related to “the nature, presentation and content of programming and film production”).

As explained below, the subject matter of the Proposal concerns an ordinary course business matter and does not have any significant policy implications. The Proposal implicates each of the central considerations underlying the ordinary business exclusion: the subject matter of the Proposal deals with issues that are “fundamental to management’s ability to run the company on a day-to-day basis” and seeks to micromanage the Company by limiting its discretion with respect to its complex, day-to-day operations. *See* 1998 Release. Accordingly, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(7) as it relates to the Company’s ordinary business operations.

B. The Proposal Seeks to Direct the Policies Governing the Company’s Properties, Which Would Hinder Management’s Fundamental Ability to Run the Company’s Day-to-Day Operations

The Commission has long held that in applying Rule 14a-8(i)(7), the Staff evaluates proposals requesting a report by considering the underlying subject matter of the proposal. *See* 1983 Release. The Proposal requests that the Company commission and disclose a report on the potential cost savings through the adoption of a smokefree policy for the Company’s properties. However, the underlying subject matter of the report requested in the Proposal – the implementation of a smokefree policy – relates directly to the ordinary business of the Company, and more specifically, the Company’s ability to manage its properties and make decisions regarding the accommodations it provides to its customers. The Staff has consistently recognized that proposals concerning management of the place of business, including those relating to controlling the use of tobacco on company premises, implicate a company’s ordinary business operations and may be excluded pursuant to Rule 14a-8(i)(7). Relevant prior determinations by the Staff include:

- *The Walt Disney Co.* (avail. Dec. 22, 2010), permitting exclusion of a proposal to modify Disney’s smoking policy to not allow children within the designated smoking areas of its theme parks because the proposal related to “the policies and procedures regarding the products and services that the company offers”;

- *Hilton Hotels Corp.* (avail. Mar. 11, 1998), involving a proposal requesting that the board of directors “adopt a policy making all [of the company’s] facilities, including [its] restaurants, smokefree by January 1, 1999....” Hilton noted in its no-action request that the smoking policy at its premises, particularly with respect to its casinos, was a complicated matter better left to company management and that the implementation of such a proposal could have a negative economic effect on its results of financial operations. The Staff permitted exclusion of the proposal “as relating to the conduct of the [c]ompany’s ordinary business operations (i.e., management of the place of business)”;
- *McDonald’s Corp.* (avail. Mar. 16, 1993), permitting exclusion of a proposal requesting that the board of directors adopt a policy to make the corporate facilities smoke-free because such proposal related “to the conduct of the [c]ompany’s ordinary business operations (i.e., management of the place of business)”;
- *Agency Rent-A-Car* (avail. Apr. 8, 1992), permitting exclusion of a proposal requesting that the company prohibit smoking in all of its vehicles because the proposal related “to the conduct of the ordinary business operations of the [c]ompany (i.e., restrictions on customer conduct and management of the work environment)”;
- *American Telephone and Telegraph Co.* (avail. Dec. 11, 1991), permitting exclusion of a proposal requesting that the company publish a total non-smoking policy for the company’s buildings, vehicles and facilities used by employees because the proposal related to “a matter of the [c]ompany’s ordinary business operations (i.e., management of the work environment and employee supervision).”

Further, we note that the gaming experience is the Company’s key product, and accordingly, decisions that the Company makes regarding the accommodations it provides to its customers when they visit the Company’s properties is analogous to the decisions that other companies make regarding which products and services to offer. The Staff has consistently agreed that proposals seeking to dictate management’s day-to-day decisions regarding the selection of products or services offered implicate a company’s ordinary business operations and may be excluded pursuant to Rule 14a-8(i)(7). In particular, we note that the Staff has reached this position consistently, regardless of whether the proposal calls for the adoption of a specific policy or practice regarding the offering of tobacco products or, instead, calls for a report with regard to the offering of tobacco products. Relevant prior determinations by the Staff include:

- *Walgreens Boots Alliance, Inc.* (avail. November 7, 2016, *recon. Denied* Nov. 22, 2016), involving a proposal that would have required the company to issue a report assessing the risks of continued sales of tobacco products in its stores. Walgreens argued that the offering of particular products was a matter properly under the purview of management of the company, and the Staff concurred with the exclusion of the proposal pursuant to Rule 14a-8(i)(7), as relating to the company’s ordinary business operations.

- *Rite Aid Corp.* (avail. Mar. 24, 2015), concurring with the exclusion of a proposal requesting additional oversight on the sale of certain products, in particular tobacco products, because the proposal concerned the “products and services offered for sale by the company”;
- *CVS Caremark Corp.* (avail. Feb. 25, 2010), concurring with the exclusion of a proposal requesting a report on how the company responds to rising public pressures to discourage sales of tobacco products, because the proposal concerned the “sale of tobacco products”;
- *Rite Aid Corp.* (Mar. 26, 2009), concurring with the exclusion of a proposal requesting a report on how the company responds to rising regulatory, competitive and public pressures to halt sales of tobacco products, because the proposal concerned the “sale of a particular product”).

Similar to the cases noted above, the Proposal seeks to control the management of the Company’s places of business and to directly impose controls on the accommodations that the Company may provide to its customers while those customers are visiting the Company’s properties. As discussed above, even though the Proposal requests the Company to issue a report on the potential cost savings of the adoption of a smokefree policy, the underlying subject matter of the Proposal is the actual adoption of a smokefree policy, similar to the proposal in *Hilton*, which sought to prohibit smoking in the company’s casinos, hotels and/or other properties. Given the Staff’s consistent approach with respect to proposals seeking to influence a company’s management of its places of business and the accommodations it provides to its customers, the Company believes the Proposal may be properly excluded under Rule 14a-8(i)(7).

C. The Proposal Seeks to Micromanage the Company

As discussed above, the underlying purpose of the report requested in the Proposal is the implementation of a smokefree policy for all of the Company’s properties, and the fact that the Proposal calls for a report assessing the cost savings of such a policy does not change the underlying subject matter of the Proposal.

The Staff has previously concurred that a proposal seeking to micromanage the determinations of a company’s management regarding day-to-day business decisions is excludable under Rule 14a-8(i)(7) as relating to the company’s “ordinary business.” A proposal that limits something as core to the Company’s business as the management of its place of business and the accommodations that the Company may provide its customers is by definition an attempt to micromanage the Company in areas best left to management in the ordinary course of business.

Explaining this standard, the Commission noted in the 1998 Release that consideration of complex matters upon which shareholders could not make an informed judgment “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.” The Proposal implicates precisely the circumstances contemplated by the Commission in determining when a proposal may be omitted pursuant to Rule 14a-8(i)(7) — it involves both “intricate detail” (the complex decisions regarding how best to manage the Company’s properties and the

accommodations the Company provides to its customers, including whether or not to implement a smokefree policy) and the imposition of “specific ... methods for implementing complex policies” (the adoption of a smokefree policy for all of the Company’s properties).

Relevant prior determinations in which the Staff permitted exclusion under Rule 14a-8(i)(7) include:

- *The Kroger Co.* (avail. Apr. 25, 2023), with respect to a proposal that would have required the company to give purchase preference within their supply chain to certain suppliers and to suspend purchases from suppliers not complying with the company’s Fair Food Code of Conduct. Kroger argued that the selection of suppliers and management of supplier relationships was a complex process that shareholders were not in a position to make an informed judgment about and that the proposal sought to substitute shareholders’ judgment for management’s existing practices and processes. The Staff concurred with the exclusion of the proposal pursuant to Rule 14a-8(i)(7), noting the proposal sought “to micromanage the Company; see also *The Wendy’s Co.* (avail. Mar. 2, 2017) (concurring with the exclusion of a substantially similar proposal because it “prob[es] 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”);
- *Deere & Co.* (avail. Jan. 3, 2022), permitting exclusion of a proposal requesting the company to publish employee training materials as “probing too deeply into matters of a complex nature”;
- *EOG Resources, Inc.* (avail. Feb. 26, 2018, recon. denied Mar. 12, 2018), permitting exclusion of a proposal requesting the company adopt company-wide, quantitative, time-bound targets for reducing greenhouse gases despite the company having already balanced multiple factors in making drilling decisions;
- *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, recon. denied Apr. 17, 2017), permitting exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as “seek[ing] to micromanage 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 each case noted above, the company articulated the complex decision-making process involved in the topic of the proposal. Similar to these examples, the Proposal addresses complex matters upon which shareholders, as a group, are not in a position to make an informed judgment.

Additionally, the Staff has consistently concurred that shareholder proposals requesting a specific method for implementing a proposal in place of the judgment and discretion of management attempt to micromanage a company and are excludable under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc.* (avail. Apr. 7, 2023, recon. denied Apr. 20, 2023), the Staff concurred with the exclusion of a proposal for the company to measure and disclose scope 3 GHG emissions from its full value chain. In its reply, the Staff stated that the proposal sought to micromanage the company by “imposing a specific method for implementing a complex policy disclosure without affording discretion to management.” See also *Amazon.com Inc.* (avail. Apr.

3, 2019) (concurring with the exclusion of a proposal requesting human rights impact assessments for food products sold because the proposal sought “to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors”); *JPMorgan Chase & Co.* (avail. Mar. 30, 2018) (concurring with the exclusion of a proposal requesting a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing of tar sands projects because it sought “to impose specific methods for implementing complex policies”).

The Proposal intends for shareholders to step into the shoes of management and oversee the environmental, social and financial risks to the Company associated with the Company’s complex management of its properties, and specifically, the Company’s smoking policies at such properties. The Proposal does not merely request that environmental, social and financial concerns be considered when managing the Company’s places of business; rather, the underlying subject matter calls for the implementation of a smokefree policy for all of the Company’s properties. As it stands, the Proposal does not afford any “discretion to management as to how to achieve such goals.” SLB 14L.

The smoking policy for each of the Company’s properties is impacted by a wide range of business considerations, including, among others, the tastes and preferences of customers, local practices and regulations, policies of competitors located nearby the Company’s properties, the effectiveness of airflow technology solutions, and the availability of alternative approaches. Balancing such business considerations is a complex issue and shareholders as a group lack the business expertise and knowledge of the hospitality and gaming industry necessary to make an informed judgment. Instead, the Company has a robust governance structure which includes an active board of directors and management team, dedicated management committees and other subject matter experts, each of which plays a role in analyzing the Company’s ongoing management of its properties and ultimately making decisions in a manner that is appropriate for the Company, its customers and its shareholders.

If the Proposal were to be included in the Proxy Materials, shareholders would be asked to vote on a proposal that would displace the Company’s judgments regarding its own business and operations with a mandate that effectively disregards the complexity of the Company’s management of its properties and its decisions regarding the accommodations it provides to its customers. Accordingly, the Proposal is excludable pursuant to Rule 14a-8(i)(7) as it seeks to micromanage the Company.

D. The Proposal Does Not Raise a Significant Social Policy Issue that Would Override its Ordinary Business Subject Matter

While the 1998 Release indicated that proposals that “focus on” significant social policy issues may not be excludable under Rule 14a-8(i)(7), the Staff has made clear that proposals which touch upon topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7).

In SLB 14L, the Staff outlined its present approach to evaluating ordinary business proposals, noting a plan to “realign” with the Commission’s standard in the 1998 Release by

focusing on “the social policy significance of the issue that is the subject of the shareholder proposal” rather than “the nexus between a policy issue and the company.” The explanation provided in SLB 14L confirms the Staff’s intent to preserve the Commission’s policy objectives behind the ordinary business exclusion, namely “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.” 1998 Release.

The Staff’s intent was evidenced in *American Express Co.* (avail. Mar. 9, 2023), where a proposal requested that the company’s board of directors conduct an evaluation and issue a report regarding collecting information on the processing of payments for the sale and purchase of firearms. American Express argued that the proposal merely touched on issues related to firearms and mass shootings and that its main request focused primarily on the ordinary business matter of the company’s particular products and services. The Staff concurred with the exclusion under Rule 14a-8(i)(7), noting that the proposal related to, and did not transcend, ordinary business matters.

Similarly, in *Amazon.com, Inc.* (avail. Apr. 8, 2022) (the “Amazon 2022 Letter”), a proposal requested that the company report on the effects of the COVID-19 pandemic on workforce turnover rates and include an assessment of the impact on the company’s diversity, equity and inclusion. Amazon argued that passing references to diversity, equity and inclusion did not transcend the primary focus on the ordinary business matter of the company’s human capital management practices. The Staff concurred with the exclusion under Rule 14a-8(i)(7), agreeing that the proposal did “not focus on significant social policy issues.” See also *Amazon.com, Inc.* (avail. Apr. 7, 2022) (concurring with the exclusion of a proposal requesting a report on the risks to the company related to ensuring adequate staffing of its business and operations on the basis that the proposal related to, and did not transcend, ordinary business matters); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal requesting that the company prepare a report discussing risks to the company posed by the environmental, social and economic challenges associated with oil sands, noting the proposal’s lack of focus on a significant policy issue); *Dominion Resources, Inc.* (avail. Feb. 3, 2011) (concurring with the exclusion of a proposal requesting the company to provide financing for installation of rooftop solar or wind power generation as the proposal ultimately related to “the products and services offered for sale by the company”). Likewise, in *Walgreens* and *The Walt Disney Co.* discussed above, the Staff concurred that mere reference to a significant social policy issue did not transcend the ordinary business subject matter of the proposal.

The Staff’s no-action determinations under Rule 14a-8(i)(7) and guidance in SLB 14L reconfirm several key principles underlying the ordinary business exclusion. First, as demonstrated in *American Express Co.*, the Staff will not recast matters that are inherently operational as social policy issues. Second, as demonstrated in the Amazon 2022 Letter, merely citing potential social policy implications in a proposal does not equate to “focusing” on such issues.

As discussed above, the underlying subject of the Proposal is the Company’s management of its places of business and the accommodations it provides to its customers, and thus inherently implicates ordinary business matters integral to the Company’s gaming business. Although the Proponents purport to frame the Proposal as concerns over health, environmental

and financial risks associated with the Company's smoking policies, at its core, the Proposal remains an ordinary business matter—the adoption of a smokefree policy at all of the Company's properties. References to the health of customers and employees and speculation about potentially lower costs or higher revenues neither shift the underlying request of the Proposal nor do they transcend the Company's ordinary business operations.

The Company agrees that the health of its customers and employees and managing costs are important. Indeed, the Company is committed to taking purposeful action to support its employees, communities, and the environment, as outlined in the Company's proxy materials for its 2023 Annual Meeting of Shareholders, which describe the ways in which the Company is committed to being an industry leader in CSR (which includes diversity, equity and inclusion, social impact and environmental sustainability). Nevertheless, the Proposal remains squarely focused on the Company's policies relating to the management of its places of business and the accommodations provided to its customers. Such issues are inherently ordinary business matters which are integral to the Company's day-to-day business.

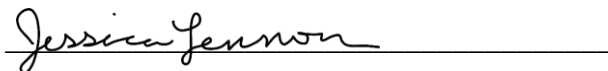
For these reasons, the significant social policy issue exception does not support inclusion of the Proposal in the Company's Proxy Materials.

Conclusion

For the foregoing reasons, the Company believes that it may properly exclude the Proposal from the Proxy Materials under Rule 14a-8(i)(7) because the Proposal impermissibly relates to, and does not transcend, the Company's ordinary business matters. We respectfully request that the Staff not recommend any enforcement action if the Company excludes the Proposal from its Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned at (202) 637-2113 to discuss any questions you may have regarding this matter.

Very truly yours,



Jessica L. Lennon
of LATHAM & WATKINS LLP

Enclosures

cc: Catherine M. Rowan, Trinity Health
Cynthia Hallett, American Nonsmokers' Rights Foundation
Ed Quatmann, Caesars Entertainment, Inc.
Steven Stokdyk, Latham & Watkins LLP
Brent Epstein, Latham & Watkins LLP

Exhibit A

Proposal from Trinity Health and the American Nonsmokers' Rights Foundation

Caesars Entertainment, Inc.

RESOLVED: Shareholders request the Board of Directors commission and disclose a report on the potential cost savings through the adoption of a smokefree policy for Caesars Entertainment properties. The report, prepared at reasonable cost and omitting confidential and proprietary information, should be published within six months following the 2024 shareholders meeting.

WHEREAS:

The U.S. Surgeon General released a landmark report in 2006 stating that there is no safe level of exposure to secondhand smoke. Tobacco use and secondhand smoke exposure kills nearly 500,000 Americans every year.¹ For the gaming industry, workers on casino floors are largely people of color and women; lack of access to smokefree air can deepen existing disparities in health outcomes.

The COVID-19 pandemic changed long-held business assumptions across many industries. For the gaming industry, customers became much more sensitive to indoor air quality and how such air affects their health.

While our Company may have efforts to address indoor air quality, the American Society of Heating, Refrigerating and Air-Conditioning Engineers states: "There is no currently available or reasonably anticipated ventilation or air cleaning system that can adequately control or significantly reduce the health risks of environmental tobacco smoke to an acceptable level."²

As independent researchers C3 Gaming found in analyzing revenue performance in several competitive casino markets, smokefree casinos, for the first time, generated more revenue: "Data from multiple jurisdictions clearly indicates that banning smoking no longer causes a dramatic drop in gaming revenue. In fact, non-smoking properties appear to be performing better than their counterparts that continue to allow smoking."³

There are potential business risks to allowing indoor smoking in Caesars Entertainment properties, from higher employee health insurance premiums (when compared with casinos that don't permit indoor smoking), greater maintenance costs, and deterring a significant number of potential visitors who won't visit a casino due exposure to tobacco smoke (88.5% of the American public does not smoke).⁴

Shareholders have no guidance as to the costs our Company is bearing for continuing to allow indoor smoking, nor has the Company disclosed the social and environmental costs and risks imposed on its stakeholders.

Parx Casino's Chief Marketing Officer told the *Play Pennsylvania* website in February 2023 that since the casino went smokefree, Parx has seen a positive effect on the health and morale of employees, and did not increase health insurance premiums: "Frankly, we are starting to see health costs go down....What's been interesting to me, is a lot of our smoking guests have actually said things like, 'I never realized how smoky and annoying it was. I really don't mind walking 50 feet out to the smoking patio.'⁵

¹ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm

² https://www.ashrae.org/file%20library/about/position%20documents/pd_environmental-tobacco-smoke-2020-07-1.pdf

³ https://8b3e0552-f01a-40e0-b077-ea4813c4af0b.usrfiles.com/ugd/8b3e05_348baee6d05949ad9b4adae2b7a77105.pdf

⁴ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm

⁵ <https://www.playpennsylvania.com/g2e-panel-discussion-parx-casino-smoking/>

New customer preferences require an examination of the status quo in which smoking is allowed in gaming properties around the country. We believe our Company could enhance its ESG initiatives by conducting the report that our proposal requests. We urge Caesars Entertainment shareholders to vote in favor of this proposal.



Catherine M. Rowan
Director, Socially Responsible Investments
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Phone: (718) 822-0820
Fax: (718) 504-4787
E-Mail Address: rowancm@trinity-health.org

February 21, 2024

Via Shareholder Proposal Portal

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

Re: Request by Caesars Entertainment Inc. to omit proposal submitted by Trinity Health and American Nonsmokers' Rights Foundation

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trinity Health and the American Nonsmokers' Rights Foundation (together, the "Proponents") submitted a shareholder proposal (the "Proposal") to Caesars Entertainment Inc. ("Caesars" or the "Company"). The Proposal asks Caesars to report on the potential cost savings resulting from the adoption of a smokefree policy for its gaming properties.

In a letter to the Division dated February 5, 2024 (the "No-Action Request"), Caesars stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2024 annual meeting of shareholders. Caesars argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with the Company's ordinary business operations. As discussed more fully below, Caesars has not met its burden of proving its entitlement to exclude the Proposal on that basis, and the Proponents respectfully request that the Company's request for relief be denied.

The Proposal

The Proposal states:

Resolved: Shareholders request the Board of Directors commission and disclose a report on the potential cost savings through the adoption of a smokefree policy for Caesars Entertainment properties. The report, prepared at reasonable cost and omitting confidential and proprietary information, should be published within six months following the 2024 shareholders meeting.

Background

According to the Centers for Disease Control and Prevention, “there is no safe level of exposure to secondhand smoke.”¹ Secondhand smoke is known to cause numerous health problems, including “coronary heart disease, stroke, and lung cancer, as well as adverse reproductive health effects in women, including low birth weight.” Nonsmokers suffer nearly 34,000 premature deaths per year from heart disease as a result of secondhand smoke exposure.² Lung cancer risk for nonsmokers exposed to secondhand smoke is increased by 25-30%.³ The American Heart Association⁴ and American Lung Association⁵ support banning smoking in all public places and workplaces.

Although many states have banned smoking indoors, a significant number allow it in bars and casinos. According to CNN, “13 of the 22 states and territories that allow casino gambling permit smoking in at least part of their facilities.”⁶ The casino industry has grown tremendously in recent years; the American Gaming Association pegged 2022 casino slots and table gaming revenue at nearly \$48 billion.⁷

Smoking in casinos poses serious health risks for customers and especially for workers, who are exposed more regularly and for longer periods of time. A study found that “50% of the casinos sampled had air pollution levels known to cause cardiovascular disease after only 2 hours of exposure.”⁸ According to the American Cancer Society, casino customers were “found to have significantly elevated levels of a tobacco-specific lung carcinogen after a four-hour visit to a casino that allowed smoking.”⁹ Research has found that separating smoking and nonsmoking areas in a casino is ineffective: A 2023 study found that secondhand smoke levels were “5.4 times higher in gaming areas [of casinos that allow smoking] when compared with a smoke-free casino”; even non-smoking areas of casinos that allowed smoking had twice the level of secondhand smoke as the nonsmoking casino.¹⁰

¹ <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>

² <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>

³ <https://www.cdc.gov/tobacco/secondhand-smoke/health.html>

⁴ <https://www.heart.org/-/media/Files/About-Us/Policy-Research/Policy-Positions/Tobacco-Endgame/Clean-Indoor-Air-Laws-and-Cardiovascular-Disease-2009.pdf>

⁵ <https://www.lung.org/policy-advocacy/tobacco/smokefree-environments/smokefree-air-laws>

⁶ <https://www.cnn.com/2024/01/09/health/indoor-smoking-casinos-kff-health-news-partner/index.html>

⁷ https://www.americangaming.org/wp-content/uploads/2023/02/CGRT_CY_2022_Report.pdf, at 2.

⁸ <https://www.cdc.gov/statesystem/factsheets/gaming/Gaming.html>

⁹ fightcancer.org/sites/default/files/The%20risk%20of%20secondhand%20smoke%20in%20casinos%202018.pdf

¹⁰ Michael A. Tynan et al., “What happens in Vegas, stays in your lungs: an assessment of fine particulate matter in casinos that prohibit and allow smoking in Las Vegas, Nevada, USA,” *Tobacco Control*, Feb. 2023 (online preprint at <https://pubmed.ncbi.nlm.nih.gov/36822833/>); see also

<https://www.cdc.gov/statesystem/factsheets/gaming/Gaming.html>

Ordinary Business

Rule 14a-8(i)(7) allows exclusion of proposals related to a company's ordinary business operations. Caesars argues that the Proposal relates to the Company's ordinary business operations because its subject involves the management of the Company's properties and the accommodations it provides to its customers and because it would micromanage the Company. Neither claim withstands scrutiny.

The Proposal's Subject is a Significant Social Policy Issue

Caesars contends that reporting on a policy regarding the use of tobacco on company premises is analogous to dictating how a company manages its properties or the details of the products and services it sells. It is true that the Division's Staff has allowed exclusion of proposals in both of those categories. However, the proposals at issue in those determinations were deemed not to address a significant social policy issue transcending ordinary business, which defeats application of the ordinary business exclusion.¹¹

Two changes in the Staff's analytical approach to identifying significant social policy issues and the renewed debate over exposure of workers to secondhand smoke in the workplace favor a different outcome here than in the determinations on which Caesars relies.

The first shift involves the "Cracker Barrel" doctrine. In 1992, the SEC Staff allowed Cracker Barrel Old Country Stores to exclude a proposal on employment discrimination. Since 1976, the Commission had interpreted the ordinary business exclusion to allow omission of a proposal if it addressed "business matters that are mundane in nature" and implicated no "substantial policy or other considerations,"¹² but the Cracker Barrel determination read the second prong out of the test altogether for workforce-related proposals. In Cracker Barrel,¹³ the Staff not only concurred with the company that the proposal was excludable on ordinary business grounds but also announced a new rule:

[T]he Division has determined that the fact that a shareholder proposal concerning a company's employment policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant. Rather, determinations with respect to any such proposals are properly governed by the employment-based nature of the proposal.

The Cracker Barrel interpretation remained in effect until mid-1998, when the Commission returned to the two-part test for employment-related proposals.¹⁴

Cracker Barrel matters because it was in effect when the Hilton¹⁵ and McDonald's¹⁶ determinations relied on by Caesars were issued. Of the determinations Caesars cites, the proposals

¹¹ In Exchange Act Rel. No. 40018 (May 21, 1998), the Commission stated that a proposal whose subject matter focuses on "sufficiently significant social policy issues" is not excludable on ordinary business grounds.

¹² Exchange Act Release No. 12,999 (Nov. 22, 1976)

¹³ Cracker Barrel Old Country Store, Inc. (Oct. 13, 1992)

¹⁴ Exchange Act Release No. 40,018 (May 21, 1998)

¹⁵ Hilton Hotels Corp. (Mar. 11, 1998)

¹⁶ McDonald's Corp. (Mar. 16, 1993).

at issue in those letters most closely resemble the Proposal, in that both involved smoking policies in a hospitality business.

In Hilton, the company urged that the proposal, which asked the company to make the company’s facilities smoke-free by 1999, addressed ordinary business matters for several reasons, including that it dealt with “management of the workplace.” In response to the proponent’s claim that the proposal implicated a significant social policy issue, given the overwhelming evidence of harm caused by secondhand smoke, the company invoked Cracker Barrel, stating that the existence of a significant policy issue was irrelevant “as long as the Cracker Barrel interpretation is binding on the Commission.” McDonald’s also characterized the proposal, which sought a smoke-free policy for the company’s corporate facilities, as addressing ordinary business because it concerned management of the workplace. (The McDonald’s proponent did not respond to the request.) Following the return to the pre-Cracker Barrel analytical framework, the Hilton and McDonald’s determinations may be considered to have less persuasive power.

The second, and much more recent, interpretive shift was articulated in Staff Legal Bulletin (“SLB”) 14L¹⁷ There, the Staff emphasized that the focus when deciding whether an otherwise excludable proposal concerns a significant social policy issue would be whether it “raises issues with a broad societal impact” even if the proponent does not demonstrate the issue’s significance to the specific company. SLB 14L illustrated the application of the broad societal impact standard by pointing to human capital matters, stating that a “proposal[] squarely raising human capital management issues with a broad societal impact” would not be subject to exclusion. Under this approach, proponents of proposals addressing exposure to secondhand smoke might have been able to defeat no-action requests based on ordinary business, due to the public health impacts involved, even if those proposals also stood to benefit the health of workers.

The Proposal’s Subject Has Broad Societal Impact

The health benefits to workers from a smoke-free policy support a conclusion that the Proposal deals with a significant social policy issue under SLB 14L’s standard. According to the American Cancer Society, studies show that “smoke-free policies reduce workers’ long-term risk of lung cancer and cardiovascular disease.”¹⁸

Post-SLB 14L determinations on two proposals addressing worker health and safety show that this issue has a broad societal impact. In Amazon,¹⁹ the Staff did not concur with the company that a proposal requesting an audit of warehouse workers’ working conditions and treatment was excludable on ordinary business grounds. The proponent argued that the proposal’s subject was a human capital matter with broad societal impact. Dollar General’s²⁰ argument for excluding a proposal seeking an audit of how the company’s policies affected workers’ safety and well-being focused primarily on whether implementing the proposal would prejudice Dollar General in litigation, but the proponent urged the Staff not to allow the company to evade accountability on the significant social policy issue of workers’ safety and wellbeing. Dollar General’s request for relief was denied.

¹⁷ Staff Legal Bulletin 14L (Nov. 3, 2021)

¹⁸ fightcancer.org/sites/default/files/The%20risk%20of%20secondhand%20smoke%20in%20casinos%202018.pdf

¹⁹ Amazon.com, Inc. (Apr. 6, 2022)

²⁰ Dollar General Corporation (Mar. 31, 2023)

The societal impact extends beyond workers to customers at Caesar’s properties. Cardiovascular disease kills more Americans each year than any other cause,²¹ and exposure to secondhand smoke is an avoidable risk factor. Lung cancer accounted for 22% of cancer deaths in 2021.²² Given their prevalence, mitigating a risk factor for both of these conditions would have a broad societal impact, and the Proposal would allow shareholders to better understand the factors relevant to Caesars’ decision not to do so.

The Proposal’s Subject is a Consistent Topic of Widespread Public Debate

The Proposal’s subject is a consistent topic of widespread public debate. Although most indoor smoking bans were adopted in the 1990s, there has been a recent surge of interest in extending bans to bars and casinos:

- In September 2023, Pennsylvania House Health Committee Majority Chairman Dan Frankel introduced H.B. 1657, the Protecting Workers From Secondhand Smoke Act. It would close the loophole in the state’s Clean Indoor Air Act allowing bars, clubs and casinos to permit smoking. Rep. Frankel argued that “Pennsylvania’s workers should not have to sacrifice their health for a paycheck, but the data shows that’s exactly what’s happening.”²³
- Davidson County, Tennessee, in which Nashville is located, enacted a ban on smoking in “most 21+ establishments” in the county in October 2022.²⁴ Supporters of the ban, like an opinion columnist in the Nashville Tennessean, focused on the value of a smoke-free workplace: “As the metro city council continues to debate an ordinance to ensure age-restricted venues are smoke-free, I’m thankful to see a worker’s right to safe working conditions front and center.”²⁵
- A bill to end smoking in Atlantic City casinos stalled in the New Jersey legislature amid industry opposition in November 2023. Casino workers led the campaign for the ban,²⁶ arguing that secondhand smoke created great health risks for them.²⁷ UAW president Shawn Fain weighed in, urging lawmakers to pass the measure.²⁸ The following month, the workers’ organization, Casino Employees Against Smoking Effects (“CEASE”), announced it was forming a political action committee to support legislators who will back a casino smoking ban.²⁹

²¹ <https://www.ahajournals.org/doi/10.1161/CIR.0000000000001123>

²² [https://www.lung.org/research/trends-in-lung-disease/lung-cancer-trends-brief/lung-cancer-mortality-\(1\)](https://www.lung.org/research/trends-in-lung-disease/lung-cancer-trends-brief/lung-cancer-mortality-(1))

²³ <https://www.pahouse.com/InTheNews/NewsRelease/?id=130684>

²⁴ <https://www.smokefreenashville.com/>

²⁵ Denis Gilmore, “Historic smoke free ordinance will protect Nashville workers from secondhand smoke,” Nashville Tennessean, Oct. 3, 2022.

²⁶ <https://apnews.com/article/casino-smoking-atlantic-city-cigarettes-dealers-cancer-11534c340a3d8a3443ebae9e7f5bff01>

²⁷ Scott Fallon, “Smoking ban in Atlantic City casinos to get hearing in Legislature,” Daily Record (Morristown, NJ), Nov. 29, 2023

²⁸ <https://why.org/articles/new-jersey-casino-smoking-ban-auto-union/>

²⁹ <https://smokefreecasinos.org/casino-workers-announce-formation-of-pac-to-bring-accountability-to-new-jersey-legislators/>

- An effort to ban smoking in St. Louis, Missouri county casinos failed in 2023, but a compromise measure mandates that casinos can allow smoking on no more than half of their gaming space.³⁰
- Two Rhode Island legislators introduced bills to ban smoking in casinos that died in committee in 2023; they plan to reintroduce them in 2024.³¹ A Rhode Island CEASE chapter was formed in May 2022.³²
- In 2023, the Kansas Senate passed a bill that, among other things, would have “remove[d] the exemption in the Kansas Indoor Clean Air Act for gaming floors.”³³ Kansas casino workers formed a CEASE chapter last year.³⁴
- A Virginia CEASE chapter was formed in 2023 to advocate for smoke-free casinos in that state.³⁵
- 2023 saw the first panel on casino smoking bans at the Global Gaming Expo.³⁶
- In 2020, the American Lung Association pressed Indiana casinos to ban smoking, citing a survey showing that two-thirds of state residents supported doing so.³⁷

Advocates for casino smoking bans have faced fierce opposition from the industry, which lobbied against many of the measures listed above. The Casino Association of New Jersey opposed that state’s legislation to make casinos smoke-free, arguing that the bill would have “significant adverse effect on Atlantic City’s economy.”³⁸ (The Proposal notes that there is solid evidence that banning smoking would not curtail revenue.) “[P]ushback” from Penn Entertainment helped to defeat St. Louis’s proposed ban.³⁹

At the same time, there have been recent efforts to create exemptions to previously-adopted smoking bans. Campbellsville, Kentucky council members sought last year to allow businesses servicing alcohol to create rooms where smoking is permitted.⁴⁰ A West Virginia bill that “would have allowed indoor smoking areas at certain resort areas and gaming facilities at existing historic resort hotels like The Greenbrier” passed the state House but didn’t make it out of committee in the Senate last year.⁴¹ Shreveport, Louisiana repealed its ban on smoking in casinos last year.⁴²

³⁰ T.J. McBride, “St. Louis Casino Smoking Ordinance Compromise Reached,” Play Missouri, Aug. 18, 2023

³¹ <https://www.playusa.com/smoking-ban-ballys-rhode-island-casinos/>

³² <https://www.casino.org/news/rhode-island-senate-casino-smoking-comments-ignite-backlash/>

³³ https://www.kslegislature.org/li/b2023_24/measures/vote_view/je_20230404144953_288367/

³⁴ <https://no-smoke.org/kansas-casino-workers/>

³⁵ <https://www.casino.org/news/virginia-casino-workers-join-coalition-to-end-indoor-smoking/>

³⁶ <https://www.reviewjournal.com/business/casinos-gaming/is-nevada-facing-pressure-to-ban-smoking-in-casinos-2919865/>

³⁷ Dan Carden, “Lung Association poll finds two-thirds of Hoosiers favor smoke free casinos,” The Times (Munster, Indiana), Aug. 11, 2020

³⁸ <https://why.org/articles/new-jersey-casino-smoking-ban-workers/>

³⁹ <https://medicalxpress.com/news/2024-01-air-casinos-workers-tobacco.html>

⁴⁰ “MD urges vote to stay smokefree, The Central Kentucky News-Journal, Dec. 14, 2023

⁴¹ Mike Tony, “Bill that would have allowed indoor smoking facilities at certain resort areas fails in WV Senate,” Charleston Gazette-Mail, Mar. 13, 2023

⁴² “Smoke-free Shreveport in danger: Council repeals smoke-free protections for casino workers,” States News Service, May 25, 2023

Casinos are taking action even in the absence of legislative mandates. Over 1000 casinos now prohibit smoking in all indoor areas.⁴³ More than 160 tribal casinos are smoke-free,⁴⁴ including all of those operated by the Navajo Nation and the Eastern Band of Cherokee.⁴⁵ Some credit the pandemic, which imposed smoking bans on casinos, with accelerating the trend toward smoke-free policies.⁴⁶

The determinations Caesars cites in support of its contention that the Proposal does not address a significant social policy issue are distinguishable, due to the Staff's reasoning, the proposal's focus or the proponent's framing of the policy issue:

- The determinations in Walgreens,⁴⁷ Rite Aid,⁴⁸ and CVS Caremark,⁴⁹ all of which pre-dated SLB 14L, involved proposals asking retailers to report on or impose additional restrictions on the sale of tobacco products. The companies' status as retailers was likely important in the Staff's analysis, given that the Staff has often allowed exclusion on ordinary business grounds of proposals on retailers' sale of particular products they do not manufacture.⁵⁰
- The Disney⁵¹ proposal asked the company to bar children from smoking areas of the company's theme parks. Disney argued that the proposal sought to regulate the guest experience and did not implicate a significant policy issue, citing determinations allowing retailers to exclude proposals regarding their decisions to sell tobacco products. The proponent did not respond, leaving the company's characterization of the proposal unchallenged.
- Agency Rent-A-Car⁵² successfully argued that a proposal urging that smoking be prohibited in the company's vehicles was excludable as dealing with "management of the work environment" and "management's ability to control the operation of the Company's fleet of rental cars." The proponent did not respond to Agency's request for relief.
- The Staff allowed exclusion of the proposal to Exxon Mobil⁵³ regarding oil extraction from tar sands, reasoning that the proposal addressed the "economic challenges" associated with that process. The proposal's resolved clause specified that it sought information on risks "other than those associated with or attributable to climate change," which was an established significant social policy issue. Likewise, the Dominion Resources⁵⁴ proposal, which asked the company to provide financing for rooftop solar installation, focused on the business benefits of doing so and did not mention climate change. The Exxon Mobil and

⁴³ <https://www.gamingdirectory.com/smokefree/properties/>

⁴⁴ <https://no-smoke.org/tribal-casinos-set-revenue-record-smokefree/>

⁴⁵ <https://www.cnn.com/2022/03/12/opinions/american-indian-casinos-smoking-ban/index.html>

⁴⁶ <https://www.vixio.com/insights/gc-marriage-rocks-smoking-and-casinos-and-you-can-blame-or-thank-covid-19;>
<https://www.cbsnews.com/pittsburgh/news/report-smoking-bans-no-longer-a-threat-to-casino-revenue/>

⁴⁷ Walgreens Boots Alliance, Inc. (Nov. 7, 2016, recon. denied Nov. 22, 2016)

⁴⁸ Rite Aid Corp. (Mar. 24, 2015); Rite Aid Corp. (Mar. 26, 2009)

⁴⁹ CVS Caremark Corp. (Feb. 25, 2010); CVS Caremark Corp. (Mar. 3, 2009)

⁵⁰ See Walgreens Boots Alliance Inc. (Nov. 20, 2018) (declining to concur that the "sale of products" basis allowed the company to a proposal on the sale of opioid medications); Amazon.com, Inc. (Apr. 1, 2020) (rejecting argument that proposal seeking human rights risk assessments on at least one high-risk product Amazon sold was excludable on ordinary business grounds)

⁵¹ The Walt Disney Company (Dec. 22, 2010)

⁵² Agency Rent-A-Car (Apr. 8, 1992)

⁵³ Exxon Mobil Corp. (Mar. 6, 2012)

⁵⁴ Dominion Resources, Inc. (Feb. 3, 2011)

Dominion proposals would be analogous to the Proposal, then, if the latter did not mention public health impacts from secondhand smoke.

- In AT&T,⁵⁵ the Staff concurred with the company’s characterization of a proposal requesting a total smoking ban for AT&T’s buildings, vehicles and other facilities as addressing “management of the work environment and employee supervision.” The proponents did not respond to the company’s request.
- The proposal in American Express⁵⁶ asked the board to evaluate and report on “how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms.” The supporting statement made clear that the proponent was not concerned about the gun violence epidemic or its public health impacts; rather, it focused exclusively on privacy concerns associated with the use of merchant category codes to track firearms purchases. In opposing the no-action request, the proponent characterized the significant policy issue quite narrowly, as “the critical issue of firearms and the utilization of each respective company’s cards and services to purchase them,” focusing on the debate over adoption of merchant category codes.
- The Amazon (2022; AFL-CIO Reserve Fund)⁵⁷ proponent, by contrast, did try to connect the proposal to a subject that had been recognized as a significant social policy issue, at least in some contexts—the COVID-19 pandemic. The proposal asked Amazon to report on the company’s workforce turnover rates and the effects of labor market changes that had resulted from the pandemic, but four of the five supporting statement paragraphs discussed Amazon’s high turnover, including prior to the pandemic. In its no-action response, the proponent pointed to several determinations involving proposals submitted to Johnson & Johnson and Pfizer regarding the financing of and access to COVID-19 vaccines and therapies. It is possible that the Staff viewed the public health aspects of COVID-19 as a significant policy issue, but not the employment impacts. That interpretation finds support in the Dollar Tree⁵⁸ and Amazon (2022; UAW Retiree Medical Benefits Trust)⁵⁹ determinations, both of which allowed exclusion of proposals that addressed post-pandemic labor market pressures as they related to the companies’ strategies and employment practices.

Here, by contrast, the Proposal addresses a public health issue with broad societal impact. Although Caesars characterizes the Proposal’s subject as “inherently operational,”⁶⁰ the central focus of the Proposal is on the adverse health impacts of allowing smoking at Caesar’s facilities. Because the Proposal’s subject is also a consistent topic of widespread public debate, the Proposal implicates a significant social policy issue, making exclusion pursuant to the ordinary business exclusion inappropriate.

The Proposal Would Not Micromanage Caesars Because it Does Not Direct the Company to Take Specific Actions, Request Disclosure of Intricate Detail, or Dictate the Report’s Specific Content or Format

⁵⁵ American Telephone and Telegraph Co. (Dec. 11, 1991)

⁵⁶ American Express Company (Mar. 9, 2023)

⁵⁷ Amazon.com Inc. (AFL-CIO Reserve Fund) (Apr. 8, 2022)

⁵⁸ Dollar Tree, Inc. (May 2, 2022)

⁵⁹ Amazon.com Inc. (UAW Retiree Medical Benefits Trust) (Apr. 7, 2022)

⁶⁰ No-Action Request, at 8

The Proposal would not micromanage Caesars. SLB 14L clarified the Staff's approach to micromanagement claims, stating that "the staff will take a measured approach to evaluating companies' micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement." Instead, the Staff will analyze "the level of granularity sought in the proposal and to what extent it inappropriately limits the discretion of the board or management."⁶¹

Caesars seems to conflate the Proposal's request for a report on an action the Company might take with a demand that the Company take that action. According to the No-Action Request, "The Proposal intends for shareholders to step into the shoes of management and oversee the environmental, social and financial risks to the Company associated with the Company's complex management of its properties, and specifically, the Company's smoking policies at such properties."⁶² Caesars emphasizes the "wide range of business considerations"⁶³ that must be balanced in determining whether to allow smoking at its properties, factors on which shareholders lack expertise.

Caesars' efforts to connect its arguments to the language of the Commission's 1998 release and SLB 14L's language all assume that the Proposal aims to impose a smokefree policy. For example, the Company claims that the Proposal "involves both 'intricate detail' (the complex decisions regarding how best to manage the Company's properties and the accommodations the Company provides to its customers, including whether or not to implement a smokefree policy) and the imposition of 'specific . . . methods for implementing complex policies' (the adoption of a smokefree policy for all of the Company's properties)."⁶⁴

The Proposal's language does not contemplate that shareholders would dictate Caesars policy or substitute its judgment for that of management. Nor would the Proposal delegate oversight of risks related to smoking at Caesars property to the Company's shareholders. The Proposal leads with a resolved clause that clearly asks for a report. The supporting statement focuses on disclosure, arguing that "[s]hareholders have no guidance as to the costs our Company is bearing for continuing to allow indoor smoking, nor has the Company disclosed the social and environmental costs and risks imposed on its stakeholders." The supporting statement ends by asserting that "[w]e believe our Company could enhance its ESG initiatives by conducting the report that our proposal requests." No reasonable reader of the Proposal, then, could conclude that it asks Caesars to adopt a smokefree policy; greater transparency is the clear goal.

The Proposal does not specify any details around implementation, such as the methodology for estimating the costs associated with allowing smoking. Nor does it request intricate detail about the costs. Rather, it gives Caesars discretion to determine how it defines "cost savings," the assumptions and methods used to estimate those savings, and the content and format of the report.

The determinations Caesars cites on page 6 of the No-Action Request involved proposals that were far more detailed and prescriptive than the Proposal. Several proposals asked the companies to take specific actions related to their businesses, which is more intrusive than a request

⁶¹ Staff Legal Bulletin 14L (Nov. 3, 2021).

⁶² No-Action Request, at 7

⁶³ No-Action Request, at 7

⁶⁴ No-Action Request, at 5-6.

for a report. One proposal, submitted to SeaWorld,⁶⁵ not only urged the company to retire its resident orcas; it also suggested where they should go—seaside sanctuaries—and what type of exhibit should replace them. The Kroger⁶⁶ proposal highlighted by Caesars identified a specific program—the Fair Food Program (“FFP”)—Kroger should join; that program mandated that participating buyers pay a price premium, give preference to suppliers that adhered to the FFP’s code of conduct, and stop doing business with suppliers that did not comply with that code. The Proposal does not ask Caesars to change any of its practices, much less do so with the specificity seen in these proposals.

The disclosure proposals in the determinations Caesars cites sought much more detailed and extensive information than the Proposal’s one-time report. For example, the proposal submitted to Deere⁶⁷ asked the company to disclose, each year, all diversity, equity and inclusion-related employee-training materials offered to any subset of employees, including material conveyed orally, which would be voluminous and, in the case of oral training materials, burdensome to produce. The Staff concurred with the company that the proposal micromanaged, stating that it sought disclosure of “intricate details” regarding employment and training practices.

The Staff recently rejected arguments very similar to Caesars’. Last season, Travelers⁶⁸ argued that a proposal seeking a report on the company’s intentions to measure, disclose and reduce the greenhouse gas emissions associated with its underwriting activities was excludable on micromanagement grounds. Travelers urged that the proposal would require it to reduce emissions by changing its business activities and that those kinds of decisions involved “myriad and complex considerations,” including “extensive statutory and regulatory constraints” and “advanced industry and regulatory knowledge, mathematics, modeling and more.” In other words, Travelers—like Caesars—claimed that the subject of the proposal was too technical and difficult for shareholders and thus would micromanage the company. The Staff declined to grant relief. Similar arguments were unavailing in Merck,⁶⁹ Eli Lilly,⁷⁰ and Chubb.⁷¹

In sum, Caesars is not entitled to exclude the Proposal on ordinary business grounds because the health impact of allowing smoking in casinos—the Proposal’s sole subject—is a significant social policy issue transcending ordinary business, as evidenced by the broad societal impact and consistent and widespread public debate. Because the Proposal would not dictate company policy, inappropriately limit the discretion of Caesars’ management or board, or request intricate detail, it would not micromanage Caesars. Caesars has thus not met its burden of showing that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), and the Proponents respectfully ask that its request be denied.

⁶⁵ SeaWorld Entertainment Inc. (Mar. 30, 2017, recon. denied Apr. 17, 2017)

⁶⁶ The Kroger Co. (Domini Impact Equity Fund) (Apr. 25, 2023)

⁶⁷ Deere & Company (Jan. 3, 2022).

⁶⁸ The Travelers Companies, Inc.(Meyer Memorial Trust) (Mar. 30, 2023)

⁶⁹ Merck & Co., Inc. (Province of St. Joseph of the Capuchin Order) (Mar. 28, 2023)

⁷⁰ Eli Lilly & Company (Trinity Health) (Mar. 28, 2023)

⁷¹ Chubb Limited (Domini Impact Equity Fund) (Mar. 27, 2023)

* * *

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (718) 822-0820.

Sincerely,

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cc: Jessica L. Lennon
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