



DIVISION OF  
CORPORATION FINANCE

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

March 12, 2025

Derek Zaba  
Sidley Austin LLP

Re: Intuitive Surgical, Inc. (the "Company")  
Incoming letter dated December 23, 2024

Dear Derek Zaba:

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

The Proposal recommends that the Company improve its executive compensation program to include the CEO pay ratio factor.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

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: Jing Zhao



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December 23, 2024

**Via Online Submission Form**

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

Re: Intuitive Surgical, Inc. – Stockholder Proposal Submitted by Jing Zhao

Ladies and Gentlemen:

On behalf of Intuitive Surgical, Inc. (“Intuitive” or the “Company”), and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we hereby request confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if Intuitive excludes a stockholder proposal received via email on October 17, 2024 (the “Proposal”) by Jing Zhao (the “Proponent”) from the proxy materials (the “2025 Proxy Materials”) for Intuitive’s 2025 annual stockholders’ meeting. Intuitive expects to file the 2025 Proxy Materials in definitive form with the SEC on or about March 14, 2025.

Pursuant to Rule 14a-8(j),

- (a) a copy of the Proposal, together with the supporting statement included in the Proposal (the “Supporting Statement”), is attached hereto as Exhibit A; and
- (b) a copy of this letter is being sent to notify the Proponent of Intuitive’s intention to omit the Proposal from the 2025 Proxy Materials.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008), the Company is submitting this letter to the Commission through the online submission portal.

**THE PROPOSAL AND SUPPORTING STATEMENT**

The Proposal and Supporting Statement, attached hereto as Exhibit A, provide as follows:

Resolved: stockholders recommend that Intuitive Surgical, Inc. (our Company) improve the executive compensation program to include the CEO pay ratio factor.

*Supporting Statement*

The Economic Policy Institute found that “from 1978–2023, top CEO compensation shot up 1,085%, compared with a 24% increase in a typical worker’s compensation.”<sup>1</sup> America’s ballooning executive compensation is not sustainable for the economy, and there is no rational methodology to decide the executive compensation, particularly because there is no consideration of the CEO pay ratio. The increase of disparity of income has a direct negative impact on American social order. The CEO pay ratios of big Japanese and European companies are much less than of big American companies.

The American corporate boards and executives have become a class of oligarchy, as defined by Aristotle, according to his *Politics*. In this great classic, Aristotle demonstrated that in a stable community (polis), the ratio of the rich citizen’s land to the poor citizen’s land should not be over 5 to 1. Our Company’s CEO pay ratio was 111: 1 in 2023 (Notice of the 2024 Annual Meeting of Stockholders and Proxy Statement p.59), jumped from 81:1 in 2022 (Notice of the 2023 Annual Meeting of Stockholders and Proxy Statement p.60). This is against the trend: shareholders in JPMorgan Chase & Co., Intel, Netflix, Salesforce and other big companies rejected sky-high executive pay packages in 2022, 2023, and 2024.

Adam Smith said: “Wealth, as Mr Hobbes says, is power.” As a social contract, the American public gives the corporate board the power to run the corporate business without organized unions in most companies, without employee representation in the board; and the board is nominated and elected without any competition (the number of candidates is the same number of board seats). To increase the executive wealth (compensation) irrationally is to abuse the power.

Human nature has not changed so much since Aristotle. The Company has the flexibility to reform the Compensation Committee to improve the executive compensation program, such as to include the CEO pay ratio factor.

<sup>1</sup> By Josh Bivens, Elise Gould, and Jori Kandra, September 19, 2024.

**BASIS FOR EXCLUSION**

We hereby request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

## ANALYSIS

***The Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague and indefinite so as to be inherently misleading.***

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission’s proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the company argued that its stockholders “would not know with any certainty what they are voting either for or against”).

Under this standard, the Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either stockholders or the company to understand how the proposal would be implemented. For example, in *Apple Inc. (Jing Zhao)* (avail. Dec. 6, 2019), the Staff recently concurred that a company could exclude, as vague and indefinite, a proposal by the same Proponent recommending that the company “improve guiding principles of executive compensation,” but failed to define or explain what improvements the proponent sought to the “guiding principles.” The Staff noted that the proposal “lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles” and concurred with exclusion of the proposal as “vague and indefinite.” In *The Boeing Company (Recon.)* (avail. March 2, 2011), the Staff concurred that a company could exclude, as vague and indefinite, a compensation-related proposal that, due to unclear language, was subject to multiple interpretations.

Additionally, in *eBay Inc.* (avail. April 10, 2019), the Staff concurred that a company could exclude as vague and indefinite a proposal requesting that a company “reform the company’s executive compensation committee.” The proposal’s supporting statement did not request any specific reforms, but instead made observations about various elements of executive compensation. These statements did not indicate whether those elements of the company’s executive compensation program needed reform or how they should or could be affected by reform of the compensation committee. In its response, the Staff noted that “neither shareholders nor the [c]ompany would be able to determine with any reasonable certainty the nature of the ‘reform’ the [p]roposal is requesting. Thus, the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading.” *See also AT&T Inc.* (avail. Feb. 21, 2014) (concurring in the exclusion of a proposal requesting that the board of directors review the company’s policies and

procedures relating to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where the phrase “moral, ethical and legal fiduciary” was not defined or meaningfully described); *General Motors Corp.* (avail. Mar. 26, 2009) (concurring with the exclusion of a proposal to “[e]liminate all incentives for the CEOs [sic] and the board of directors” where the proposal did not define “incentives”); *Bank of America Corp.* (avail. June 18, 2007) (concurring with the exclusion of a proposal calling for the board of directors to compile a report “concerning the thinking of the Directors concerning representative payees” as “vague and indefinite”).

Here, neither the stockholders voting on the Proposal, nor the Company in implementing the Proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.

To begin with, the Proposal and Supporting Statement do not explain the key concepts of the Proposal. The Proposal recommends that the Company “improve the executive compensation program to include the CEO pay ratio factor.” It is not clear what it would mean to “improve” the executive compensation program or “include the CEO pay ratio” in the executive compensation program, and it is not clear how including the CEO pay ratio in the executive compensation program would “improve” the program. The Supporting Statement adds to the lack of clarity by implying a range of potential, competing meanings of the Proposal.

As a result, stockholders and the Company could reasonably interpret multiple, distinct meanings of the Proposal and ways of implementing it.

First, the Proposal’s request to “include the CEO pay ratio” in order to “improve the executive compensation program” may be interpreted by stockholders as a recommendation that the Company change its executive compensation program so as to reduce its CEO pay ratio.

The Supporting Statement indicates multiple times that the Proponent is not satisfied with CEO pay ratios of American companies, or the CEO pay ratio of the Company, compared to what the Proponent claims are lower CEO pay ratios of Japanese and European companies. The Supporting Statement claims that “CEO pay ratios of big Japanese and European companies” are “much less than” the CEO pay ratios “of big American companies.” The Supporting Statement refers to stockholders of “other big companies” having “rejected sky-high executive pay packages.” The Supporting Statement criticizes the Company’s CEO pay ratio in noting that, according to Aristotle’s *Politics*, “the ratio of the rich citizen’s land to the poor citizen’s land should not be over 5 to 1,” while the Company’s CEO pay ratio “jumped from 81:1 in 2022” to “111:1 in 2023.”

If a stockholder understood the Proposal as a recommendation that the Company change its executive compensation program so as to reduce its CEO pay ratio, the Proponent provides no clarity or thought for such stockholder as to how such a reduction should be achieved. A reduction in the CEO pay ratio could be effected through downward adjustments to the CEO’s compensation by various means, upward adjustments to employees’ compensation by various means, or by a combination of these approaches. Neither the Company nor the stockholders would be able to

determine with any reasonable certainty which approach the Proposal and the Proponent would endorse.

Second, the Proposal's request to "improve the executive compensation program to include the CEO pay ratio factor" may be interpreted by stockholders as a request for the Board and the Compensation Committee to take into account the CEO pay ratio when setting executive compensation.

From the Supporting Statement, it seems possible (although it is ambiguous) that the Proponent means that the Board and the Compensation Committee should be wary of high CEO pay ratios and that this wariness can act as a curb on executive remuneration. The Supporting Statement indicates that the Proponent believes that high CEO pay ratios contribute to adverse outcomes for the American economy and American society. The Supporting Statement states that "America's ballooning executive compensation is not sustainable for the economy" and that "[t]he increase of disparity of income has a direct negative impact on American social order." As noted, the Proponent refers to stockholders at "other big companies" having "rejected sky-high executive pay packages," implying that stockholders could also reject such packages at the Company.

As such, certain stockholders may understand that the intent of the Proposal is for the consideration of the CEO pay ratio to "improve" executive compensation by lowering executive compensation, raising employee compensation, or both. Stockholders may not agree that lowering executive compensation or raising employee compensation to narrow the CEO pay ratio would necessarily "improve" executive compensation, leaving the meaning of "improve" vague and indefinite. Other stockholders may interpret the proposal as simply asking the Compensation Committee of the Board to be aware of the CEO pay ratio when setting executive compensation, which is already the case given the public disclosure of the CEO pay ratio in the Company's proxy material.

Third, the Proposal may be interpreted by stockholders as calling not only for reform of the methodology for setting executive compensation, but also for other compensation-related reforms.

The Supporting Statement advocates for reform of the Compensation Committee. It states: "The Company has the flexibility to reform the Compensation Committee to improve the executive compensation program, such as to include the CEO pay ratio factor."

If a stockholder understood the meaning of the Proposal to be that the Company should reform the Compensation Committee, then the Proposal would be additionally vague and indefinite given that such reform could be pursued through multiple approaches. For instance, reform of the Compensation Committee could include changing, among other things, the scope of the Compensation Committee's mandate, the criteria the Compensation Committee uses to set compensation or, perhaps, new members of the Compensation Committee.

We are aware that in *AT&T, Inc.* (avail. Jan. 24, 2022) ("AT&T 2022"), the Staff did not concur with the company's proposal for omission under Rule 14a-8(i)(3) of a similar, but different,

proposal made by the Proponent, which recommended “that AT&T Inc. improve executive compensation program, such as to include the executive pay ratios factor and voices from employees.” Here, the Proposal is distinguishable—and more vague and indefinite—because the proposal and the supporting statement in AT&T 2022 repeatedly indicated that the purpose of the Proposal was to lead the Company to consider employees’ perspectives when establishing executive compensation. This purpose is evident from the text of the Proposal itself, but moreover, the supporting statement in AT&T 2022 referred approvingly to, variously: “employee representation on boards”, “boards . . . engag[ing] with employees”, and “voices from employees.” Here, the Proposal and Supporting Statement make no such references to explain the Proposal and to add specificity to its meaning and objective.

Thus, as in *Apple Inc. (Jing Zhao)* (avail. Dec. 6, 2019), *eBay* (avail. April 10, 2019) and the other precedents cited above, neither the Company nor its stockholders would be able to determine with any reasonable certainty how to implement the Proposal. Just as *Apple* hinged on the vagueness of the term, “improve,” where the proposal failed to provide clarity about the manner and scope of reform being sought, so, too, here does the term “improve” used in this Proposal leave the Company and its stockholders unable to determine with any reasonable certainty the scope and nature of the requested undertaking. Given the inherent vagueness of the Proposal, there is little assurance that, even if the Proposal received majority support, the Company would implement it in the manner that the supporting stockholders expected. As such, the Proposal lacks sufficient specificity to indicate to the Company and to its stockholders what actions the Proposal requires, and the Proposal as a whole is thus inherently misleading.

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Based upon the foregoing analysis, we respectfully request that the Staff concur that the Proposal may properly be omitted from the Company's 2025 Proxy Materials on the basis of Rule 14a-8(i)(3). We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to me at [dzaba@sidley.com](mailto:dzaba@sidley.com). If I can be of any further assistance in this matter, please do not hesitate to contact me at (650) 565-7131.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek Zaba', with a stylized flourish at the end.

Derek Zaba

Attachment: Exhibit A

cc: Cory Balliet  
Vice President, Corporate Law, Governance and Corporate Secretary  
Intuitive Surgical, Inc.

Leonard Wood  
Sidley Austin LLP



**EXHIBIT A**

[REDACTED]  
[REDACTED]  
October 17, 2024

Intuitive Surgical, Inc.

Attention: Corporate Secretary

1020 Kifer Road

Sunnyvale, CA 94086-5301

(via email Mr. Mark J. Meltzer General Counsel [REDACTED], Kara Andersen  
Reiter [REDACTED], Ms. Siang Chin [REDACTED] & post mail)

Re: Proposal to 2025 Stockholders Meeting

Dear Secretary:

Enclosed please find my stockholder proposal for inclusion in our company's proxy materials for the 2025 annual meeting of stockholders and a letter confirming my shares. I will continuously hold these shares through the 2025 annual meeting of stockholders.

I encourage Intuitive Surgical to engage with stockholders on important policy issues, including providing an email account to receive shareholder proposals for better communication, as the SEC does. I am available between 10am – 5pm Monday-Friday at [REDACTED] (I will provide the phone # to communicate upon request) from today to December 5, 2024.

Yours truly,

*Jing Zhao*

Jing Zhao

Enclosure: stockholder proposal, letter of shares

## **Stockholder Proposal to Improve Executive Compensation Program**

Resolved: stockholders recommend that Intuitive Surgical, Inc. (our Company) improve the executive compensation program to include the CEO pay ratio factor.

### Supporting Statement

The Economic Policy Institute found that “from 1978–2023, top CEO compensation shot up 1,085%, compared with a 24% increase in a typical worker’s compensation.”<sup>1</sup> America’s ballooning executive compensation is not sustainable for the economy, and there is no rational methodology to decide the executive compensation, particularly because there is no consideration of the CEO pay ratio. The increase of disparity of income has a direct negative impact on American social order. The CEO pay ratios of big Japanese and European companies are much less than of big American companies.

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<sup>1</sup>By Josh Bivens, Elise Gould, and Jori Kandra, September 19, 2024.