



January 12, 2024
Via electronic submission

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

RE: Shareholder Proposal of Inspire Global Hope ETF at The Charles Schwab Corporation under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of the shareholder proponent Inspire Global Hope ETF (“Inspire” or the “Proponent”) to defend its shareholder proposal at The Charles Schwab Corporation (“Charles Schwab” or the “Company”). Julia Lapitskaya wrote to you on behalf of Charles Schwab on December 29th, 2023, to ask you to concur with Charles Schwab’s view that it can exclude Inspire’s shareholder proposal from its 2024 Annual Meeting of Shareholders under Rule 14a-8(i)(12) because it is a resubmission of a 2023 proposal. Charles Schwab has the burden of proving it may exclude the Proposal. *See* Rule 14a-8(g). But it cannot bear this burden.

Inspire’s Proposal asks for a report evaluating workforce policies and other policies that could contribute to workforce discrimination. Charles Schwab says this is a resubmission, i.e., addresses substantially the same subject matter, as a 2023 proposal focused on how financial institutions discriminate against customers. But Diversity, Equity & Inclusion (“DE&I”) and other workforce culture issues are vastly different subject matters from debanking. The public, shareholders, and SEC understand this. SEC no-action decisions also recognize much finer distinctions even within DE&I and other customer-facing issues. The Staff should deny Charles Schwab’s request.

The Proposals

Inspire's Proposal provides as follows:

Resolved: Shareholders request the Board of Directors conduct an evaluation and issue a civil rights and non-discrimination report within the next year, at a reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how Charles Schwab's policies and practices impact employees and prospective employees based on their race, color, religion (including religious views), sex, national origin, or political views, and the risks those impacts present to Charles Schwab's business.

The Supporting Statement states that workforces are becoming increasingly polarized because many of America's largest companies "promote divisive training concepts" and "alienate employees by taking divisive stances on political issues," including many that directly "undermine[] First Amendment freedoms." These actions not only harm employees, they also subject Charles Schwab to significant legal risk. Given this, the Proposal urges Charles Schwab to "respect the free speech and religious freedom of its employees."

Charles Schwab's argument relies on a 2023 proposal on debanking submitted by the National Center for Public Policy Research. That proposal states:

Resolved: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how it oversees risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views, and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights.

The supporting statement explains that the proposal is concerned about customers being denied service at financial institutions because of their political or religious views. It cites the U.S. Constitution and the UN Declaration of Human Rights as examples of laws that protect "freedom of thought, conscience, and religion" and says that "[f]inancial institutions should respect these freedoms." Charles Schwab's No-Action Request ("NAR"), Ex. B. It then says, "The Statement on Debanking and Free Speech identified many companies in the financial services industry that frequently include vague and subjective standards in their policy . . . that allow employees to deny or restrict service for arbitrary or discriminatory reasons." It also cites the Viewpoint Diversity Score Business Index for examples of vague and subjective policies that can be and are used to deny service to customers based on viewpoint. *Id.*

Discussion

A. Legal standard

1. Proposals focusing on different operations of the company or different harms do not address substantially the same subject matter.

A shareholder may not submit a proposal that “addresses substantially the same subject matter as a proposal, or proposals, previously included in the company’s proxy materials within the preceding five calendar years” if the matter was voted on at least once in the last three years and received support below specified voting thresholds on the most recent vote. 17 C.F.R. § 240.14a-8(i)(12).

When adopting this standard, the Commission sought to counter gamesmanship where a proponent could “make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue.” Exchange Act Release No. 34-20091, at *8 (Aug. 16, 1983).

To focus on shareholder interest, the SEC determines whether a proposal “addresses substantially the same subject matter” “based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns.” *Id.* This also avoids “an improperly broad interpretation of the[] rule.” *Id.*¹

Determining the “subject matter” of a proposal sometimes involves “difficult subjective judgments.” *Id.* But the Staff have consistently distinguished proposals that target similar harms but focus on different parts, policies, or practices of the company. A few recent examples show this.

In two decisions at Meta, the SEC rejected no-action requests focused on content moderation. In the first one, *Meta Platforms, Inc.* (Mar. 31, 2022), the proposal asked for a report on how Meta’s “Community Standards” had “proven ineffective at controlling . . . hate speech, disinformation, or content that incites violence and/or harm to public health or personal safety.” Meta said this addressed substantially the same subject matter as three prior proposals on content governance that spanned election disinformation, “content management controversies (including election interference, fake news, hate speech, sexual harassment, and violence),” and a very

¹ The 1983 Rule originally said “*deals with* substantially the same subject matter.” In 2020, the Commission updated this to “*addresses* substantially the same subject matter” but stated that it was only a stylistic change. Exchange Act Release No. 89964 (Sep. 23, 2020).

broad resolution “on content governance, including the extent to which they address human rights abuses and threats to democracy and freedom of expression.” *Id.* at 4.²

In the second decision, *Meta Platforms, Inc.* (Mar. 31, 2022), the proposal asked for a report on “the actual and potential human rights impacts of Facebook’s targeted advertising policies and practices” with a focus (in its supporting statement) on “misinformation campaigns” and “propagating hate speech.” *Id.* at 12. The Staff stated that this was not a resubmission of a 2020 proposal focused on similar “civil and human rights risks” broadly or a 2019 proposal focused on how content moderation contributes to “human rights abuses and threats to democracy and freedom of expression.” *Id.* at 6.

The SEC also distinguishes subject matters within workforce-facing proposals. In *Wal-Mart, Inc.* (Apr. 10, 2023) and *AT&T, Inc.* (Mar. 15, 2023), the Staff rejected a pair of no-action requests on racial equity audits even though proposals with almost identical resolved language were submitted the year before. The racial equity audits requested impacts on “civil rights and non-discrimination” vs. BIPOC but were otherwise materially identical. The supporting statements, as both proponents noted, also expressed opposite views on DE&I initiatives and other cultural workforce issues. *Wal-Mart, Inc.* at 30–31; *AT&T, Inc.* at 26–27.

The Staff has also distinguished proposals focused on similar parts of the company but different harms. For example, in *Apple Inc.* (Dec. 6, 2019), the Staff rejected a no-action request asking for a report on free speech and access to information, including Apple’s commitment to speech as a human right, even though earlier proposals had asked for reports on human rights impacts and Apple’s apparent censorship in China. *Id.* at 5–6

2. Charles Schwab’s no-action citations do not apply.

Charles Schwab observes that Staff have sometimes excluded a proposal if it “shares the same substantive concerns even if the proposal differs in scope from a prior proposal.” NAR at 4. While this is true in general, its no-action citations deal with proposals that either made minor revisions in the resolution language but focused on the same substantive concerns or that focused on the same company policy or practice. Neither concern is present here.

The former include *Pfizer, Inc.* (AFSCME) (Jan. 9, 2013) and *The PNC Financial Services Group, Inc.* (Feb. 28, 2013). In *Pfizer*, the proposals asked for essentially the same thing, disclosures on lobbying and other political spending. *Id.* at 29, 71. The proponent unsuccessfully tried to distinguish the proposals by providing different

² Page numbers refer to the pdf page number of the collected no-action documents available on the SEC’s website at <https://www.sec.gov/corpfin/shareholder-proposals-no-action?>.

legislative and regulatory provisions in each proposal and identifying different audiences that cared about them. *See id.* at 5. But just shifting the proposal’s audience and identifying different legal background does not substantially shift the proposal’s subject matter.

In *PNC*, the proposals were nominally different; one asked for a report on the risks of “financing companies producing controversial weapons and/or with business activities in conflict-affected and high-risk areas” while two earlier ones asked for a report on the risks of “lending, investing, and financing activities within the nuclear weapons industry.” *Id.* at 5. However, the supporting statement of the later proposal “focuses almost entirely on nuclear weapons, with only one reference to [other types of weapons].” *Id.* at 5; *see id.* at 10–12, 15–16. This showed that the substantive focus of the new proposal, and thus all three proposals, was nuclear weapons.

As for the latter set of cites, these just show that different approaches to the same corporate practice or policy may be excludable. *Apple Inc.* (Nov. 20, 2018) (human rights policy); *Apple Inc. (Plenk)* (Dec. 15, 2017) (diversity among senior management and board members);³ *The Coca Cola Co.* (Jan. 18, 2017) (equal opportunity employment for Israelis and Palestinians, both from same proponent); *Exxon Mobil Corp.* (Mar. 7, 2013) (risks associated with relying on carbon-based energy sources and addressing climate change).⁴

B. Inspire’s Proposal focuses on DE&I and workforce culture, which is not remotely the same subject matter as debanking.

Inspire’s Proposal, titled “Report on Respecting Workforce Civil Liberties,” does not come close to addressing “substantially the same subject matter” as the prior debanking proposal; one addresses an aspect of workforce culture while the other addresses a particular set of customer policies and practices.

To begin, the workforce proposal adds racial discrimination to the concerns about religious and political viewpoint discrimination. It mentions the legal risks of racial discrimination in light of the recent Supreme Court rulings in *Students for Fair Admission vs. Harvard* and *Groff v. DeJoy*. It also discusses “divisive training concepts like critical race theory” and how this leads to discrimination “based on the

³ In *Apple Inc. (Plenk)*, although the proposal at issue requested a report on “sustainability metrics” including “diversity among senior executives,” that was also the only category of sustainability it singled out as mandatory for inclusion.

⁴ Proponent was unable to locate a copy of the *Saks Inc.* no-action correspondence or proposals. Proponent does not concede the accuracy of Charles Schwab’s characterization of the proposals at issue there. But even accepting that characterization, they still all dealt with fair labor standards for employees.

color of their skin, biological sex, or religious status.” This is one reason to distinguish the subject matters of the proposals, as *Apple Inc.* (Dec. 6, 2019) shows.

But even ignoring the added focus on race, the proposals also address distinct subject matters because they deal with vastly different parts of the company. The *Meta* decisions show that proponents can address the same issue, content censorship and its effect on human rights, on various aspects of the company, from its community guidelines to its targeted advertising practices to content moderation writ large. The Staff’s letters in *Wal-Mart* and *AT&T* also show that even two DE&I proposals can address different subject matters. Inspire’s matter is even easier because its Proposal focuses on an entirely different set of company stakeholders, employees, than the debanking proposal, which focused on customers.

More concretely, the debanking proposal cites financial institutions using “vague and arbitrary terms” that can lead to customers being “denied access to essential services as a consequence of their speech or political activity.” NAR Ex. B. Inspire’s Proposal cites “divisive training concepts like critical race theory,” companies “discriminate[ing] against religious nonprofits in their charitable giving,” and “adopt[ing] radical stances and policies on abortion.” It notes that a recent survey found that 60% of employees were concerned about being punished for expressing their political or religious views at work. The Inspire Proposal also notes the public importance of, and legal risk associated with, DE&I initiatives.

The supporting statement (and common sense) thus shows that the substantive concerns of the Inspire Proposal are on employees and workforce culture. Indeed, most shareholders would understand the distinction between DE&I (and other workforce culture issues) and debanking. Recent news articles have virtually no overlap between the two.⁵

Charles Schwab next objects to superficial similarities in the supporting statements, like “cit[ing] the Viewpoint Diversity Score Business Index for examples of discriminatory practices by companies generally.” NAR at 8. But this Index is a comprehensive benchmark for measuring corporate respect for free speech and religious liberty across all aspects of a company’s operations. It has 43 different performance indicators that span company policies and practices in the marketplace,

⁵ See, e.g., Andrew Ross Sorkin et al., *The Fight Over D.E.I. in the C-Suite*, New York Times (Jan. 4, 2024); Shaun Harper, *Why Business Leaders Are Pulling the Plug on DEI*, Forbes (July 18, 2023); Jamie Joseph, *Republican attorneys general from 23 states demand major firms stop supporting ‘debanking’ of conservatives*, FoxNews (Dec. 9, 2023); *UK’s Hunt says will change law to stop political ‘debanking,’* Reuters (Oct. 2, 2023).

workforce, and public square.⁶ The policies cited in each proposal are explained above and are vastly different in scope; one focuses mainly on the workforce and the other on the financial institutions' customer-facing terms of service.

Charles Schwab also notes similarities between the resolved language of each proposal. This is form over substance. The Staff rightly consider supporting statements to help determine a proposal's "substantive concern." Instructive here are *Wal-Mart, Inc.* (Apr. 10, 2023) and *AT&T, Inc.* (Mar. 15, 2023). Again, both dealt with pairs of proposals that had virtually identical resolved language asking for racial equity audits. However, the supporting statements reflected vastly different perspectives on the targeted harm. It is no surprise the SEC denied no-action relief in both. Similarly, the Staff denied no-action relief in *The PNC Financial Services Group, Inc.* (Feb. 28, 2013) despite *different* resolved clauses precisely because the supporting statements showed that the substantive focus for both was nuclear weapons.

In any event, the resolved language of the proposals here are materially different. The Inspire Proposal asks for a report on the impact on "employees and prospective employees," while the debanking proposal focuses on "risks related to discrimination against individuals."

Charles Schwab tries to sweep this under the rug by saying that "the broader analysis required by the 2023 NCPPR Proposal would encompass the more narrow analysis sought by the Proposal." NAR at 9. Again, this improperly broadens the substantive focus of the debanking proposal.

But even accepting this characterization, Charles Schwab is wrong. As explained above, Charles Schwab has no no-action decisions that support this proposition. In fact, the two *Meta* decisions show the opposite. *Meta Platforms, Inc.* (Mar. 30, 2022); *Meta Platforms, Inc.* (Mar. 31, 2022). In both cases, there were earlier proposals focused broadly on content moderation and human rights impacts. Those proposals did not preclude later proposals focusing on the same issues but on more targeted aspects of *Meta's* operations, specifically its targeted advertising policies and community standards. The same result holds here. Focusing on discrimination, particularly on religious and political views, in the workforce is a more targeted concern than religious and political discrimination at Charles Schwab writ large.

Thus, Charles Schwab cannot exclude Inspire's Proposal on "Report on Respecting Workforce Civil Liberties" under Rule 14a-8(i)(12) as a resubmission.

⁶ The 2023 edition of the Viewpoint Diversity Score Business Index is available at <https://www.viewpointdiversityscore.org>.

Conclusion

For these reasons, we respectfully request that the Staff reject the Company's request for relief from the Proposal. A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have on this letter, please contact me.

Sincerely,



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Cc: Julia Lapitskaya