

United States Securities and Exchange Commission
Washington, D.C. 20549

NOTICE OF EXEMPT SOLICITATION
Pursuant to Rule 14a-103

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Name of the Registrant: Johnson & Johnson

Name of persons relying on exemption: The Shareholder Commons, Inc.

Address of persons relying on exemption: PO Box 7545, Wilmington, Delaware 19803-7545

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SHAREHOLDER REBUTTAL TO JOHNSON & JOHNSON

The Shareholder Commons urges you to vote **FOR** Item 9 on the proxy, the shareholder proposal requesting that the Board study the public health costs of Johnson & Johnson's ("J&J" or the "Company") decision to limit its sharing of vaccine technology and the impact of those costs on the many J&J shareholders who rely upon overall market returns to support the value of their diversified portfolios.

The Shareholder Commons is a non-profit organization that seeks to shift the paradigm of investor thinking away from a narrow and harmful focus on individual company value towards a systems-first approach to investing that serves investors and their beneficiaries better.

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I call on the nations gathering next week for the World Trade Organization ministerial meeting to meet the U.S. challenge to waive intellectual property protections for COVID vaccines, so these vaccines can be manufactured globally. I endorsed this position in April; this news today [the spread of the Omicron variant] reiterates the importance of moving on this quickly.



-President Joseph Biden Jr., November 26, 2021¹

Background

In asking that companies like J&J to waive patent and other intellectual property rights (“IPR”) that limit COVID-19 vaccination, the President added his voice to that of more than 100 nations.² His call recognized that when access to key public health resources is limited, the entire economy suffers.³ And when the economy suffers, investors lose.

Despite these requests for waivers, the Company has decided not to grant an IPR waiver. That decision may well enable it to increase its profits,⁴ but only by creating severe costs to the economy:

- The International Monetary Fund has estimated that an inadequate global vaccine supply could lead to global economic losses of up to \$9 trillion.⁵
- The Federal Reserve Bank of St. Louis published research showing that the average country’s GDP was reduced by 7.3 percent in 2020 due to the pandemic.⁶

Such losses can in turn create broad losses across investment markets. In fact, the value of a diversified portfolio bears a direct relationship to GDP.⁷

For the diversified investors who make up a large portion of J&J shareholders, the pandemic threat to GDP may very well outweigh any profits J&J receives from protecting its IPR. The Proposal asks that the Company explain this trade-off to shareholders.

We urge diversified shareholders and the asset managers and proxy-voting professionals who represent them to vote FOR Proposal No. 9. Supporting the Proposal signals that you want to understand how the Company’s focus on its own financial returns may be harmful to diversified investors and global public health.

Voting FOR Proposal No. 9 does not constitute a criticism of the Company’s business decisions or COVID-19 program. The requested report will allow shareholders to understand the balance being struck between maintaining Company profits and addressing the pandemic and consequent global economic disruption.

Without the report the Proposal requests, shareholders will not be equipped to understand one of the most impactful decisions the Company has ever had to make. More specifically, diversified investors and the fiduciaries who vote on their behalf will not be able to understand the effect these decisions are having on their investment portfolios.

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/26/statement-by-president-joe-biden-on-the-omicron-covid-19-variant/>. The ministerial meeting was canceled later that day, due to the spread of the Omicron variant.

² Andrew Green, *WTO Council Offers Hope for TRIPS Vaccine Proposal* (June 10, 2021), available at <https://www.devex.com/news/wto-council-offers-hope-for-trips-vaccine-proposal-100125>

³ David Harrison and Paul Hannon, *Omicron Slows the Global Economy, Hitting the U.S. Particularly Hard*, Wall Street Journal (January 24, 2022).

⁴ See JNJ Q4 Earnings Call (“We expect the company’s COVID-19 vaccine to contribute approximately an incremental \$0.20 to earnings per share in 2022”), available at <https://www.fool.com/earnings/call-transcripts/2022/01/25/johnson-johnson-jnj-q4-2021-earnings-call-transcri/>.

⁵ Ruchir Agarwal and Gita Gopinath, *A Proposal to End the COVID-19 Pandemic*, IMF Staff Discussion Note (May 2021), available at <https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2021/05/19/A-Proposal-to-End-the-COVID-19-Pandemic-460263>.

⁶ Juan Sanchez, *COVID-19's Economic Impact around the World*, ST. Louis Federal Reserve (August 11, 2021) available at <https://www.stlouisfed.org/publications/regional-economist/third-quarter-2021/covid19s-economic-impact-world>.

⁷ https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf



The Proposal

The Proposal asks for a report on the effect that the Company's failure to share its COVID-19 IPR more fully might have on public health and, consequently, on the investment returns of diversified shareholders:

RESOLVED, shareholders ask that the Board of Directors commission and publish a report on (1) the public health costs created by the limited sharing of the Company's COVID-19 vaccine technologies and any consequent reduced availability in poorer nations and (2) the manner in which such costs may affect the market returns available to its diversified shareholders.

The rapid creation of vaccines for COVID-19 is one of the greatest success stories in modern public health and the Company has played an important role in that story, developing a product that will protect billions of individuals from the virus.

But because it is a for-profit company with responsibilities to its investors, the decisions that the Company makes about whether to share the technology for the vaccine will inevitably take revenues and profits into account. To date, none of its disclosures have explained how the Company is balancing its obligation to earn profits with its impact on public health and its economic repercussions.

In particular, the Company has not explained the cost to the public of its decision not to make the waiver requested by President Biden. Specifically, he has called for pharmaceutical companies to waive certain IPR under the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), a World Trade Organization-administered document. TRIPS requires countries (with limited exceptions) to enforce patents and copyrights so that, for example, India cannot easily manufacture a vaccine for export without a license from a pharmaceutical company that holds a relevant patent. In 2020, India and South Africa called for a waiver of the relevant TRIPS provisions for technology relating to COVID-19. As noted above, more than 100 countries have followed suit.

Information about the Company's balancing of profit and public health is critical to diversified shareholders and the advisors who manage their portfolios and help them vote their shares. These shareholders and advisors need this information to understand how the Company factored the effects on the economy and diversified shareholders into its decision to limit the use of its IPR.

The Proposal asks the Company to investigate whether its IPR decisions harmed public health and thereby lowered returns for its diversified shareholders. In its statement opposing the Proposal (the "Opposition Statement"), the Company fails to acknowledge or address this concern and instead diverts attention to the limited manner in which it is distributing vaccines and technology, without discussing the implications of the accompanying decisions it has made **not** to share technology.

But other Company documents and disclosure make it clear that preserving its revenue stream through IPR protection is critical to its business model:

- According to the Annual Report the Company recently filed with the Securities and Exchange Commission, 2021 sales of COVID-19 vaccines accounted for \$2.385 billion in revenue.⁸

⁸ <https://www.sec.gov/ix?doc=/Archives/edgar/data/200406/000020040622000022/jnj-20220102.htm>



- For 2022, the Company has provided guidance that such revenue will grow to \$3 billion and account for \$0.20 of profit per share of stock.⁹ Clearly, a broad waiver of IPR could threaten these revenues and profits.
- The Annual Report cites as a risk factor “[p]otential changes to applicable laws and regulations affecting United States and international operations, including relating to... licensing and patent rights.”¹⁰ In other words, protecting IPR successfully is part of the Company’s business model.
- In its Position Paper on COVID-19 and IPR, the Company implies that without the profits IPR makes possible, it would be unable to make enough profits to justify development of the vaccine.¹¹

The Opposition Statement, however, is not forthright about the business motive, and implies that all the Company’s decisions about vaccine IPR are based solely on ensuring the most vaccines are produced and put into arms where they are needed. As shown below, that assertion is highly disputed. Many experts suggest that the failure to share the IPR is detrimental to public health, which suggests that the Company’s motive for not broadly sharing COVID-19 IPR is really about preserving the billions in sales and accompanying profits.

Recognizing this dispute, the Proposal does not ask for an immediate change in conduct. Instead, the Proposal asks the Company to explain its vaccine decisions more clearly, including their relation to preserving financial return, and to explain specifically how those decisions affect public health and the returns a diversified shareholder receives.

Why you should support the Proposal

- **Despite the pleas of more than 100 countries and the President of the United States, the Company refuses to waive rights to its COVID-19 vaccine-related IPR.**
- **Many experts have argued that the failure of pharmaceutical companies to waive their IPR is exacerbating the COVID-19 pandemic.**
- **Exacerbating and extending the pandemic has dire consequences for public health and economic growth.**
- **The loss in economic growth caused by an extended pandemic threatens the Company’s diversified shareholders’ portfolios, and that threat may outweigh any benefit those shareholders receive from J&J incrementally increasing its profitability by exploiting its monopoly power over its IPR.**
- **Fiduciaries and advisors should understand whether their diversified clients and beneficiaries are at risk from the Company trading off economic growth for its own financial performance.**
- **Company decision-makers are heavily compensated in equity, so that they do not share the same broad market risk as the Company’s diversified shareholders.**
- **Voting FOR will signal that shareholders want to understand whether the Company is putting the global economy at risk in order to improve financial performance.**
- **The Proposal only asks for an analysis, not a change in practice. Any trade-offs of public interest for financial gain must be explained, so that shareholders can make educated decisions about the balance between promoting internal financial return and maintaining the economic health that supports their diversified portfolios.**

⁹ *Supra*, n. 4.

¹⁰ *Supra*, n. 8.

¹¹ J&J, *Position on COVID-19 and Intellectual Property Rights* (“We simply would not have a vaccine, nor would we be able to scale up production, without a reliable IP framework.”)



The Opposition Statement misses the point

The International Monetary Fund has estimated that the global economy could benefit by \$9 trillion over five years if the global response to COVID-19 were optimized. Failure to do so could directly harm the interests of the Company's diversified shareholders, as a healthy economy is a far greater value driver for diversified portfolios than the profits of any one company within those portfolios. Indeed, a number of studies have shown systematic factors, rather than individual company performance, explain 75-94 percent of average portfolio return.¹²

The Opposition Statement does not acknowledge the tension between internal profits and optimizing vaccine uptake. It suggests that there is no tension, but in so doing, contradicts multiple experts, along with the governments of many countries whose citizens remain under vaccinated. If anything, the Opposition Statement demonstrates the need for the Company to honestly reckon with a difficult issue.

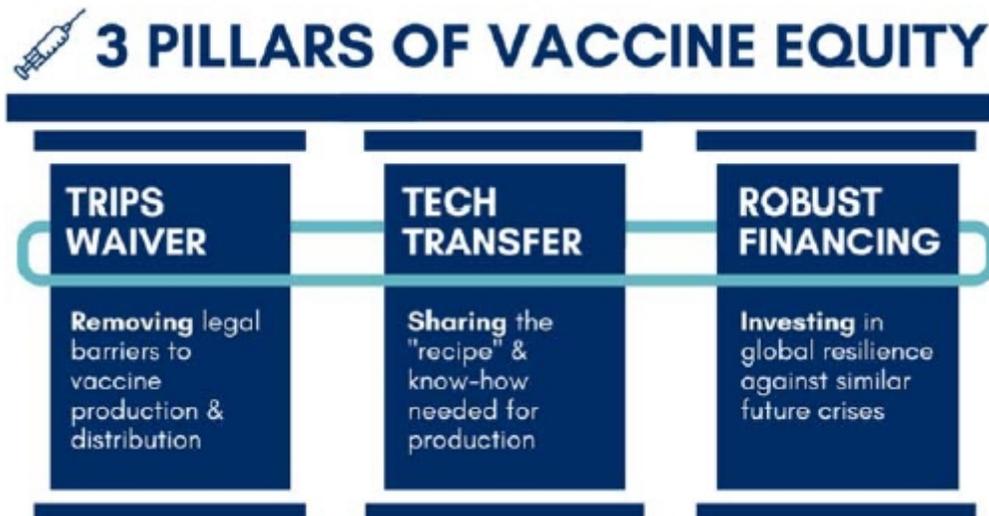
The Opposition Statement makes four points, which we respond to below.

The Company claims waiving IPR would be futile or counterproductive because of the difficulties associated with vaccine manufacture

The Company argues that other manufacturers are inexperienced and incapable of producing vaccine, and that supply chains are already stretched, so that waiving their IPR would not increase supply. This is of course a convenient argument for a company that might benefit from using IPR to limit competition. It is also a heavily disputed position.

In September of 2021, The Global Development Policy Center at the Pardee School of Global Studies/Boston University published a paper directly contradicting the Company's position, explaining that IPR waivers were a necessary but not sufficient condition for addressing vaccine equity.¹³

The complex challenge of transitioning to a more equitable approach to global vaccine production can be concentrated into three broad pillars that must be advanced simultaneously:



¹² Lukomnik, Jon and James P. Hawley. *Moving Beyond Modern Portfolio Theory: Investing that Matters*. (Routledge, 2021).

¹³ Katie Gallogly-Swan and Rachel Thrasher, *Three Pillars of Vaccine Equity: Triaging the Global Vaccination Challenge* (September 2021)



In other words, the problems the Company posits with a waiver are problems only if the waiver is not accompanied by other measures. This is an argument for a coordinated waiver program, not an argument not to waive IPR at all.

An analysis published in the British Medical Journal homed in on lack of intellectual property sharing as the principal obstacle:

The barrier to adequate vaccine supply today is not lack of vaccine options, nor even theoretical production capacity; the problem is the intellectual property (IP) protection governing production and access to vaccines...¹⁴

Finally, Human Rights Watch has documented that it is IPR protection, not supply chains and technological capability, that holds back production:

Right now, there are manufacturers with capacity to produce additional Covid-19 vaccines and other health products at factories in Bangladesh, Canada, Denmark, India, and Israel, but they are unable to contribute because they do not yet have the right licenses. So, IP is a barrier to them. The TRIPS waiver proposal sponsors and experts at the leading science journal Nature, Médecins Sans Frontières (MSF) Access Campaign, the Third World Network, and others have presented many other concrete examples of how enforcement of IP rules blocked, delayed, or limited production of chemical reagents for Covid-19 tests, ventilator valves, Covid-19 treatments, and elements of Covid-19 vaccines. IP constraints have not only led to vaccine shortages but have also led to shortages of key raw materials like bioreactor bags and filters.

Rather than manufacturers being held back by an inherent lack of manufacturing and technological capability, studies have shown that transnational claims to IP impede new manufacturers from entering and competing in the market. The same dynamics are playing out today with Covid-19.¹⁵

If these authorities are correct, then the Company's failure to make its IP more widely available is contributing to the crisis. In addition to its human cost, this decision may be directly harming the diversified portfolios of its own shareholders.

The Company argues that it is in advanced discussions for a potential licensing agreement that would allow vaccine to be manufactured and sold in Africa.

While this may be a laudable development, it is non-responsive to the question the Proposal raises: how is public health affected by the production **that does not occur** due to the Company's decision not to share its IPR more aggressively?

Moreover, third parties who have studied the issue have concluded that granting such individual licenses is inadequate to the challenge of vaccinating the global population adequately:

Voluntary licensing is the practice where the developer of the vaccine or drug decides to whom and on what terms the IP can be licensed to enable manufacturing.

¹⁴ Parsa Erfani, Agnes Binagwaho, Mohamed Juldeh Jalloh, Muhammad Yunus, Paul Farmer, Vanessa Kerry, *Intellectual Property Waiver for Covid-19 Vaccines Will Advance Global Health Equity* (August 3, 2021), available at <https://www.bmj.com/content/374/bmj.n1837.full.print#ref-11>.

¹⁵ Human Rights Watch, *Seven Reasons the EU is Wrong to Oppose the TRIPS Waiver* (June 3, 2021), available at <https://www.hrw.org/news/2021/06/03/seven-reasons-eu-wrong-oppose-trips-waiver>; see also U.S. Congressional Research Service, *Potential WTO TRIPS Waiver and COVID-19* (June 16, 2021) ("For example, firms in Bangladesh, Canada, and Israel state they are willing and able to make the vaccine save for the IPR"), available at <https://crsreports.congress.gov/product/pdf/IF/IF11858/1>.



The past year has shown that we cannot rely on the pharmaceutical industry to take voluntary action to scale up manufacturing of health products at the pace and scale needed to address the pandemic.

Tedros Adhanom Ghebreyesus, director-general of the WHO, recently commented that voluntary licensing agreements “tend to be exclusive and nontransparent, compromising equitable access.” The supply delays and production challenges several pharmaceutical companies faced have been exacerbated by restrictive or exclusive licensing practices.¹⁶

These observations go directly to the issue the Proposal addresses: to what extent is the Company prioritizing its own financial performance and how does that prioritization affect diversified shareholders? If the Company is deciding the terms of the license in each instance, it will be in a position to factor in how the arrangement will allow it to maintain its own cash flows and profits. As discussed above, optimizing its own financial return may adversely affect public health, and thus the returns received by its diversified shareholders.

The Company argues that it has entered into agreements to make 900 million doses available at a “not-for-profit price” through COVAX and other facilities

COVAX is a global collaboration that seeks to accelerate production of and equal access to COVID-19 vaccines. Nine hundred million more vaccines into arms through collaborative projects is certainly a good thing, but the question the Proposal poses is whether the global population would be vaccinated more effectively if the Company were more expansive in its sharing of IPR, and whether that more effective uptake would benefit diversified shareholders by hastening the end of the pandemic. This argument simply does not address the question the Proposal raises.

Moreover, restricting such donations to vaccine produced by or at the direction of J&J or a licensee increases the risk that its own production failure will interfere with timely delivery, as happened in 2021, when a “mix-up” resulted in production delays at a J&J-contracted facility.¹⁷ This error led to delays in delivery to COVAX.¹⁸ Other reports have suggested that when supply is insufficient, wealthy countries are favored over COVAX and low-income countries and that commercial considerations play into COVAX negotiations with vaccine suppliers.¹⁹

The Company argues that a large percentage of its vaccine supply was made available to low- and middle-income countries in 2021 and that it will continue to focus on access in countries where the people are in greatest need.

Once again, even if this is true, it does not mean that the Company is optimizing the number of doses reaching those populations. Indeed, many of these doses do not come directly from J&J:

[T]he vast majority of J&J doses that have reached COVAX have come through country-led donations, rather than through purchase agreements from J&J. In other words, COVAX is relying on wealthy countries donating their unwanted supply of J&J vaccines, rather than receiving adequate shipments directly from J&J.²⁰

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¹⁶ *Supra*, n. 15.

¹⁷ Jen Christensen, *FDA OK's Emergent Biosolutions Plant to Resume Manufacturing J&J's Covid-19 Vaccine*, CNN Health (July 29, 2021), available at <https://www.cnn.com/2021/07/29/health/fda-johnson-johnson-covid-vaccine-production/index.html>.

¹⁸ Virginia Langmaid, *World Health Organization Forecasts 25% Fewer Covid Vaccines for the World This Year Than Hoped*. CNN (September 8, 2021) (“‘Production issues at J&J’s Emergent facility (which is assigned to supply COVAX) have led to delays,’ the report reads.”), available at <https://www.msn.com/en-us/health/medical/world-health-organization-forecasts-25-fewer-covid-vaccines-for-the-world-this-year-than-hoped/ar-AAOeCtf>.

¹⁹ Public Citizen, *How the Vaccine Rich Get Richer* (November 23, 2021) (“The European COVAX restriction, with its narrow carve-out for donations to less profitable markets, seems to suggest that future commercial considerations influenced the emergency pandemic response. To our knowledge, J&J has not publicly commented on this provision.”), available at <https://www.citizen.org/article/how-the-vaccine-rich-get-richer/?eType=EmailBlastContent&eId=8721eeb0-acad-4b7c-b33a-e6ea29d324f0>.

²⁰ *Id.*



The Company has failed to make any argument that is responsive to the request for a report that would help shareholders understand whether the Company's decision not to provide IPR waivers threatens public health and, by extension, the economic health that is the single greatest value driver of its diversified shareholders' portfolios. Shareholders should let the Board and management of the Company know that investors do care about the potential trade-offs that the Company is making that would put global public health at risk.

Conclusion

Please vote FOR Item 9

By voting FOR Item 9, shareholders can urge J&J to account directly for its effect on public health, upon which a thriving economy depends. Such a report can aid the Board and management in authentically addressing the public need for an effective vaccination program while supporting the interests of its diversified shareholders and others.

The Shareholder Commons urges you to vote **FOR** Item 9 on the proxy, the Shareholder Proposal requesting a report on external public health costs at the Johnson & Johnson Annual Meeting on April 28, 2021.

For questions regarding Johnson & Johnson, Proposal 9 – submitted by Jeffrey E. Field, please contact Sara E. Murphy, The Shareholder Commons at +1.202.578.0261 or via email at sara@theshareholdercommons.com.

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