



PEOPLE FOR  
THE ETHICAL  
TREATMENT  
OF ANIMALS

January 20, 2021

*Via e-mail*

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Re: Churchill Downs, Inc., 2021 Annual Meeting  
Shareholder Proposal Submitted by People for the  
Ethical Treatment of Animals

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to Churchill Downs, Inc.'s ("Churchill Downs") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by Churchill Downs in connection with its 2021 annual meeting of shareholders (the "proxy materials").

As discussed below, Churchill Downs' request for a no-action letter should be denied because the resolution does not seek to micromanage the Company and focuses on a significant social policy issue. Rule 14a-8(i)(7).

## I. Background

PETA's resolution provides:

**RESOLVED**, that Churchill Downs, Inc., assess and report to shareholders on the feasibility of replacing the dirt track surface at Churchill Downs with a synthetic surface, given the potentially detrimental effect on our Company of horse fatalities and the higher fatality rate associated with dirt tracks.

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- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

The supporting statement then discusses the statistical evidence demonstrating that horses suffer far fewer fatal catastrophic injuries on synthetic surfaces than on dirt tracks, as well as the relatively high number of horse deaths per start that have occurred at Churchill Downs compared to other race tracks across the country.

## II. The Proposal May Not Be Excluded Pursuant to Rule 14a-8(i)(7)

Rule 14a-8(i)(7) provides that a company may exclude a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” Only “business matters that are mundane in nature and do not involve any substantial policy” considerations may be omitted under this exemption. Adoption of Amendments Relating to Proposals by Security Holders, 41 Fed. Reg. 52,994, 52,998 (1976). The Commission has explained that the policy underlying this rule rests on two central considerations. The first consideration “relates to the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.” Release No. 34-40018 (May 21, 1998).

Second, “certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* The Commission has stated and repeatedly found since that “proposals relating to such matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* In Staff Legal Bulletin No. 14H, the agency provided further guidance on the significant policy exception following the Third Circuit’s decision in *Trinity Wall St. v. Wal-Mart Stores, Inc.*, 792 F.3d 323 (3d Cir.), *cert. dismissed*, 136 S. Ct. 499 (2015). The Commission specifically rejected the majority’s interpretation of the exception as requiring a two-part test: (1) the proposal must focus on a significant policy issue; (2) the significant policy issue must “transcend” ordinary business by being “divorced from how a company approaches the nitty-gritty of its core business.” SLB No. 14H (citing *Trinity*, 792 F.3d at 347). The Commission reasoned that “a proposal’s focus [is not] separate and distinct from whether a proposal transcends a company’s ordinary business,” but instead:

[P]roposals focusing on a significant policy issue are not excludable under the ordinary business exception “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Thus, a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.”

*Id.* (citing Release No. 34-40018). Pursuant to this exception, “[t]he Division has noted many times that the presence of widespread public debate regarding an issue is among the factors

to be considered in determining whether proposals concerning that issue ‘transcend the day-to-day business matters.’” SLB No. 14A.

PETA’s Proposal does not seek to “‘micro-manage’ the company by probing too deeply into matters of a complex nature,” and does not implicate a day-to-day operation that is “mundane in nature,” but rather focuses on a substantial policy issue.

#### A. The Proposal does not seek to micro-manage the company.

Churchill Downs argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because PETA “seeks to micromanage the Company by requesting that the Company use a synthetic track surface at [Churchill Downs Racetrack (CDRT)].” *No-Action Request*, at 6. The Company asserts “[t]he Proposal would replace the careful balancing of the factors that direct management’s decisions on which track surface will be used at CDRT.” *No-Action Request*, at 7. Churchill Downs’ argument unnecessarily complicates the issue. The statistics surrounding race track materials and horse mortality definitively illustrate that significantly fewer horse fatalities are caused by synthetic tracks than dirt tracks. “Synthetic racetracks are indisputably safer.”<sup>1</sup> Since its creation in July 2008, the Equine Injury Database has shown dirt tracks have a 64% higher fatality rate than that of synthetic tracks, with dirt tracks averaging 1.97 fatalities per 1,000 starts, and synthetic tracks averaging only 1.2 fatalities per 1,000 starts.<sup>2</sup>

In response to mounting pressure, “thoroughbred racing has recently embraced a range of reforms aimed at reducing its disturbing death toll: Medication restrictions, additional veterinary screenings, whip limitations, etc. Yet an industry admittedly in crisis continues to resist change that arguably represents the clearest connection to enhanced safety”—the adoption of synthetic tracks.<sup>3</sup> This prescient report anticipated and rejected the very argument on which Churchill Downs relies in attempting to prevent shareholders from requiring the Company to assess and report to them on the feasibility of adopting this well-accepted means of reducing horse fatalities on its tracks. This issue is critically important to the Company’s long-term viability and success. As the former chairman of the Thoroughbred Owners and Breeders Association and owner of a past Kentucky Derby winner noted, the decision to use dirt tracks is not one made in the best interest of the horse, and “unless decisions are made that are in the best interest of the horse, we *will* lose [the horseracing industry].”<sup>4</sup>

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<sup>1</sup> Tim Sullivan, *‘We Bury Our Heads’: Horsemen Prefer Dirt Tracks Even Though They Lead to More Fatalities*, Courier Journal (July 1, 2019), <https://www.courier-journal.com/story/sports/horses/horse-racing/2019/07/01/horse-racing-deaths-could-lessened-with-artificial-racetracks/1579341001/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; see also Tim Sullivan, *With Fatalities Mounting, Horse Racing Has Rejected Safer Surfaces at Its Own Peril*, Courier Journal (Apr. 6, 2019), <https://www.courier-journal.com/story/sports/2019/04/06/horse-racing-has-rejected-safer-surfaces-its-own-peril/3387764002/>.

Converting four major California racetracks from dirt to synthetic materials resulted in racing fatalities falling by 37 percent over a period of five years.<sup>5</sup> In fact, in 2006, the California Horse Racing Board mandated that California racetracks conducting more than thirty continuous days of thoroughbred racing in any calendar year use synthetic racing surfaces.<sup>6</sup> Two California racetracks, Del Mar and Santa Anita, subsequently returned to dirt tracks after complaints from trainers, owners, and breeders, despite the “remarkable” decrease in the number of horse injuries on synthetic tracks.<sup>7</sup> Predictably, after reverting to a dirt surface, the Santa Anita track returned to having “catastrophic injury rates.”<sup>8</sup> These statistics from California racetracks significantly undercut the Company’s argument that synthetic surfaces are desirable primarily for those tracks that conduct races in the winter because a synthetic surface “is more consistent in winter conditions, unlike dirt.” *No-Action Request*, at 7. These California racetracks do not need to withstand winter weather, and nevertheless, the California Horse Racing Board (CHRB) mandated their conversion to synthetic surfaces. In addition, while explaining the CHRB’s decision, chairman Richard B. Shapiro stated, “I think injuries will be drastically reduced.”<sup>9</sup> Furthermore, a California Senate appropriations bill proposed in 2006 to assist with implementing the CHRB’s rule, states the CHRB approved the rule unanimously because it concluded synthetic surfaces were “crucial to the health and safety of the jockeys, horses, and other directly related participants in racing.”<sup>10</sup>

In addition, in 2014 the Jockey Club released statistics for another track in Kentucky, the Keeneland Race Course in Lexington, “showing that synthetic racetracks were far safer than dirt or turf, and that the one at Keeneland Race Course was one of the safest in the nation, with a fatality rate last year of 0.33 per 1,000 starts,” far below the national average on dirt tracks of 1.97 per 1,000 starts.<sup>11</sup> Nevertheless, Keeneland subsequently decided to replace its synthetic track with dirt at the request of owners and trainers who prefer dirt surfaces—but at the expense of the horses.<sup>12</sup>

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<sup>5</sup> Rick M. Arthur, *Comparison of Racing Fatality Rates on Dirt, Synthetic, and Turf at Four California Racetracks*, Am. Ass’n of Equine Practitioners Proceedings, 405 (2010), <https://aaep.org/sites/default/files/issues/proceedings-10proceedings-z9100110000405.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> Associated Press, *Santa Anita explores possible return to synthetic surface*, USA Today (Oct. 30, 2019), <https://www.usatoday.com/story/sports/horseracing/2019/10/30/santa-anita-explores-possible-return-to-synthetic-surface/40505783/>.

<sup>8</sup> Joe Drape & Corina Knoll, *Why So Many Horses Have Died at Santa Anita*, N.Y. Times (June 26, 2019), <https://www.nytimes.com/2019/06/26/sports/santa-anita-horse-deaths.html?auth=link-dismiss-google1tap>.

<sup>9</sup> Robyn Norwood, *Horse Racing Puts Real Hopes for Future on Synthetic Tracks*, L.A. Times (June 7, 2006), <https://www.latimes.com/archives/la-xpm-2006-jun-07-sp-belmont7-story.html>.

<sup>10</sup> Bill Analysis, Cal. S.B. 1464 (2006), [http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb\\_1451\\_1500/sb\\_1464\\_cfa\\_20060510\\_105503\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1451_1500/sb_1464_cfa_20060510_105503_sen_floor.html).

<sup>11</sup> See Joe Drape, *A Track’s Shift to Dirt Adds to Horses’ Risks*, N.Y. Times (Apr. 3, 2014), <https://www.nytimes.com/2014/04/04/sports/in-a-tracks-decision-horses-are-the-losers.html>.

<sup>12</sup> *Id.*

The focus of the Proposal is no more complex than issues related to animal experimentation, non-animal and *in vitro* alternatives, or requiring a particular killing method for millions of animals held by a company's many suppliers—all for which the Staff denied no-action relief pursuant to Rule 14a-8(i)(7). *See, e.g., The Gillette Co.* (Jan. 16, 1996) (proposal to eliminate animal tests); *Revlon, Inc.* (Mar. 18, 2014) (proposal regarding participation in government-mandated animal tests in China); *Wyeth* (Feb. 8, 2005) (proposal to discontinue promotion of pharmaceutical products pending further review and adopt protections for mares used in their production); *Denny's Corporation* (Mar. 22, 2007), *Outback Steakhouse, Inc.* (Mar. 6, 2006); *Hormel Foods Corp.* (Nov. 10, 2005), and *Wendy's International, Inc.* (Feb. 8, 2005) (proposals focusing on the implementation of controlled-atmosphere killing by poultry suppliers). The issues the Proposal raises are also no more complicated than other non-animal issues raised in proposals that the Staff concluded did not merit exclusion on micromanagement grounds in other areas such as pharmaceuticals and greenhouse gas emissions. *See, e.g., Bristol-Myers Squibb Co.* (Mar. 8, 2019) (proposal seeking annual report about extent to which risks related to public concern over drug pricing strategies were integrated into company's incentive compensation policies for senior executives); *Great Plains Energy Inc.*, (Feb. 5, 2015) (proposal requesting company adopt "quantitative, time bound, carbon dioxide reduction goals" and issue a report on its plan to achieve these goals).

Accordingly, the Proposal does not address any matter that is too complex for shareholders to make an informed judgment.

**B. The Proposal raises a significant policy issue that transcends day-to-day business matters.**

Churchill Downs contends that because the track type is equivalent to offering a particular product or service the Company sells, the Proposal attempts to dictate a decision concerning ordinary business matters. *No-Action Request*, at 5. However, the type of track used is not a product or service the Company sells—rather, the product or service Churchill Downs is in the business of providing is live horse racing—the Company characterizes itself as “an industry-leading racing, online wagering and gaming entertainment company.”<sup>13</sup> Thus, the Staff decisions to which the Company cites in which the Staff concurred proposals relating to companies' products or services were excludable because they related to ordinary business are not applicable here. Churchill Downs does not provide any evidence that the track surface directly influences how gamblers decide to place their bets, or any other evidence indicating the track surface directly influences the gambling service the Company actually provides.

Even assuming that the Staff deems the Proposal to deal with the sale of a product or service, it is well-established that a proposal is not excludable merely because it deals with the sale of a company's products or services where significant social policy issues are implicated—as they are here. Churchill Downs' argument that even if the Proposal merely

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<sup>13</sup> *Who We Are*, Churchill Downs Investor Relations (2021), <https://ir.churchilldownsincorporated.com/>.

“touches upon the policy issue of animal welfare,” and that “the primary focus of the Proposal is on the Company’s choice of track surface,” is unavailing. *No-Action Request*, at 7.

The Staff has long recognized that shareholder proposals may properly address business decisions regarding the sale of products where significant policy issues are at issue. *See e.g.*, *Kimberly-Clark Corp.* (Jan. 12, 1988); *Texaco, Inc.* (February 28, 1984); *American Telephone and Telegraph Co.* (December 12, 1985); *Harsco Corp.* (January 4, 1993); *Firststar Corp.* (February 25, 1993); *Gilead Sciences, Inc.* (Feb. 23, 2015); *Amazon.Com, Inc.* (Mar. 25, 2015); *AmerisourceBergen Corporation* (Jan. 11, 2018); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018); *Northrop Grumman Corp.* (Mar. 19, 2019). In Staff Legal Bulletin No. 14C, the Division considered proposals related to the environment and public health, which it had previously found to be significant policy considerations, and advised that “[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public’s health, we do not concur with the company’s view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7).” SLB No. 14C. The Staff has similarly concluded that animal welfare is a significant policy consideration and proposals relating to minimizing or eliminating operations that may result in certain poor animal welfare may not be excluded on this basis.

In *Coach, Inc.*, 2010 WL 3374169 (Aug. 19, 2010), for example, PETA’s resolution encouraged the company “to enact a policy that will ensure that no fur products are acquired or sold by [Coach].” In seeking to exclude the proposal, the company argued that “[t]he use of fur or other materials is an aesthetic choice that is the essence of the business of a design and fashion house such as Coach,” “luxury companies must be able to make free and independent judgments of how best to meet the desires and preferences of their customers,” and that the proposal “does not seek to improve the treatment of animals[, but] to use animal treatment as a pretext for ending the sale of fur products at Coach entirely.” *Id.* The Staff disagreed, writing:

In arriving at this position, we note that although the proposal relates to the acquisition and sale of fur products, it focuses on the significant policy issue of the humane treatment of animals, and it does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate. Accordingly, we do not believe that Coach may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7). *Id.*

Likewise, in *Revlon, Inc.* (Mar. 18, 2014), PETA requested that the company issue an annual report to shareholders accurately disclosing, among other things, whether the company has conducted, commissioned, paid for, or allowed tests on animals anywhere in the world for its products, the types of tests, the numbers and species of animals used, and the specific actions the company has taken to eliminate this testing. Like Churchill Downs, Revlon sought to exclude the proposal because “it deals with the sale of the company’s products,” and argued specifically that its decisions regarding in which countries to sell its products

“are ordinary business matters that are fundamental to management’s running of [Revlon] on a day-to-day basis and involve complex business judgments that stockholders are not in a position to make.” *Id.* The Staff disagreed and did not permit the company to exclude the proposal pursuant to Rule 14a-8(i)(7), finding that it “focuses on the significant policy issue of the humane treatment of animals.” *Id.*

The Staff has declined to issue no-action letters on this ground on many other occasions related to the humane treatment of animals. *See, e.g., Bob Evans Farms, Inc.* (June 6, 2011) (finding that a proposal to encourage the board to phase-in the use of “cage-free” eggs so that they represent at least five percent of the company’s total egg usage “focuses on the significant policy issue of the humane treatment of animals and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate”); *Denny’s* (March 17, 2009) (finding that a proposal requesting the board to commit to selling at least 10% cage-free eggs by volume could not be excluded in reliance on Rule 14a-8(i)(7)); *Wendy’s Int’l Inc.* (Feb. 19, 2008) (finding that a proposal requesting that the board issue a report on the feasibility of committing to purchase a percentage of its eggs from cage-free hens could not be excluded in reliance on Rule 14a-8(i)(7)); *see also Kellogg Co.* (Mar. 11, 2000) (finding that a proposal requesting that the board adopt a policy of removing genetically engineered crops, organisms, or products from all products sold or manufactured “appears to raise significant policy issues that are beyond the ordinary business operations of Kellogg”).

As noted above, a company may rely on Rule 14a-8(i)(7) to exclude a proposal only where that proposal relates to the company’s ordinary business operations—those matters that are “mundane in nature and do not involve any substantial policy” considerations. 41 Fed. Reg. at 52,998. Where such proposals focus on significant social policy issues—determined, in part, by widespread public debate—they transcend day-to-day business matters and would be appropriate for a shareholder vote.

The matter at issue in the Proposal about what type of track surface to use is a matter of life and death for these racehorses, as illustrated by the staggering statistics discussed in the previous section. In addition, the rise in racehorse fatalities has garnered widespread public attention and criticism. Professional racehorse trainer Michael Dickinson compared the use of dirt tracks to improvised explosive devices because “[i]t blows up in your face without any warning,” explaining that “[d]irt racing can’t conduct without a load of fatalities and a shed load of drugs,” two things that “the public won’t put up with.”<sup>14</sup> A comment by Bill Casner, owner of the winning horse of the 2010 Kentucky Derby, further emphasizes the extent of the public debate on this issue: “We’ve had all of this catastrophic publicity, this onslaught against our industry, and yet nobody is willing to recognize one of the most

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<sup>14</sup> *See* Tim Sullivan, ‘We bury our heads’: Horsemen Prefer Dirt Tracks Even Though They Lead to More Fatalities, *Courier Journal* (July 1, 2019), <https://www.courier-journal.com/story/sports/horses/horse-racing/2019/07/01/horse-racing-deaths-could-lessened-with-artificial-racetracks/1579341001/>.

obvious things that we can do by conversion to safer surfaces.”<sup>15</sup> Protesters gathered outside Santa Anita Park in January 2020 after three horses died there in just three days.<sup>16</sup> Series of horse deaths have spurred protests at other tracks across the country as well.<sup>17</sup> There is “growing public criticism of [horseracing] after a series of horse racing deaths and injuries . . . at Santa Anita” racetrack in 2019.<sup>18</sup> In fact, the “[i]ncreased attention to the deaths of racehorses . . . has shined a spotlight on horse racing’s downside that is changing public attitudes” and compelling the public to compare horse racing to other activities involving animals, like elephant performances at circuses or killer whale shows, that are no longer socially acceptable or tolerated, leading some to predict that “[h]orse racing awaits a similar reckoning.”<sup>19</sup> In addition, a McKinsey report commissioned by the Jockey Club in 2018 found that “[o]ne of the big issues in racing’s public perception continues to be on the matter of animal welfare,” with over fifty percent of casual fans stating they would stop betting if they knew horses were mistreated.<sup>20</sup> In light of the level of public debate, the issue of increased racehorse fatalities due to track surface type clearly transcends the Company’s day-to-day business.

Furthermore, Churchill Downs’ list of unrelated steps it has taken to improve track safety for the horses is not relevant to what this Proposal is asking for. *See No-Action Request*, at 10-13. As the statistics previously discussed show, switching the track material will reduce the number of horse fatalities, regardless of other measures the Company has taken. Furthermore, the statistics Churchill Downs cites are questionable, as Churchill Downs refuses to publicly disclose racehorse fatalities at its tracks, despite other racetracks across the country sharing these numbers.<sup>21</sup> It has been reported, based on information obtained from public records requests, that in fact more horses died at Churchill Downs while racing

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<sup>15</sup> *Id.*

<sup>16</sup> Kareen Wynter & Brian Day, *Protesters Decry Horse Deaths at Santa Anita Park in Arcadia*, KTLA (Jan. 19, 2020), <https://ktla.com/news/local-news/protesters-decry-horse-deaths-at-santa-anita-park-in-arcadia/>.

<sup>17</sup> *See, e.g.,* Jason Subik, *Group Protests Saratoga Springs Horse Deaths: Nine Horses Dead at Saratoga Race Course Since April 6*, The Daily Gazette (Aug. 3, 2019), <https://dailygazette.com/2019/08/03/group-protests-saratoga-springs-horse-deaths/>; Karla Ward, *Protesters Against Horse Racing Rally Outside Keeneland as Fall Meet Comes to a Close*, Lexington Herald Leader (Oct. 26, 2019), <https://www.kentucky.com/sports/horses/keeneland/article236687753.html>.

<sup>18</sup> Tom Kenny, *Kentucky Racetracks Applaud New Medication Regulations*, WTVQ (Dec. 11, 2019), <https://www.wtvq.com/2019/12/11/kentucky-racetracks-applaud-new-medication-regulations/>.

<sup>19</sup> *Horse Racing Has Outlived Its Time*, Wash. Post (Mar. 13, 2020), [https://www.washingtonpost.com/opinions/horse-racing-has-outlived-its-time/2020/03/12/5dd48e46-6476-11ea-acc8-80c22bbee96f\\_story.html](https://www.washingtonpost.com/opinions/horse-racing-has-outlived-its-time/2020/03/12/5dd48e46-6476-11ea-acc8-80c22bbee96f_story.html).

<sup>20</sup> *McKinsey Report 2018: A Situation Analysis for Thoroughbred Racing*, The Jockey Club (2018), <http://jockeyclub.com/default.asp?section=RT&year=2018&area=4>.

<sup>21</sup> *See* Caitlin McGlade, *With Race Horse Deaths Under Scrutiny, Kentucky Keeps Details Secret*, Ky. Ctr. for Investigative Reporting (June 4, 2019), [https://kycir.org/2019/06/04/with-race-horse-deaths-under-scrutiny-kentucky-keeps-detailssecret/?fbclid=IwAR3t4DvpPC07t3yC0I2TmgmiYgULjFJ\\_JinOt11XoqSm\\_KCpbAJynGgtWWLw](https://kycir.org/2019/06/04/with-race-horse-deaths-under-scrutiny-kentucky-keeps-detailssecret/?fbclid=IwAR3t4DvpPC07t3yC0I2TmgmiYgULjFJ_JinOt11XoqSm_KCpbAJynGgtWWLw).



or training in 2019—as many as twenty-two total—than in 2018, despite the implementation of these safety measures.<sup>22</sup> The statistics Churchill Downs provided in support of its claim that death totals fell in 2019 from 2018 due to other track safety measures the Company took appears to have omitted deaths that occurred at the track during training, as opposed to racing. *See No-Action Request*, at 9.

Accordingly, even if the Staff finds that the Proposal relates to Churchill Downs' ordinary business operations, it focuses on a significant social policy issue and transcends day-to-day business matters, and is appropriate for a shareholder vote.

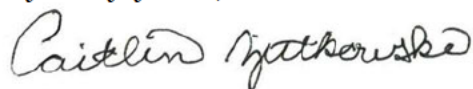
### III. Conclusion

We respectfully request that the Staff decline to issue no-action relief to Churchill Downs and inform the Company that it may not omit the Proposal from its proxy materials.

Should you need any additional information in reaching your decision, please contact me at your earliest convenience. If you intend to issue a no-action letter to Churchill Downs, we would welcome the opportunity to discuss this matter further before that response is issued.

Thank you.

Very truly yours,



Caitlin Zittkowski  
Counsel



cc: Jared Goodman, PETA Foundation  
Andrea L. Reed, Sidley Austin LLP

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<sup>22</sup> Patrick Battuello, *Killed, 2019*, Horseracing Wrongs (last visited Jan. 19, 2020), <https://horseracingwrongs.org/killed-2019/>.