



## Action Report Social (Health)

**Rite Aid**  
October 3, 2018

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
RAD	NYSE	10-30-18	9-10-18	New York City

### Agenda

Item	Proposal
1	MGT: Elect directors
2	MGT: Ratify selection of accountants
3	MGT: Advisory vote on executive compensation
4	SH: Adopt independent chair
5	SH: Publish sustainability report
6	<b>SH: Report on opioid crisis</b>

**Si2 Briefing** Background material is included in this report

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**Links** [2018 Proxy Statement](#), [2017 Form 10-K](#)

**Resolved Clause** RESOLVED, that shareholders of Rite Aid Corporation ("Rite Aid") urge the Board of Directors (the "Board") to report to shareholders by October 1, 2019, describing the corporate governance changes Rite Aid has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis, including whether Rite Aid has assigned responsibility for such monitoring to the Board or Board committee(s), revised senior executive compensation metrics or policies, adopted or changed mechanisms for obtaining input from stakeholders, or altered policies or processes regarding company political activities. The report should be prepared at reasonable cost and should omit confidential and proprietary information.

**Lead Proponent** UAW Retirees Medical Benefits Trust

**Vote History** This is the first resolution on opioids to go to a vote at Rite Aid. A similar proposal earned 62.3 percent at **Depomed** and 41.2 percent at **Amerisource Bergen**.

**Summary** The proponents seek more disclosure from the company about how it is responding to the opioid crisis, where death rates are increasing alarmingly. They believe the company has a key role to play since it is the third largest drugstore chain in the country and fills prescriptions for opioid pain medication. The company has tried unsuccessfully to merge with two other firms in the last two years and its financial results have suffered. It has recently instituted changes to its corporate governance, including splitting the chair and CEO and reshuffling its board. Its risk disclosures are

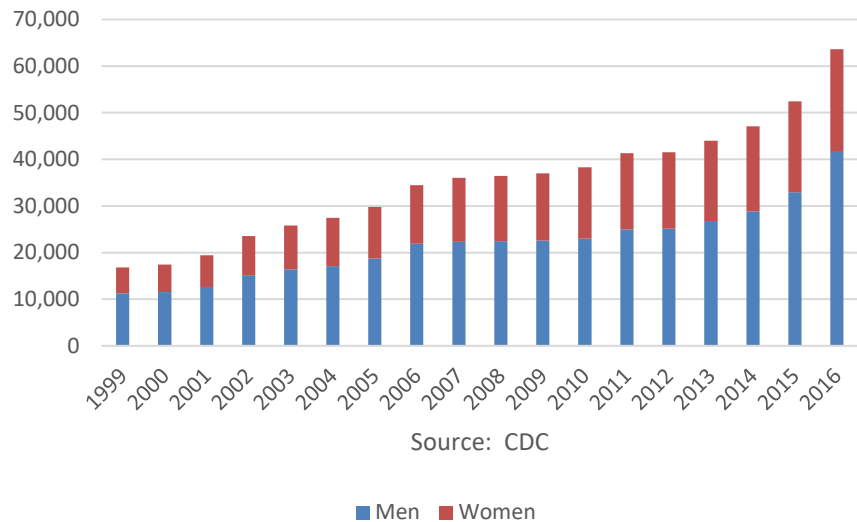
limited, however, and do not mention the opioid epidemic in its governance documents, aside from mentioning litigation and a discussion in the proxy statement about some efforts. The proxy statement reports efforts on monitoring the distribution of opioids, disposals options, education efforts and treatment for overdoses.

Investors will have to decide if the report requested will provide them with useful insight, and if the explicit inclusion of opioids is needed in specified board committee responsibilities, pay metrics, stakeholder input parameters and a political activity policy. The proponent notes other companies have produced such reports.

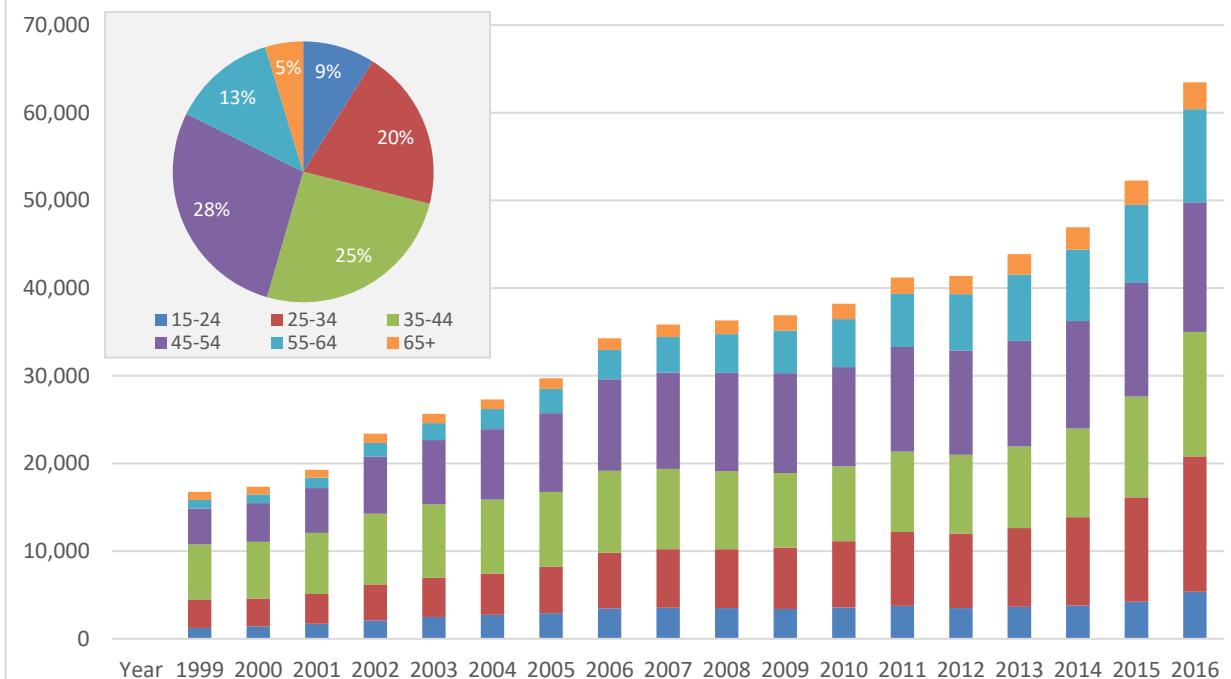
## I. Background on the Opioid Crisis

More than half a million Americans have died in the last 18 years from overdoses—64,000 in 2016 alone, the highest number yet. Two-thirds of these deaths were from opioids and 40 percent of those involved *prescription* opioids. The numbers continue to increase (*top chart*). To put these figures in perspective, the 18-year total of 632,000 is more than perished during the Civil War (about 620,000) and ten times more

Drug Overdose Deaths in the United States, 1999-16

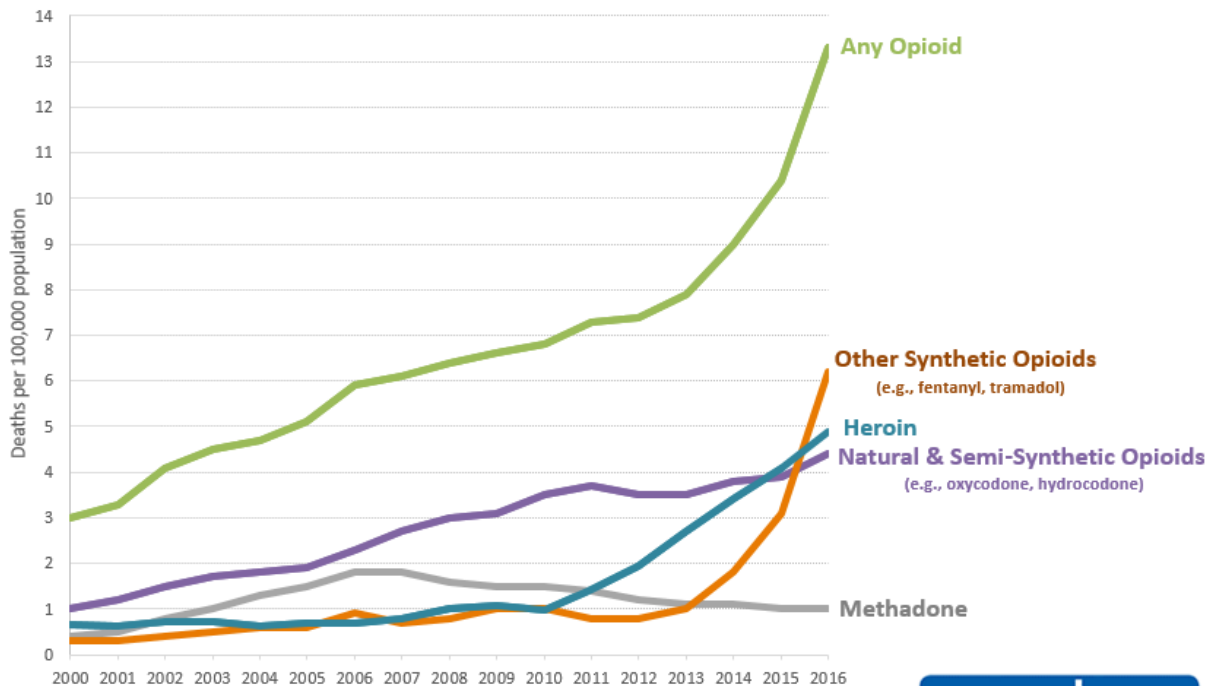


U.S. Drug Overdose Deaths by Age Group: 1999-16



than the 58,000 U.S. soldiers who died during the Vietnam War. Data from the Centers for Disease Control and Prevention (CDC) [show](#) that on average, 115 Americans die each day from an opioid overdose. The epidemic has hit young people hard (20 percent of deaths were aged 25 to 34) but also people in the prime of their lives, leaving behind children; half of those who died were 34 to 54 (*bottom chart, previous page*). The devastating impact on communities is documented in the recently published book, [Dopesick](#).

### Overdose Deaths Involving Opioids, by Type of Opioid, United States, 2000-2016



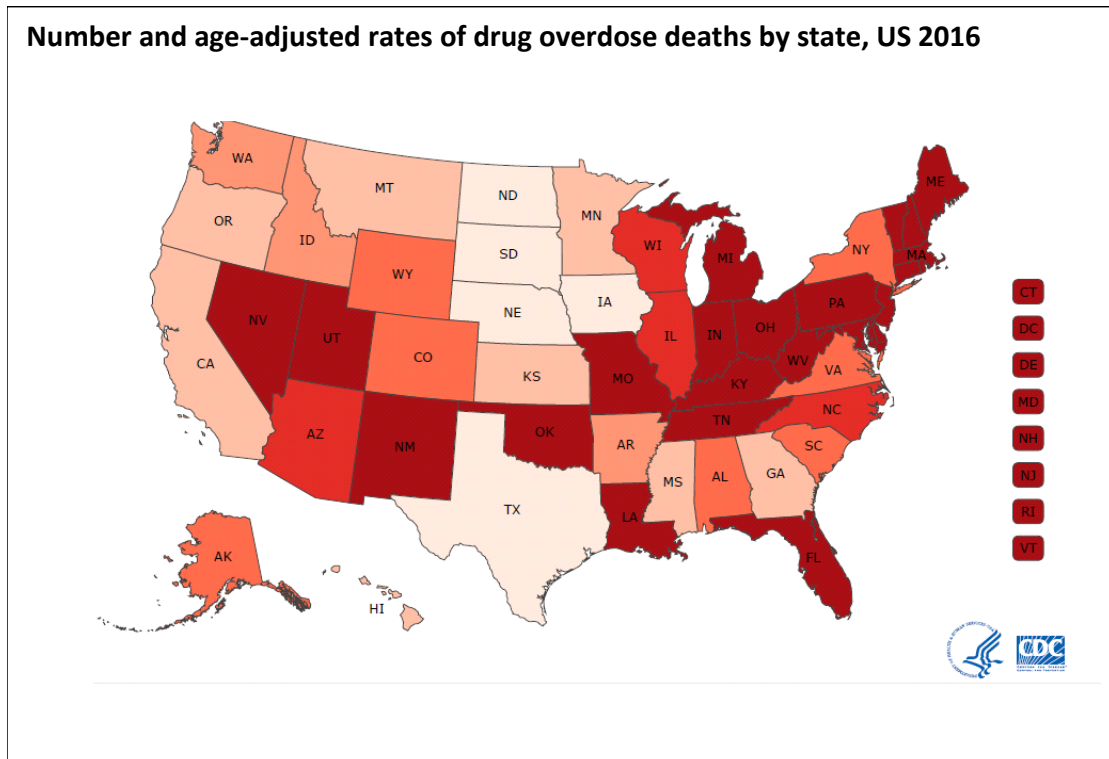
SOURCE: CDC/NCHS, National Vital Statistics System, Mortality. CDC WONDER, Atlanta, GA: US Department of Health and Human Services, CDC; 2017. <https://wonder.cdc.gov/>.



As the chart above from the CDC shows, the spike in mortality in the last few years has been substantially driven by synthetic opioids such as fentanyl and tramadol, although heroin deaths have been on a steady upward climb since 2010. The epidemic also has hit different parts of the country particularly hard, in a stain spreading westward from New England across the Mid- Atlantic and into the Midwest, through the South and into the Southwest (*see map, next page, with darker shading for higher rates*).

The CDC reports, “The amount of prescription opioids sold to pharmacies, hospitals, and doctors’ offices nearly quadrupled from 1999 to 2010, yet there had not been an overall change in the amount of pain that Americans reported.” It points out that opioids are prescribed to treat moderate to severe pain, following surgery or injury or for cancer—despite their clear risks, even though [little evidence shows](#) they are effective over the long term. Prescription patterns vary significantly around the country and appear to have no connection to underlying health status. The CDC concludes pain treatment must change and abuse, addiction and overdosing must be prevented before they start. Access to effective treatment for those battling addiction will be a key part of the solution, as well.

**Prescribing pattern change:** In one sign that [doctors have begun to respond](#) to the epidemic, the number of prescriptions written for opioid pain relievers began to fall in 2010, and has decreased ever since, although it is still three times higher than in 1999. Still the CDC notes “substantial variation” in



Source: CDC, <https://www.cdc.gov/drugoverdose/data/statedeaths.html>

prescriptions and says more should be done to cut the supply. While cutting the supply is clearly one piece of the solution, because people who are addicted have moved on to cheaper and more deadly options such as heroin or synthetic opioids such as fentanyl procured from the street, in many ways such a strategy is far from enough to bring the problem under control and reverse course.

**Controversial recent change in federal law:** In an April 2016 move that critics have roundly scoured, President Obama signed the [Ensuring Patient Access and Effective Drug Enforcement Act of 2016](#), which changed the circumstances under which the Drug Enforcement Agency (DEA) can suspend the registration of a company that makes, distributes or dispenses a controlled substance. The law altered the standard for DEA suspension to be allowed only if danger to a local community is “immediate,” rather than “imminent,” which rarely if ever can be proved.

Critics contend the change makes it much more difficult for the DEA to fight opioid abuses. The proponents expanded on this point in their response to the company’s challenge to the proposal at the SEC, noting an [investigation](#) by *The Washington Post* and *60 Minutes* into the leadup to the passage of the new law. The journalists concluded on October 15, 2017, “A handful of members of Congress, allied with the nation’s major drug distributors, prevailed upon the DEA and the Justice Department to agree to a more industry-friendly law, undermining efforts to stanch the flow of pain pills.” (The companies and industry take sharp exception to this conclusion.) The article also said the White House was “unaware of the bill’s import” when Obama signed it.

*The Post* article found that 56 former Drug Enforcement Agency and Department of Justice officials went to work for the pharmaceutical industry after 2000. It also pointed out that the industry reported more than \$102 million in lobbying expenses from 2014 to 2016, when Congress approved the new law. The

three dominant distributors who buy Depomed's products were among the largest spenders: AmerisourceBergen during this period reported \$3.8 million in federal lobbying expenditures, according to *The Post*, alongside \$3.5 million from the [Healthcare Distribution Alliance](#), the industry's trade association, McKesson (\$2.9 million) and Cardinal Health (\$1 million). (Federal lobbying data do not report the precise nature of lobbyists' requests, only the bill on which company lobbyists work.)

The law was initially introduced in the U.S. House by Representative Tom Marino (R-Pa.), who [withdrew](#) his candidacy to lead the Office of National Drug Control Policy ("the drug czar") because of the ensuing firestorm once *The Post* story broke.

Some lawmakers from hard-hit states (Senators Joe Manchin (D-W.Va.), Claire McCaskill (D-Mo.) and Margaret Wood Hassan (D-N.H.) cosponsored a bill to repeal the new law, although the law's defenders say the criticism is one-sided. This view is reflected in a posting on from the Healthcare Distribution Alliance. The webpage, "[The Reality of the Opioid Epidemic](#)," places blame for the opioid crisis on too many prescriptions written by doctors, not on actions by drug distributors, and says the new law provides a framework for more productive work between distributors and the DEA, which it asserts is a sharp contrast to the past.

### **Investor Campaign**

An investor campaign about the opioid epidemic began in 2017, focusing on the role of major drug makers, distributors and treatment manufacturers. [Investors for Opioid Accountability](#) calls for more transparency and accountability from publicly traded companies about clear business risks that are manifesting in lawsuits, legislation and reputational damage. The effort is led by Mercy Investments and other members of the Interfaith Center on Corporate Responsibility—many of them with close ties to healthcare providers—and the UAW Retiree Medical Benefits Trust, but they are joined by a broad coalition that includes state treasurers.

During 2018, two proposals have earned high levels of support—a majority of 62 percent at opioid-maker **Depomed** (now **Assertio**) and 41 percent at distributor **AmerisourceBergen**. The proposal to Rite Aid uses the same approach as at these two companies, but takes up a slightly different angle given the company's role in supplying medication.

## **II. Rite Aid and the Opioid Crisis**

Rite Aid is the third largest retail drug chain in the United States and also offers pharmacy services:

- The **Retail** segment sells both prescription and over-the-counter medications, as well as a range of other health and beauty products, personal care and cosmetics items, as well as some groceries and household items. Prescription drugs made up two-thirds of sales in the drug stores. Rite Aid also has retail clinics (RediClinics) to treat common ailments and provide preventative care, tests, immunizations and basic physical exams. Its Health Dialog business includes healthcare coaching and diseases management. Both RediClinic and Health Dialog were acquired in 2014.
- **Pharmacy Services** offers both pharmacy benefit management (PBM) services (under the EnvisionRxOptions brand) as well as other pharmacy-related services. These include services to other PBMs' mail-order, specialty and compounding pharmacy and infertility treatment services, and drug benefits under Medicare.

Financials			
(\$ millions)	2017	2018	% Change
<b>Total Revenue</b>	\$22,927.5	\$21,528.0	(6.1%)
<b>Net Income</b>	\$4,053	\$943.5	(76.8%)

As of April 2018, the company had about 2,500 stores in 19 states. California hosts the largest number of Rite Aid stores, with 570, followed by Pennsylvania (529), New York (321), Michigan (269) and Ohio (214). It employed about 59,000 people in its retail pharmacies as of March, with another 1,800 employees in the Pharmacy Services segment.

**Merger efforts:** The second of two merger attempts failed in late September. **Albertson's** had been poised to buy the company, as announced in February 2018 and discussed in the 10-K, but investor advisory firms and one of its biggest stockholders felt they would not benefit enough and did not support the move; the deal [fell apart](#) in August. As a result, the company has been reaching out to its largest investors and announced it [is reshuffling](#) its board, adding three directors, and separating the positions of chair and CEO (*more on these and other changes appears below*). Earlier, **Walgreens** and Rite Aid had planned to merge but Walgreens instead only ended up buying about 2,000 Rite Aid stores (about 40 percent of Rite Aid's locations); these transactions were completed as of March 2018 and three distribution centers and related inventory were to be sold starting in September. This September, the company also [revised upward](#) its projections for losses going forward, and announced higher restructuring costs.

**Strategy:** The company's strategy laid out in its 10-K was predicated on the merger with Albertson's. It said the company would expand pharmacy services to go beyond filling prescriptions, by providing immunizations, and expand its retail business to help customers with managing their medications. It said in the 10-K, "An important part of our retail healthcare strategy continues to be finding ways to integrate our expanded suite of healthcare assets with our base of conveniently located retail pharmacies to deliver a higher level of care and service in our communities." On the Pharmacy Services side, it stressed its ability to help its customers manage costs.

**Sales:** Prescription drug sales as a proportion of total drugstore revenue have been dropping, falling to \$10.3 billion in fiscal 2018 (65.9 percent of the total) from \$11.1 billion in fiscal 2017 (66 percent) and \$11.3 billion in 2016 (66.9 percent). The company filled 177.4 million prescriptions in fiscal 2018, serving on average about 1.2 million customers per day.

### ***Company Policies and Disclosures***

**Risk factors:** Rite Aid's discussion of material risks that might be associated with the opioid crisis is relatively limited, compared to the two other recipients of this proposal in 2018 (distributor Amerisource-Bergen and manufacturer Depomed). Its [Form 10-K](#) covers the following factors:

- **"The availability of pharmacy drugs is subject to governmental regulations."**

Rite Aid notes that "concerns about the safety or effectiveness of certain drugs or negative publicity surrounding certain categories of drugs may...have a negative effect on our pharmacy sales or may cause shifts in our pharmacy or front end product mix."

- **"We may be subject to significant liability should the consumption of any of our products cause injury, illness or death."**

The company points to potential product liability claims "with respect to any of the products or pharmaceuticals we sell and we may be obligated to recall our products. A product liability judgment against us or a product recall could have a material, adverse effect on our business, financial condition or results of operations."

Rite Aid does not discuss opioid-related risks explicitly in the 10-K otherwise, but takes note of litigation.

**Legal issues:** Rite Aid is a defendant, as the proponent notes, in national class action litigation relating to the opioid crisis. A variety of cases filed by local and state governments, hospitals and entities that pay for drugs filed suit in 2016, claiming companies connected to the opioid crisis are liable for some of



damage emanating from misuse of the drugs. Some of the lawsuits from West Virginia and Michigan were consolidated in U.S. District Court for the Northern District of Ohio in December 2017. Additional cases in state court name the company and are pending in Tennessee, West Virginia, South Carolina—among others. Rite Aid notes it is “vigorously defending” itself in all cases. It says it is unable to predict the outcome or estimate potential losses relating at this point.

Rite Aid and other pharmacies named in the suits tried in May to have them dismissed, *Forbes* [notes](#), arguing they only filled the prescriptions they received and were compliant with state and federal regulations. Their motion to dismiss suggested other parties named—doctors, dealers and abusers—are more to blame for the crisis. *Forbes* noted that the first of three key trials is to begin in 2019, shepherded by three special masters who are attempting to corral the complex claims.

In February 2018, the U.S. Justice Department [indicated](#) it is backing the case. Attorney General Jeff Sessions said, “We will use whatever tools we have to hold people accountable for breaking our laws.”

**DEA settlement**—Although the company does not mention it, the resolution points out that in May 2017, Rite Aid [paid](#) a \$834,200 civil settlement with the Drug Enforcement Agency (DEA) to resolve allegations it violated the Controlled Substances Act, because some of its Los Angeles pharmacies dispensed controlled substances using an expired DEA registration number some 1,200 times. Part of the settlement included an agreement by the company to beef up its monitoring system.

**Corporate governance:** The shareholder proposal contends that more robust and specific corporate governance oversight will mitigate investor risks associated with opioids, although the company contends its procedures for risk management are adequate already, although they are not described in much detail on the company website and they do not mention the epidemic.

The company’s Corporate Governance [page](#) sets out the company’s approach, including its [Code of Business Ethics and Business Conduct](#) for employees, which also applies to the board. The Code refers to the company’s Risk Management department but does not describe its policies or procedures.

**Board committees**—Rite Aid has three standing committees plus an executive committee. Key provisions of the charters as they relate to the shareholder resolution request are:

- The [Audit](#) committee oversees compliance with applicable legal and regulatory requirements. Among its duties, it is to “[r]eview and discuss with management” and counsel “contingencies and legal matters.”
- The [Compensation](#) committee is tasked with evaluating and reviewing CEO performance and compensation as well as that of other executives. It annually reviews corporate performance goals and objectives and approves them, in addition to any related incentive compensation.
- The [Nominating and Governance](#) committee advises the board on new member nominees and governance, including the need for any changes to corporate governance practices or guidelines and any committee changes.

**Risk management**—The proxy statement discusses the board’s role in overseeing risks, the focus of the pending proposal. It says risk management oversight is the overall responsibility of the board and its committees, with attention paid to five specific risk areas: “operational, financial performance, financial reporting, legal and regulatory, and strategic and reputational”—with the board annually reviewing with management the efficacy of systems that assess and manage these risks. The only specific risk discussed is that having to do with cybersecurity.

The proxy statement notes that the Compensation Committee aims to ensure its incentive plans do not “encourage excessive risk-taking by our executives or associates.”

**Executive compensation links to risk**—The 2018 proxy statement [Compensation Discussion and Analysis](#) (CD&A) notes that 2018 financial results were negatively affected by the protracted and failed merger efforts during the year. Rite Aid reports most of its executive compensation is tied to financial performance and that given the business turmoil, it did add an executive retention program, to be paid out in August 2018 and May 2019 in equal installments. The company does not discuss risk management in general or opioid epidemic-related risks in particular with regard to compensation, as requested in the resolution.

**Stakeholder input process**—As noted above, after the Albertson’s merger collapsed, Rite Aid reached out to major institutional investors, reporting in the proxy statement on discussions with 11 of its largest stockholders who own about 38 percent of its shares. It made additional unspecified outreach to retail shareholders.

These discussions resulted in new policies on board refreshment, management evaluation, corporate governance and sustainability. Key changes include a new (and separate from CEO) chair, Bruce Bodaken, three new independent directors who replace three departing ones, and a more ethnically and racially diverse board (although the new board will have fewer women; the company says it will seek to correct this going forward). The company says CEO John Standley remains well-suited to achieving the company’s mission “to improve the health and wellness of our communities through engaging experiences that provide our customers with the best products, services and advice to meet their unique needs.” But it has stripped him of the chairmanship.

The company reports it is considering additional corporate governance changes in the coming year, including “enhancements to its current oversight of the Company’s environmental practices and sustainability efforts.” A separate section in the proxy statement discusses sustainability, covering energy efficiency, waste and environmental protection efforts. (*See Si2’s report on Item 5 for more.*) None of the changes appear to specifically address any risks associated with the opioid crisis, as the proponents would like.

**Political activity:** The resolution calls for more oversight and disclosure of company political activity, although the proposal itself does not go into detail about these concerns. It suggests, however, that the company can do more to oversee its political involvement.

The company discloses a policy on election spending and lobbying in the [Code of Business Ethics & Conduct](#). According to the Code, all political contributions and lobbying activity must be approved by the Legal Department. Neither the Code nor any board committee charter discloses any provisions for board oversight of election spending or lobbying.

Rite Aid is not included in comparative rankings issued by the Center for Political Accountability in its annual [CPA-Zicklin Index](#) (CPAZ) since it is not a member of the S&P 500. The CPAZ ranking for the health care sector in general gives relatively better marks for constituent companies than the S&P 500 as a whole, with a sector ranking of 49.2 out of 100 points. The CPAZ Index does not address lobbying and Si2 also did not include the company in its annual assessment because of its size.

The Center for Responsive Politics [notes](#) the company’s federal lobbying jumped to more than \$1 million annually starting in 2013, more than twice its earlier annual expenditures, and after similar annual lobbying totals from 2014 to 2016, grew still further in 2017 to \$1.4 million in 2017. The Center notes that in the 2016 election cycle, the company’s PAC made election contributions of \$310,900 (with \$237,500 going to federal candidates, \$20,000 to political action committees, \$9,000 to joint fundraising committees and \$12,150 at the state and local level); so far in the 2018 election cycles, the PAC has contributed \$220,100.



The National Institute on Money in State Politics [reports](#) the company made corporate contributions of approximately \$301,606 in the last three election cycles on state and local political campaigns.

### III. Proponent Position

The UAW Retirees Medical Benefits Trust, working with Investors want the company to provide a report with “governance measures Rite Aid has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis.” They want to know if the company:

- has assigned responsibility for such monitoring to the Board or one or more Board committees,
- revised senior executive compensation metrics or policies,
- adopted or changed mechanisms for obtaining input from stakeholders, or
- altered policies or processes regarding company political activities.

In the resolution, the proponents discuss the crisis. They note 2016 overdose deaths documented by the CDC, “more than 42,000 deaths,” and the “profound” economic and social effects, which by one estimate has had a cumulative economic toll of \$1 trillion from 2001 to 2017, [according](#) to health care research and consulting firm Altarum. “Opioid use and dependency is a key factor in the decline in prime-age male labor force participation,” the resolution points out, pointing to a 2017 study [published](#) by the Brookings Institution.

The resolution points to the Ohio class action suit mentioned in the 10-K, and also refers to West Virginia litigation about allegedly inadequate oversight of opioid distribution in small town pharmacies, [covered](#) in the Charleston Gazette-Mail in April 2018, with “similar lawsuits in Tennessee and South Carolina.” It further notes the DEA settlement from 2017, discussed above.

The proponent opines that board oversight and governance reforms “can play an important role in effectively addressing opioid-related risks,” and asserts that the company should provide more information so that shareholders can better understand how the company manages related risks. The proposal contends that company governance documents do not make clear if a specific committee is obligated to monitor “opioid-related financial and reputational risks,” since the company is silent on the matter and says nothing about board oversight of reporting to the DEA.

The proponents say the company’s board committee charters and proxy statement do not indicate if a specific committee monitors opioid-related risks, and note that there is no explicit opioid-related compliance responsibility for DEA reporting by any of the committees.

Finally, the resolution notes that none of the incentives described for executives contain any opioid-specific risk management metrics, or any factors linked to “promoting ethical conduct.”

The UAW Trust had discussions with the company about the resolution, but notes Rite Aid has not decided to produce a report on its efforts. It points to reports issued by other companies in the opioid supply chain, at **Assertio** (formerly **Depomed**), **Cardinal Health** and **McKesson**.

### IV. Management Position

The company opposes the resolution. It contends its current general risk oversight, management and related reporting make additional disclosure unnecessary. Rite Aid does “recognize the opioid epidemic that is afflicting Americans across the United States as a serious public health issue,” it says, however, and tells investors in the proxy statement that it is committed to addressing the problem.

Current committee charters and disclosures, discussed in the proxy statement and noted in Section I of this report, “adequately describe our approach to corporate governance matters, including risk management,” Rite Aid asserts. This includes the five areas of risk it outlines, and its publicly disclosed Code of

Ethics and Business Conduct and its guidance for employees on cutting risk “through ethical conduct and compliance with laws.”

Because the board already reviews its risk management system with management “at least annually,” and looks at specific topics “on an ongoing basis, including the risks associated with opioid medications,” more action is unneeded, Rite Aid states. Oversight includes review of “compliance and internal assurance services with regard to the overall effectiveness of the Company’s risk management program and significant areas of risk” raised by the board committees or management, which has included opioid distribution. It explains: “In addition, each Board committee regularly reports to the full Board on risks within their respective areas of responsibility. For example, the Compensation Committee annually reviews the Company’s compensation plans, programs and policies as they relate to the Company’s risk management.”

Management goes on to reiterate that it sees open communication and engagement with investors as “a critical aspect of our corporate governance program,” noting its recently stepped up efforts discussed above. It promises more engagement to come.

**Work on opioids:** While the company’s published corporate governance policies and board committee charters do not mention the opioid epidemic, in the proxy statement of opposition Rite Aid describes what it says is a “comprehensive strategy” via a range of efforts with customers, law enforcement, communities and government. These include:

- **Monitoring distribution**—Rite Aid says it supports the Centers for Disease Control and Prevention guidelines on opioid prescriptions—“including limiting acute opioid prescriptions to a seven day supply, limiting the daily dosage of opioids dispensed based on the strength of the opioid and requiring the use of immediate-release formulations of opioids before extended release opioids are dispensed.” Further, it reports monitoring its prescriptions and ensuring its pharmacists are properly registered and covered by a system to review suspicious orders. In addition, it is working “to identify physicians with questionable prescription writing practices, conducting ongoing reviews of physicians that over-prescribe as compared to the average norms for a geographic area and, when appropriate, proactively discontinuing filling controlled substances for certain prescribers.”
- **Disposal**—The company provides the most information about its efforts to ensure the safe disposal of opioids. Its new nationwide DisposeRx program, in all stores, is offered to those receiving new opioid prescriptions and every six months to those with chronic opioid prescriptions. It explains, “DisposeRx packets contain a biodegradable powder that, when mixed with water in the prescription vial, dissolves drugs, forming a viscous gel which may be safely discarded in the trash.”

Further, the company supports National Take-Back Days to turn in unused or unwanted medications at community sites, it is creating the KidsCents Safe Medication Disposal program through its company foundation and providing free drug disposal units to local and state law enforcement with a \$1 million commitment that to date has installed 280 units. The company will add 100 more in-store drug disposal kiosks; the first was added in Pennsylvania in June. Information about community drug disposal sites is on the company website, as well, Rite Aid notes.

- **Education**—Management describes efforts by its staff to educate the public and patients about safe use of opioids. It says this occurs through counseling by its pharmacists who use an “auto-generated system” that provides patients with information on the “proper utilization and handling of opioid medications.” Further, it educates and trains its pharmacists about abuse risk

factor, overdose symptoms, how to treat overdoses, naloxone therapies and recommended follow-ups.

Finally, it notes the company foundation plans to give a \$1.7 million three-year grant to support “EVERFI, the nation’s leading technology innovator, to educate high school students to make safe and healthy decisions about prescription drugs,” in a prevention initiative through the Prescription Drug Safety Network, which it describes as “the nation’s first public-private initiative to combat prescription drug abuse by providing prevention education to schools.”

- **Treatment**—Rite Aid reports that naloxone is available without a prescription in all of its pharmacies around the country, and that it provides information on the pharmacy portion of its website about drug abuse and treatment programs, under the heading “Pharmacy & Immunizations—Drug Safety & Disposal.”

In management’s view, the above efforts and its current risk management system are a sufficient response to the opioid epidemic. On disclosure, it says it is “committed to providing reasonable governance information to our stakeholders, including investors, customers and our communities.” It leaves the door open to doing more, saying “we will continue to assess how to expand and improve disclosures related to our governance initiatives related to the opioid epidemic,” but concludes for now that the requested report will not help shareholders, be an inefficient use of its resources and “would be largely duplicative of information already available on our website or otherwise publicly available.” It urges a vote against the proposal.

## V. Analysis

### *Key Points at Issue*

- What are the key risks facing Rite Aid in the opioid crisis?
- Does the company make enough information available to investors to determine if its current risk management practices are adequate to addressing the specific challenges posed by the opioid epidemic?
- How does the company’s disclosure compare to competitors?

The opioid epidemic ravaging the United States has now killed more Americans than died in the Civil War. More died in 2016 alone from overdoses than all the U.S. soldiers killed in the entire Vietnam War. There is no end in sight. The proponent wants the company to provide more information about its response to the epidemic given the role it plays as the country’s third largest drug store chain, a key conduit for opioid medications in the United States.

**Risks:** The company provides little disclosure in its securities filings and formal governance documents about the specific risks it faces from the opioid epidemic. The only mention of the crisis in its 10-K is a discussion of its status as a defendant in the growing number of lawsuits that seek damages from makers and distributors of opioids. Many of the cases have been consolidated as a class action that is being compared to earlier litigation that resulted in a settlement with tobacco companies to fund tobacco cessation programs around the country. Additional cases continue to be filed by states and local jurisdictions around the country and the first suits are to go to trial in 2019.

The proxy statement provides more information on risk management, saying oversight is the overall responsibility of the board and its committees, with attention paid to five specific risk areas—“operational, financial performance, financial reporting, legal and regulatory, and strategic and reputational”—but it does not go into more detail.

**Governance:** Board committee charter discussions of risk management is thin and makes no mention of specific oversight about opioid epidemic concerns. The proxy statement asserts that the epidemic and its role in the opioid distribution chain has come up in regular board discussions of risk, but it does not provide any details.

The company's financial results have suffered of late, given two failed merger attempts that aimed to make Rite Aid more competitive in a market of consolidating health care providers. Its financial problems do not appear to be tied directly to filling opioid prescriptions, however. In response to investor concerns about the mergers, Rite Aid has made a number of corporate governance changes recently, including separating its chair and CEO and reconfiguring its board. This ferment could prompt further governance changes that might shed more light on its general risk management approach, but this has yet to happen.

All executive incentive compensation at Rite Aid is tied to the company's overall financial performance. The company reports no ties to any elements that might address opioid-related risks, as the proposal suggests.

**Disclosure:** The 10-K's coverage of the opioid epidemic is limited to the mention of litigation, noted above, although the proxy statement outlines some measures Rite Aid is taking to address the crisis. It describes measures to monitor opioid distribution to avoid abuses by customers and complicity by its pharmacists; reports on a nationwide prescription disposal effort that includes an innovative approach that converts opioids to a substance safe to dispose in regular trash; take-back and disposal initiatives with in-store kiosks; education efforts for its personnel, the public and students; and making naloxone, the overdose treatment, available without a prescription in all its stores.

While the resolution suggests there should be better oversight of political involvement, and the company does not provide any specific information on its related oversight and spending, there is not as much evidence to suggest that the company has played the same sort of direct role influencing federal drug policy and legislation in evidence for **AmerisourceBergen** and opioid distributors, where other opioid risk shareholder resolutions were filed this year. But some investors may nonetheless feel that more transparency about its political involvement is warranted; currently it provides only brief mention of an approval process through the legal department but no spending disclosure—which stands in marked contrast to many other companies, which increasingly are putting in place oversight and disclosure as noted in Si2's [Briefing Paper on Political Activity](#).

**Peer comparison:** The proponents noted to Si2 that three other recipients of opioid risk resolutions in 2018 have now released reports similar to the one requested in this resolution—**Assertio** (formerly **Depomed**), **Cardinal Health** and **McKesson**. (*Links to these reports appear at the end of this report.*)

**Summing up:** The company is going through a troubled phase financially, but its struggles do not appear to be as related to the opioid epidemic as they do to broader changes in the health care market in general. Still, its connection to the opioid market as a leading drug store may present significant risks going forward since it plays a key role in the opioid supply chain and is named as a defendant in pending class action litigation; the extent of these legal risks will become clearer as litigation progresses next year. The company's recent governance changes and its efforts with a changed board could prompt further opioid-related disclosures, although this has yet to happen. Investors will have to decide if the report requested would provide them with additional useful insight, and if the explicit inclusion of opioids is needed in specified board committee responsibilities, pay metrics, stakeholder input parameters and a political activity policy.

### ***Voting Considerations***

**Votes in favor:** Shareholders who believe the company has not provided adequate disclosure of the ways in which it oversees and manages opioid-related legal, regulatory and reputational risks are likely to vote in favor of the proposal. They may be concerned that current risk management procedures are not explained in much detail in formal governance documents and have particular worries about the pending litigation, and believe explicit links of the issue to executive compensation are in order. The lack of any disclosure about political activity policies and spending may also be a red flag for some, as well.

**Votes against:** Shareholders who believe the company already provides sufficient disclosure of the risks connected to its business in the proxy statement are not likely to support the resolution. These investors may think opioid-related risks are less integral to the company's journey back to profitability than its strategy for providing more health care services to customers in general, and its plan to help pharmacy services customers manage costs. They may be satisfied that pay links to financial performance bake into the cake any risks the company faces, and they may be unconcerned about political activity disclosure in Rite Aid's case.

### **Resources**

- 2018 Rite Aid Proxy Statement  
<https://www.sec.gov/Archives/edgar/data/84129/000104746918006450/a2236772zdef14a.htm>
- 2018 Rite Aid Form 10-K  
<https://www.sec.gov/Archives/edgar/data/84129/000104746918003207/a2235393z10-k.htm>
- Centers for Disease Control and Prevention Opioid Epidemic Website  
<https://www.cdc.gov/drugoverdose/index.html>
- U.S. House of Representatives' Energy and Commerce Committee opioid epidemic resources  
<https://energycommerce.house.gov/opioids/>

### ***Sample Company Reports***

- McKesson  
<https://www.mckesson.com/about-mckesson/fighting-opioid-abuse/board-response/>
- Asserto (formerly Depomed)  
<http://investor.assertiotx.com/static-files/792208af-f568-4611-8940-8f894644dca5>
- Cardinal Health  
<https://www.cardinalhealth.com/en/about-us/corporate-citizenship/ethics-and-governance/board-engagement-and-governance.html>