

CtW Investment Group

June 5, 2017

Re: Please vote AGAINST the Re-election of Director Charles G. Berg

Dear DaVita Shareholder:

We urge you to vote AGAINST the re-election of director Charles G. Berg at DaVita, Inc. 2017 Annual Stockholders' Meeting on June 16, 2017. As Chairman of the Compliance Committee from October 9, 2014 to October 31, 2016, Mr. Berg bears primary responsibility for DaVita's troubling relationship with the American Kidney Foundation (AKF), which is currently under investigation by the Department of Justice. Since scrutiny of the relationship between DaVita and the AKF began in August 2016, DaVita's share price has dropped 2.7% while the S&P 500 has risen by over 10%.

Publicly available information convinces us that, under Mr. Berg, the Compliance Committee failed in its duty to oversee compliance efforts at the company, especially given that DaVita has been operating under a Corporate Integrity Agreement with the Department of Health and Human Services since October, 2014. Moreover, while Mr. Berg is no longer a member of the Compliance Committee, he is now a company employee (Executive Chair of DaVita Medical Group), meaning that his continued presence on the board unnecessarily reduces board independence.

The CtW Investment Group works with pension funds sponsored by affiliates of Change to Win, a federation of unions representing 5.5 million members, to enhance long-term shareholder value through active ownership. These funds invest over \$250 billion in the global capital markets and are substantial investors in DaVita.

DaVita's Relationship to the AKF Results in Federal Investigation Creates Significant Risk.

As fully detailed in our January 12, 2017 letter (available at ctwinvestmentgroup.com) to Mr. Berg, the longstanding and close relationship between DaVita and the American Kidney Fund has come under scrutiny: first, on August 18, 2016, the Center for Medicaid and Medicare Services issued a request for information concerning the steering of patients eligible for Medicaid into commercial insurance plans available on the Affordable Care Act exchanges. This announcement caused an immediate 4.7% drop in the share price, and since that date DaVita's share price has fallen 2.7% while the S&P 500 has risen over 10%.

Second, on October 23, 2016 the *St. Louis Post-Dispatch* published an investigative report reviewing hundreds of internal DaVita emails which showed that DaVita representatives told patients that the AKF would pay their insurance premiums, that DaVita employees were instrumental in signing up patients for commercial insurance plans, that DaVita employees were told by their supervisors which patients to target, and that their progress in having such conversations with patients was closely tracked by the company.

Third, on January 6, 2017 DaVita received a subpoena from the Department of Justice concerning premium assistance provided to dialysis patients.

We see a clear basis for this scrutiny:

- The 1997 agreement in which the federal government allowed third-party premium support payments for dialysis patients required that such support not be channeled to dialysis providers based on their contributions to the third-party (in this case, the AKF).
- The *New York Times* has reported that the AKF closely monitors the contributions it receives from dialysis providers, and appears to condition its premium support for patients on such contributions.
- DaVita was reportedly one of two contributors responsible for 80% of the AKF's annual contributions in 2015.
- After a steady decline in the commercially insured share of its patients from 2007 to 2014, DaVita experienced a dramatic increase in its commercially insured share in 2015, five times as large as expected by independent analysts.
- Analysts estimate that commercial insurance pays as much as \$3,700 more per dialysis treatment than Medicaid.
- DaVita has estimated that, if its patients lost AKF premium support, it would lose \$230 million in annual operating income; independent analysts have estimated that the costs may be twice as large.
- The Chair of the AKF's board of trustees is a former DaVita executive.
- Since October 2014, DaVita has operated under a Corporate Integrity Agreement with the HHS OIG, which requires the company to report all matters "involving DaVita Dialysis that a reasonable person would consider a probable violation of criminal, civil, or administrative laws."

As Compliance Committee Director Berg Failed to Draw Attention to Significant Reputational, Regulatory, and Litigation Risks.

Both the financial impact of AKF premium support payments to DaVita, and the close relationship between DaVita and the AKF pose significant regulatory enforcement, reputational, and litigation risks to DaVita shareholders. Moreover, the failure of the Compliance Committee under Mr. Berg's leadership to draw attention to the potential liabilities this relationship creates, and to take steps to mitigate such liabilities – such as full and timely disclosure of DaVita's relationship to the AKF – reinforces our concern that compliance oversight has been inadequate. Given that Mr. Berg is now a company employee, there is no justification for undermining board independence by retaining him as a director.

We urge you to join us in voting **AGAINST** the re-election of director **Charles G. Berg**. If you would like to discuss our concerns with us directly, please call our Research Director Richard Clayton at (202) 721-6038.

Sincerely,



Dieter Waizenegger, Executive Director

**This is not a solicitation of authority to vote your proxy.
Please DO NOT send us your proxy card as it will not be accepted.**