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January 12, 2024

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Home Depot, Inc.*
Shareholder Proposal of Green Century Capital Management, Inc.
Securities Exchange Act of 1934 — Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Home Depot, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") submitted by Green Century Capital Management, Inc. and Felican Sisters of North America (the "Proponents").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponent elects to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved**: Shareholders request the Board of Directors issue a public report, within a reasonable time, assessing the benefits and drawbacks of permanently committing not to sell paint containing titanium dioxide sourced from the Okefenokee, and assessing risks to the company associated with same.

A copy of the Proposal and the Supporting Statement, as well as correspondence with the Proponents directly relevant to this no-action request, is attached to this letter as Exhibit A.

BACKGROUND AND BASES FOR EXCLUSION

The Proposal concerns the Company "sell[ing] paint containing titanium dioxide sourced from the Okefenokee, and assessing risks to the company associated with same." Given that the Company is the world's largest home improvement retailer that sells more than two million products in its stores and online, we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations and seeks to micromanage the Company's operations.

In addition, we note that to date, the Company has never purchased titanium dioxide sourced from the Okefenokee Swamp nor has the Company purchased or sold any paint or any other product containing titanium dioxide sourced from the Okefenokee Swamp. Moreover, none of the Company's suppliers currently purchase titanium dioxide sourced from the Okefenokee Swamp. Furthermore, to the Company's knowledge, no permits to mine titanium on Trail Ridge in the Okefenokee Swamp have been granted, and it is not known (i) whether and to what extent titanium will be mined on Trail Ridge and used to produce titanium dioxide, (ii) whether any of the Company's current or future suppliers will offer paint products that include titanium dioxide containing titanium mined on Trail Ridge, and (iii) whether the Company will determine to sell such paint as part of its business. For these reasons, we also request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(5) because the Proposal relates to operations of the Company that are not economically significant to the Company, and the Proposal is not otherwise significantly related to the Company's business.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations And Seeks To Micromanage The Company

The Proposal seeks a public report on the benefits, drawbacks and risks to the Company associated with a permanent commitment not to sell paint containing titanium dioxide sourced from the Okefenokee Swamp, a wetland ecosystem located in southeastern Georgia. As discussed below, the Proposal may be excluded under Rule 14a-8(i)(7) because it relates to the Company's ordinary business activities, namely, future decisions to sell a particular product containing materials sourced from a particular place, and does not focus on a significant policy issue that transcends the Company's ordinary business, and it seeks to micromanage the Company's operations.

A. Background

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that "deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first of those considerations is that "[c]ertain 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*. Examples of such tasks cited by the Commission include "decisions on production quality and quantity, and the retention of suppliers." *Id*. The second consideration is related 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 shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release")). The Proposal implicates both of these considerations.

Moreover, a shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[w]here the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."). Also relevant to the Proposal is the discussion in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E") where the Staff explained how it evaluates proposals relating to risk:

> [R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk . . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

Consistent with its positions in SLB 14E, the Staff has repeatedly concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See, e.g., McDonald's Corp.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal asking the company to "disclose the economic risks" it faced from "campaigns targeting the [c]ompany over concerns about cruelty to chickens" because it "focuse[d] primarily on matters relating to the [c]ompany's ordinary business operations"); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on "environmental, social, and economic challenges associated with the oil sands," which involved ordinary business matters); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state, and local taxes and provide a report to stockholders on the assessment).

B. The Proposal Is Excludable Because It Addresses The Company's Decision To Sell A Particular Product

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it addresses a core feature of the ordinary business of a home improvement retailer: the ability to offer for sale particular paint products, specifically "paint containing titanium dioxide sourced from the Okefenokee." As discussed below, the Staff

consistently has agreed that decisions by companies regarding the products they sell are part of a company's ordinary business operations and thus the Proposal may be excluded under Rule 14a-8(i)(7).

The Staff consistently has concurred with the exclusion of proposals relating to the sale of particular products. For example, in *The Home Depot, Inc.* (avail. Jan. 24, 2008) the Staff agreed that the Company could exclude a proposal requesting it stop selling glue traps because of their harm to mice and danger to other wildlife and human health. Although the proponent argued that the proposal focused on a significant policy issue, the Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting in particular that it "relate[d] to Home Depot's ordinary business operations (i.e., the sale of a particular product)." *See also Lowe's Companies, Inc.* (avail. Feb 1, 2008) (same). Likewise, in *Wal-Mart Stores, Inc.* (*Trinity Church*) (avail. Mar. 20, 2014) ("*Wal-Mart 2014*") aff'd and cited in *Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323 (3rd Cir. 2015), the Staff concurred with the exclusion of a proposal seeking to limit the sale of any "product that especially endangers public safety and well-being, has the substantial potential to impair the reputation of the company and/or would reasonably be considered by many offensive to the family and community values integral to the company's promotion of its brand." The company argued that the proposal could be excluded under Rule 14a-8(i)(7) as relating to the company's decision to offer specific products to its customers.

Similarly, in *Wells Fargo & Co.* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013), a proposal requested that the company prepare a report discussing the adequacy of the company's policies in addressing the social and financial impacts of the company's direct deposit advance lending service. The company argued that the proposal could be excluded under Rule 14a-8(i)(7) as relating to the company's decision to offer specific lending products and services to its customers, a core feature of the ordinary business of banking. The Staff concurred with exclusion of the proposal under Rule 14a-8(i)(7), noting that "the proposal relates to the products and services offered for sale by the company." As the Staff further explained, "[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)." *See also Pepco Holdings, Inc.* (avail. Feb. 18, 2011) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal that urged the company to pursue the market for solar technology and noting that "the proposal relates to the products and services offered for sale by the company"); *Wal-Mart Stores, Inc. (Albert)* (avail. Mar. 30, 2010) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning "the sale of particular products"); *Wal-Mart Stores, Inc. (Porter)* (avail. Mar. 26, 2010) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal "to adopt a policy requiring all products and services offered for sale in the United States of America by Wal-Mart and Sam's Club stores shall be manufactured or produced in the United States of America" and noting that "the proposal relates to the products and services offered for sale by the [c]ompany"); and *Marriott International, Inc.* (avail. Feb. 13, 2004) (concurring with the

exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company eliminate sexually explicit content from its hotel gift shops and television programming as relating to "the sale and display of a particular product and the nature, content and presentation of programming").

While the Proposal requests a report involving a risk assessment, as noted above the Commission has made clear that the analysis turns on whether the subject matter of the proposed report is within the ordinary business of the issuer and the subject matter that gives rise to the risk. *See* 1983 Release; SLB 14E. Like proposals regarding the sale of particular products in *Wal-Mart 2014*, financial services in *Wells Fargo*, solar products in *Pepco*, and glue traps in *Home Depot* and *Lowes*, the Proposal addresses decisions concerning the products offered for sale by the Company. The Proposal requests that the Company "issue a public report . . . assessing the benefits and drawbacks of permanently committing not to sell paint containing titanium dioxide sourced from the Okefenokee, and assessing risks to the [C]ompany associated with same." By calling for policies that would govern the Company's decisions whether to sell particular products, the Proposal seeks to subject these decisions to shareholder oversight. As the world's largest home improvement retailer, the Company sells more than two million products in its stores and online, and it is a fundamental responsibility of management to decide which products to sell. In making these decisions, the Company's management must consider myriad factors, including the availability and prices charged by the Company's suppliers; the tastes, preferences and budgets of customers; the products offered by the Company's competitors; and the laws where the Company's stores and facilities are located. Balancing such interests is a complex issue and is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Accordingly, because the Proposal relates to decisions concerning the particular products offered for sale by the Company, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

C. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company's Supplier Relationships

The Proposal concerns a permanent commitment by the Company to not sell "paint containing titanium dioxide sourced from the Okefenokee." The Company does not manufacture paint, rather it sources all of its paint products from suppliers, so such a commitment would (1) restrict the pool of future suppliers the Company may retain, and (2) influence and restrict the manner in which the Company monitors the conduct of its suppliers, including supplier product quality and sourcing of materials. As a result, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it concerns decisions relating to the Company's supplier relationships, which is an ordinary business matter.

In the 1998 Release, the Commission specifically cited "the retention of suppliers" as an example of a task that is so fundamental to management's ability to run a company on a day-to-day basis that it could not, as a practical matter, be subject to direct shareholder oversight. Subsequently, the Staff has concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to or affecting a company's supplier or vendor relationships. For example, in *Duke Energy Corp.* (avail. Jan. 24, 2011), the Staff concurred with the exclusion of a proposal requesting that the company "strive to purchase a very high percentage" of "Made in USA" goods and services on the grounds that it related to "decisions relating to supplier relationships." *See also PG&E Corp.* (avail. Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender, or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business operations).

Additionally, in numerous instances, the Staff has concurred with the exclusion of proposals under Rule 14a-8(i)(7) because they concerned decisions relating to monitoring supplier or vendor relationships. For example, in *Foot Locker, Inc.* (avail. Mar. 3, 2017), the Staff concurred with the exclusion of a proposal seeking a report on steps taken by the company to monitor overseas apparel suppliers' use of subcontractors as relating "broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors." And in *Kraft Foods Inc.* (avail. Feb. 23, 2012), the Staff concurred with the exclusion of a proposal under Rule 14a-8(i)(7) that sought a report detailing the ways the company "is assessing water risk to its agricultural supply chain and action it intends to take to mitigate the impact on long-term shareholder value," noting that the "proposal relates to decisions relating to supplier relationships. Proposals concerning decisions relating to supplier relationships are generally excludable under rule 14a-8(i)(7)." *See also Corrections Corp. of America* (avail. Feb. 28, 2014, *recon. denied* Mar. 25, 2014) (concurring with the exclusion of a proposal requesting the board adopt and implement provisions "relate[d] to inmate telephone service contracts at correctional and detention facilities operated by the business" on grounds that it "relates to decisions relating to supplier relationships"); *The GEO Group, Inc.* (avail. Feb. 24, 2014, *recon. denied* Mar. 25, 2014) (same); *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal regarding the compliance of the company's suppliers with certain animal rights statutes as relating to the company's ordinary business operations).

As with the proposals at issue in *Duke Energy*, *Foot Locker*, *Kraft Foods,* and the other precedents cited above, the Proposal directly relates to the Company's ordinary business operations of retaining and managing its relationships with suppliers, which is a core function of the Company's management. The Company has developed and maintains relationships with thousands of suppliers located around the world. Deciding which factors to consider in retaining these relationships and determining how best to manage these relationships is one of management's most fundamental day-today responsibilities. A significant aspect of managing

supplier relationships is monitoring product quality and sourcing of materials used to develop these products, and deciding the requirements that suppliers must follow in this regard, which is not something that can, as a practical matter, be subject to direct shareholder oversight. The Company's decisions related to the retention and monitoring of its suppliers with respect to potential geographic sourcing issues and liability claims involve numerous factors, including price, quality, technology, capacity, support, reliability, safety, and our responsible sourcing standards. As a result of the number, variety and complexity of issues related to supplier retention and management of the Company's relationships with its suppliers, these decisions require the expertise of the Company's management, and cannot, "as a practical matter, be subject to direct shareholder oversight." Because the Proposal relates to the geographic sourcing of materials that make up the Company's paint products and given the Company sources all of its paint products from suppliers, the Proposal relates to how the Company retains and monitors and deals with the sourcing of its suppliers' products and squarely implicates decisions relating to the Company's supplier relationships. Consequently, as in the precedents cited above, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations, specifically, decisions relating to the Company's supplier relationships.

D. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters, specifically the products the Company may offer for sale and decisions relating to the Company's supplier relationships and therefore, is excludable under Rule 14a-8(i)(7). In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission initially articulated in the 1976 Release. In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) 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." 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.").

The Staff most recently discussed its interpretation of how it will evaluate whether a proposal "transcends the day-to-day business matters" of a company in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), noting that it is "realign[ing]" its approach to determining

whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976 and reaffirmed in the 1998 Release. In addition, the Staff stated that it will "no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)" but rather will consider only "whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." The Staff also stated that under its new approach proposals "previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)."

Proposals with passing references touching upon topics that might raise significant social policy issues—but that do not *focus on* or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). For example, in *American Express* (avail. Mar. 9, 2023), the Staff concurred with the exclusion of a shareholder proposal requesting a report "describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services" where the proposal was not focused on reducing gun violence or another significant social policy. Similarly, in *Walmart Inc.* (avail. Apr. 8, 2019), the Staff concurred with the exclusion of a proposal requesting a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness because it related "generally to the [c]ompany's management of its workforce, and [did] not focus on an issue that transcends ordinary business matters." *See also Apple Inc.* (*D. Rahardja*) (avail. Jan. 3, 2023) (concurring with the exclusion of a proposal requesting a report assessing "the effects of [the company's] return-to-office policy on employee retention and [the company's] competitiveness," noting it "relate[d] to, and [did] not transcend, ordinary business matters"); *Amazon.com, Inc.* (*AFL-CIO Reserve Fund*) (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting a report on the company's workforce turnover rates and labor market changes resulting from the COVID-19 pandemic noting that "the [p]roposal . . . does not focus on significant social policy issues"); *Amazon.com, Inc.* (*McRitchie*) (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting an annual report on the distribution of stock-based incentives throughout the workforce despite referring to wealth inequality in the United States as a significant policy issue); *Intel Corp.* (avail. Mar. 18, 2022) (concurring with the exclusion of a proposal requesting a report "on whether, and/or to what extent, the public display of the pride flag has impacted . . . employee's [sic] view of the company as a desirable place to work," stating it "relate[d] to, and [did] not transcend, ordinary business matters"); *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal requesting that the board require the company's suppliers to certify that they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents" where the Staff stated that, "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is

'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping'"); *Dominion Resources, Inc.* (avail. Feb. 3, 2011) (concurring with the exclusion of a proposal requesting the company to promote "stewardship of the environment" that touched upon environmental matters—such as renewable energy—with the Staff noting that the proposal related to "the products and services offered for sale by the company").

Like the proposals described in the precedent above, the Proposal does not focus on a significant social policy issue that has a broad societal impact, such as environmental protection, but instead focuses on the Company's supply chain by controlling product purchasing options and supplier relationships. The environmental, climate and reputational risk aspects of the Proposal are, at best, secondary to the Proposal's central objective regarding the Company's indirect purchase of particular paint products containing materials sourced from southeast Georgia. The Company is merely a retailer of the products described in the Proposal. Decisions regarding requirements that suppliers must follow with respect to geographic sourcing of their products do not transcend the Company's day-to-day operations. By referring to the climate, regulatory and legal and reputational risks to the Company, the Proposal attempts to suggest that any future sales of paint containing titanium dioxide sourced from the Okefenokee Swamp implicate significant social policy issues. Notwithstanding these assertions, the Proposal itself is squarely focused on the Company's ability to purchase a particular product containing materials sourced from a particular place in southeast Georgia.

Furthermore, the subject matter of the Proposal is purely hypothetical in nature. None of the Company's suppliers currently purchase titanium dioxide sourced from the Okefenokee Swamp, and no titanium dioxide sourced from the Okefenokee Swamp is currently used in any of the products the Company offers for sale. Moreover, to the Company's knowledge, neither Twin Pines Minerals, LLC, the entity referenced in the Proposal ("TPM"), nor any other company currently has mining permit approval from any Georgia regulatory authority to mine titanium on Trail Ridge in the Okefenokee Swamp. The report requested by the Proposal would be based entirely on conjecture. The hypothetical subject matter of the Proposal could not be seen to currently have a broad societal impact that focuses on a significant policy issue transcending ordinary business matters.

E. The Proposal Is Excludable Because It Seeks To Micromanage The Company By Directing Decisions And Actions Directly Concerning Supplier Relationships

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which

shareholders, as a group, would not be in a position to make an informed judgment." The 1998 Release further states that micromanagement "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific . . . methods for implementing complex policies." In SLB 14L, the Staff clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward the Staff "will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, *which is designed to preserve management's discretion on ordinary business matters* but not prevent shareholders from providing *high-level direction* on large strategic corporate matters." SLB 14L (emphasis added).

In assessing whether a proposal seeks to micromanage a company's ordinary business operations, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company's activities and management discretion. *See Deere & Co.* (avail. Jan. 3, 2022) and *The Coca-Cola Co.* (avail. Feb. 16, 2022), each of which involved a broadly phrased request but required detailed and intrusive actions to implement. Moreover, "granularity" is only one factor evaluated by the Staff.

The Proposal is more than a request for a report, as revealed by the Supporting Statement's support for "[a] commitment to avoid sourcing titanium dioxide from the Okefenokee." Thus, it ultimately seeks to micromanage the Company by directing decisions and actions that involve a host of complex matters relating to the Company's choices of products to be sold, selection of suppliers around the world, and the relationships with those suppliers. The Proposal is similar to the shareholder proposal in *Deere & Co.* (avail. Jan. 3, 2022), where the Staff concurred with the exclusion of a proposal requesting that the company's board publish "the written and oral content of any employee-training materials offered to any subset of the company's employees." The supporting statement focused on the company's diversity, equity, and inclusion efforts and the company argued that the proposal "intend[ed] for shareholders to step into the shoes of management and oversee the 'reputational, legal and financial' risks to the [c]ompany" and thus did not "afford[] management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion." Like the proposal in *Deere*, the Proposal "seeks to impose . . . specific methods for implementing complex policies"—namely by overriding management's discretion with regard to the products the Company offers for sale. SLB 14L.

Similarly, the Proposal micro-manages the Company's fundamental day-to-day decisions and policies and procedures related to its suppliers. In this regard, the Proposal is like the proposal excluded in *The Kroger Co.* (avail. Apr. 25, 2023). There the Staff concurred with the exclusion

under the micromanagement prong of Rule 14a-8(i)(7) of a proposal requesting that "the Board take the necessary steps to pilot participation in the Fair Food Program for the Company's tomato purchases in the Southeast United States, in order mitigate severe risks of forced labor and other human rights violations in Kroger's produce supply chain." In its no-action request, the company argued that the "selection of suppliers and management of supplier relationships are complicated matters that are integrally entwined with its ordinary business operations and fundamental to management's ability to run the Company's operations on a day-to-day basis" and thus the proposal sought to "micro-manage the Company by substituting the shareholder's decisions regarding the Company's supply chain for management's practices, a decision upon which the shareholders, as a group, are not in a position to make an informed judgment." As in *The Kroger Co.*, the Proposal intends for shareholders to step into the shoes of management and does not afford management sufficient flexibility or discretion to address and implement business decisions on a complex matter. The Company's relationships with its suppliers are based on the day-to-day business experience and the well-developed knowledge of the Company's management with respect to a variety of factors. Accordingly, it would be unrealistic for shareholders to direct decisions and actions relating to supplier relationships at an annual meeting of shareholders.

For these reasons, we believe that the Proposal may be omitted pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company by probing too deeply into complex matters upon which shareholders as a group would not be in a position to make an informed judgment.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates to Operations That Are Not Economically Significant to the Company, And It Is Not Otherwise Significantly Related To The Company's Business

A. Background

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded "[i]f the proposal relates to operations which account for less than five percent of the company's total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Prior to adoption of this version of Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal." Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission stated that this

interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. *Id.* In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting." 1983 Release.

In SLB 14L, the Staff returned to its historic approach of interpreting Rule 14a-8(i)(5) and noted that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)."

B. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(5) Because The Proposal Is Not Significantly Related To The Company's Business

To date, the Company has never purchased titanium dioxide sourced from the Okefenokee Swamp nor has the Company purchased or sold any paint or any other product containing titanium dioxide sourced from the Okefenokee Swamp. As a result, the Proposal relates to operations that account for 0% of the Company's total assets at the end of its most recent fiscal year, and for 0% of its net earnings and net sales[1] for its most recent fiscal year. Thus, the economics of the operations addressed in the Proposal are not significant to the Company's business under the standards in Rule 14a-8(i)(5).

Moreover, the Proposal does not demonstrate that it is otherwise significantly related to broad social or ethical concerns arising from the Company's business. Instead, the Proposal makes generalized assertions and addresses hypothetical harms that are not applicable to the Company's operations. For example, the Proposal references potential climate, regulatory and reputational risks that are not applicable to the Company's business since, to the Company's knowledge, no permits to mine titanium on Trail Ridge in the Okefenokee Swamp have been granted, and it is not known whether and to what extent titanium will be mined on Trail Ridge and used to produce titanium dioxide, whether any of the Company's current or future suppliers will offer paint products that include titanium dioxide containing titanium mined on Trail Ridge, and whether the Company will determine to sell such paint as part of its business.

As a result, the Proposal fails to demonstrate how its broad claims on potential risk are significantly related to the Company's business. Furthermore, the Proposal is not even significant to the Company's business in the abstract because it is related to a series of completely hypothetical scenarios at the world's largest home improvement retailer that sells more than two million products in the U.S., Canada, and Mexico in its stores and online. Based on the

[1] Net sales is the Company equivalent to total revenue and consists of revenue, net of expected returns and sales tax, at the time the customer takes possession of merchandise or when a service is performed.

foregoing, the Proposal is similar to the shareholder proposal considered in *Dunkin' Brands Group, Inc.* (avail. Feb. 22, 2018). There, the Staff concurred with the exclusion under Rule 14a-8(i)(5) of a proposal regarding the environmental impacts of K-Cup Pods brand packaging, noting that the proposal's "significance to the [c]ompany's business is not apparent on its face" and the proponent had "not demonstrated that it is otherwise significantly related to the [c]ompany's business." *See also Reliance Steel & Aluminum Co.* (avail. Apr. 2, 2019) (concurring with the exclusion of a proposal requesting a report on political contributions and expenditures that contains information specified in the proposal where the proposal related to operations that accounted for less than five percent of the company's total assets, net earnings and gross sales for its most recent fiscal year and were not otherwise significantly related to the company's business); *J.P. Morgan & Co. Inc.* (avail. Feb. 5, 1999) (concurring with the exclusion of a proposal that mandated that the company discontinue banking services with Swiss entities until all claims by victims of the Holocaust and their heirs are settled and total restitution is made, because the amount of revenue, earnings, and assets attributable to J.P. Morgan's operations in Switzerland was less than five percent and the proposal was not otherwise significantly related to J.P. Morgan's business); *PepsiCo, Inc.* (avail. Jan. 24, 1994) (concurring with the exclusion of a proposal requesting the company's board "urge its franchised restaurants in Northern Ireland, at the time of contract renewal, to make all possible lawful efforts to implement . . . the MacBride Principles" where the Staff noted "that the [c]ompany does not own or operate any restaurants in Northern Ireland, does not have a contractual right to review the employment practices of its franchisees and the amounts associated with the [c]ompany's franchises in Northern Ireland are less than the five percent tests under rule 14a-8[(i)](5)"); *AT&T Co.* (avail. Jan. 19, 1990) (concurring with the exclusion of a proposal addressing the company's expansion and resulting relocation of workers and jobs where any specific activity by the company would have a *de minimis* impact on the company's operations, and the impact of its activities on general housing costs in affected areas was too remote).

Here, the Proposal relates to operations that are not economically significant to the Company, and much of the Proposal consists of hypothetical risks that are not applicable to the Company and may not ever be applicable. In this regard, denial of no-action relief would improperly open the flood gates to Rule 14a-8 shareholder proposals concerning ordinary business operations simply where a proposal projects hypothetical future harms that may never materialize. Accordingly, the Proposal may be properly excluded under Rule 14a-8(i)(5), because the Proposal is not economically relevant to the Company's operations and is not otherwise significantly related to the Company's business.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Stacy S. Ingram, the Company's Associate General Counsel and Deputy Corporate Secretary, at (770) 384-2858.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Stacy S. Ingram, The Home Depot, Inc.
Annie Sanders, Green Century Capital Management, Inc.
Sister Mary Jean Sliwinski, Felican Sisters of North America

EXHIBIT A

November 29th, 2023

Via Federal Express and email to shareholder_proposals@homedepot.com

Corporate Secretary
The Home Depot
2455 Paces Ferry Road, Building C-22
Atlanta, Georgia 30339

Dear Corporate Secretary,

Green Century Capital Management, Inc. ("Green Century") is the investment advisor, agent, manager and representative of the Green Century Funds. Green Century is filing the enclosed shareholder proposal (the "Proposal") on behalf of the Green Century Equity Fund to be included in the proxy statement of The Home Depot (HD) (the "Company") for its 2024 annual meeting of shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Green Century is the lead filer for the Proposal and may be joined by other shareholders as co-filers.

Per Rule 14a-8, the Green Century Equity Fund is the beneficial owner of at least $25,000 worth of the Company's stock. We have held the requisite number of shares for over one year, and we will continue to hold sufficient shares in the Company through the date of the Company's upcoming 2024 annual shareholders' meeting. Verification of ownership from a DTC participating bank is enclosed.

Due to the importance of the issue and our need to protect our rights as shareholders, we are filing the enclosed proposal for inclusion in the proxy statement for a vote at the next shareholders' meeting.

We welcome the opportunity to discuss the subject of the enclosed proposal with Company representatives. We are available December 14 at 2pm ET, December 15 at 12pm ET, or December 18 at 3pm ET. Please direct all correspondence to Annie Sanders, Director of Shareholder Advocacy at Green Century. She may be reached at [redacted] Any co-filers have authorized Green Century to conduct the initial engagement meeting, but may participate subject to their availability.

Thank you for your attention to this matter.

Sincerely,

Leslie Samuelrich

Leslie Samuelrich

President

The Green Century Funds

Green Century Capital Management, Inc.

Whereas: Mining next to ecologically sensitive protected areas poses material climate, regulatory and reputational risks.

At 438,000 acres, the Okefenokee Swamp is one of the world's largest freshwater wetlands. Over 402,000 acres are protected in the Okefenokee National Wildlife Refuge, the largest refuge in the eastern United States and home to hundreds of plant and animal species. The Okefenokee also stores over 400M tons of CO_2 equivalent, making it one of the largest natural carbon sinks in North America.

Twin Pines Minerals, LLC (TPM) has applied for permits to mine titanium on Trail Ridge, the swamp's eastern hydrologic boundary, for production of titanium dioxide. TPM's northern neighbor has publicly called for mining on its land and TPM's new western neighbor has leased its land for titanium mining elsewhere in Georgia.

As Home Depot is a major carrier of titanium dioxide-based paint, links between the company's paint products and titanium mined on Trail Ridge could expose the company to unnecessary risks:

- **Climate:** Overwhelming scientific consensus states that TPM's project would significantly damage the Okefenokee by drawing down its water level and increasing risk of drought and landscape-level fires. Such events would destroy wildlife habitat, damage thousands of acres of timberland and release significant carbon emissions. Home Depot's greenhouse gas emissions could skyrocket in the event of a major peat fire, as the carbon stored in the Okefenokee is over 100 times greater than the Company's 2022 Scope 3 emissions. Any link to mining at the Okefenokee would conflict with Home Depot's efforts to reduce emissions and mitigate climate risk, all while exacerbating the business performance risks associated with climate change.
- **Regulatory and Legal**: The 2023 Okefenokee Protection Act, which would prohibit mining on Trail Ridge, garnered 96 bipartisan cosponsors in Georgia's House of Representatives and will return in 2024, presenting regulatory risk. Furthermore, organizations with a history of litigating to protect natural resources have publicly criticized the project, and potential litigation from timber companies suffering fire damage to their assets presents additional legal risk.
- **Reputational**: In early 2023, over 100,000 comments were submitted to Georgia's Environmental Protection Division opposing TPM's draft Mining Land Use Plan and approximately 70% of Georgians want Governor Kemp to deny TPM's permits. Okefenokee is being nominated for inclusion on UNESCO's World Heritage Site List, and the issue has received significant media coverage in the *New York Times, Wall Street Journal, AP* and *Bloomberg*.

A commitment to avoid sourcing titanium dioxide from the Okefenokee would help Home Depot more fully operationalize the conviction articulated in its 2023 ESG report, "when we invest in running a responsible, sustainable company, we make our business stronger, more agile, and more resilient."

Resolved: Shareholders request the Board of Directors issue a public report, within a reasonable time, assessing the benefits and drawbacks of permanently committing not to sell paint containing titanium dioxide sourced from the Okefenokee, and assessing risks to the company associated with same.

FELICIAN SISTERS

Our Lady of Hope Province

November 29, 2023

Via mail and email

Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, GA 30339

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Corporate Secretary,

Felician Sisters of North America is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of The Home Depot, Inc. (the "Company") for its 2024 annual meeting of shareholders. Felician Sisters of North America is co-filing the Proposal with lead filer Green Century Capital Management. In its submission letter, Green Century Capital Management will provide dates and times of ability to meet. We designate the lead filer to meet initially with the Company but may join the meeting subject to our availability.

Felician Sisters of North America Endowment Trust has continuously beneficially owned, for at least one year as of the date hereof, at least $25,000 worth of the Company's common stock. Verification of this ownership is attached. Felician Sisters of North America Endowment Trust intends to continue to hold such shares through the date of the Company's 2024 annual meeting of shareholders.

The Felician Sisters of North America gives Green Century Capital Management, Inc. full authority to engage with the company on our behalf regarding the proposal and the underlying issues, and to negotiate a withdrawal of the proposal to the extent the representative views the company's actions as responsive.

If you have any questions or need additional information, I can be contacted on [redacted] or by email at [redacted]

Sincerely,

Sister Mary Jean Sliwinski

Sister Mary Jean Sliwinski
Provincial Sustainability Coordinator
Felician Sisters of North America, Inc.
55 Westfield Ave.
Depew, NY 14043

Whereas: Mining next to ecologically sensitive protected areas poses material climate, regulatory and reputational risks.

At 438,000 acres, the Okefenokee Swamp is one of the world's largest freshwater wetlands. Over 402,000 acres are protected in the Okefenokee National Wildlife Refuge, the largest refuge in the eastern United States and home to hundreds of plant and animal species. The Okefenokee also stores over 400M tons of CO2 equivalent, making it one of the largest natural carbon sinks in North America.

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Resolved: Shareholders request the Board of Directors issue a public report, within a reasonable time, assessing the benefits and drawbacks of permanently committing not to sell paint containing titanium dioxide sourced from the Okefenokee, and assessing risks to the company associated with same.