



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-4561

June 22, 2012

John Jenkins  
Calfee, Halter & Griswold LLP  
jjenkins@calfee.com

Re: The J.M. Smucker Company  
Incoming letter dated April 12, 2012

Dear Mr. Jenkins:

This is in response to your letter dated April 12, 2012 concerning the shareholder proposal submitted to J.M. Smucker by Investor Voice on behalf of Eric W. Johnson and Emily K. Johnson. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Ted Yu  
Senior Special Counsel

Enclosure

cc: Bruce T. Herbert  
Investor Voice  
bh@newground.net

June 22, 2012

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: The J.M. Smucker Company  
Incoming letter dated April 12, 2012

The proposal requests that the board amend the company's governing documents to provide that all matters presented to shareholders be decided by a majority of the shares voted for and against an item, unless shareholders expressly approve a higher threshold for specific types of items.

There appears to be some basis for your view that J.M. Smucker may exclude the proposal under rule 14a-8(i)(2). We note that in the opinion of your counsel, implementation of the proposal would cause J.M. Smucker to violate state law. Accordingly, we will not recommend enforcement action to the Commission if J.M. Smucker omits the proposal from its proxy materials in reliance on rule 14a-8(i)(2). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which J.M. Smucker relies.

Sincerely,

Kim McManus  
Special Counsel

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.



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Calfee, Halter & Griswold LLP  
Attorneys at Law

The Calfee Building  
1405 East Sixth Street  
Cleveland, Ohio 44114-1607  
216.622.8200 Phone  
calfee.com

April 12, 2012

***Via Electronic Mail***  
***shareholderproposals@sec.gov***

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: The J. M. Smucker Company — Omission of Shareholder Proposal Submitted by Investor Voice on behalf of Eric and Emily Johnson — Securities Exchange Act of 1934, as amended — Rule 14a-8

Ladies and Gentlemen:

On behalf of The J. M. Smucker Company, an Ohio corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we respectfully request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, the shareholder proposal (the “Proposal”) submitted by Investor Voice, on behalf of Eric and Emily Johnson (the “Proponent”), received on March 9, 2012, may properly be omitted from the proxy materials (the “Proxy Materials”) to be distributed by the Company in connection with its 2012 annual meeting of shareholders (the “2012 Annual Meeting”).

The Proposal (a copy of which, together with its accompanying supporting statement, is attached hereto as Exhibit A) reads as follows:

“RESOLVED: Shareholders of the J.M. Smucker Company (“Company” or “Smucker’s”) hereby ask the Board to amend the Company’s governing documents to provide that all matters presented to shareholders shall be decided by a majority of the shares voted FOR and AGAINST an item (or, “withheld” in the case of board elections). This policy shall apply to all matters unless shareholders expressly approve a higher threshold for specific types of items.”

Pursuant to Rule 14a-8(j), we have enclosed the Proposal and provided the following explanation of the grounds upon which the Company deems omission of the Proposal to be proper. Furthermore, pursuant to Rule 14a-8(j), a copy of this letter is being sent to notify the Proponent of the Company's intention to omit the Proposal from its Proxy Materials.

**I. The Proposal can be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(2) because, if implemented, it would violate Ohio corporate law.**

Rule 14a-8(i)(2) permits exclusion of a proposal if its implementation would "cause the company to violate any state, federal, or foreign law to which it is subject." The Company is an Ohio corporation governed by, among other things, the Ohio Revised Code (the "ORC"). The Proposal asks the Company's Board of Directors to take steps so that all matters presented to shareholders be decided by a simple majority of shares voted for and against each matter (or withheld, in the case of director elections). However, Ohio corporate law does not permit the vote formulation requested by the Proponent. None of the matters as to which shareholder approval is required under the ORC is permitted to be approved by a majority of the shares voted for or against.<sup>1</sup> In fact, most require the affirmative vote of either two-thirds or a majority of the voting power of the corporation (or a particular class of shares), and corporations lack the authority to reduce any statutorily mandated voting threshold below a majority of the voting power of the corporation (or a particular class of shares).

The ORC specifies a number of corporate actions as to which shareholder approval is required, and sets forth the vote required for shareholders to approve those corporate actions, including a number of actions that *require the affirmative vote of shares representing at least two-thirds of the voting power of the corporation*. For example, a super-majority vote is required by the following ORC sections:

- Ohio Rev. Code Ann. § 1701.71(A)(1) (amendment of the Company's Amended Articles of Incorporation);
- Ohio Rev. Code Ann. § 1701.31(E) (reduction or elimination of stated capital);
- Ohio Rev. Code Ann. § 1701.32(G) (application of capital surplus to dividend payments);

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<sup>1</sup> The lowest shareholder vote requirement set forth in the ORC relates to the vote required to determine the number of directors, and even that exceeds the standard contained in the Proposal. Ohio Rev. Code Ann. § 1701.56(A)(2) provides that if the articles of incorporation or code of regulations do not fix the number of directors or otherwise provide the manner in which such number may be fixed or changed by the shareholders, the shareholders may set the number of directors by the affirmative vote of the holders of a majority of the shares which are represented and entitled to vote (but not votes cast) at a meeting at which a quorum is present.

- Ohio Rev. Code Ann. § 1701.35(A)(9) (authorization of share repurchases);
- Ohio Rev. Code Ann. § 1701.76(A)(1)(b) (authorization of sales or other dispositions of all or substantially all of the Company's assets);
- Ohio Rev. Code Ann. § 1701.78(F) (adoption of a merger agreement);
- Ohio Rev. Code Ann. § 1701.83 (authorization of a combination or majority share acquisition);
- Ohio Rev. Code Ann. § 1701.86 (authorization of the voluntary dissolution of the Company);
- Ohio Rev. Code Ann. § 1701.15(A)(7) (release of pre-emptive rights); and
- Ohio Rev. Code Ann. § 1701.33(D) (authorization of dividend to be paid in shares of another class).

While the super-majority vote requirement set forth in each of these provisions may be changed by a corporation's articles of incorporation, ***under no circumstances may the requisite shareholder vote for approval of such matters be reduced to less than a majority of the voting power of the corporation.***<sup>2</sup> In addition, other statutory provisions<sup>3</sup>, such as Ohio Rev. Code Ann. § 1701.11(A)(1)(b) which governs amendments to the Company's Amended Regulations, ***require the affirmative vote of at least a majority of the voting power of the corporation.***

The various provisions of the ORC referenced above require actions to be taken by shares representing at least a majority of the total voting power of the Company, but the Proponent's standard would look only to those shares that have been voted on a particular matter. As a result, the Proponent's voting standard of a majority of votes cast would be insufficient to meet the minimum vote requirement applicable to those matters required to be submitted to shareholders

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<sup>2</sup> See Ohio Rev. Code Ann. § 1701.52 ("Notwithstanding any provision in sections 1701.01 to 1701.98, inclusive, of the Revised Code requiring for any purpose the vote, consent, waiver, or release of the holders of a designated proportion (but less than all) of the shares of any particular class or of each class, the articles may provide that for such purpose the vote, consent, waiver, or release of the holders of a greater or lesser proportion of the shares of such particular class or of each class shall be required, but ***unless otherwise expressly permitted by such sections such proportion shall be not less than a majority.***")

<sup>3</sup> See also Ohio Rev. Code Ann. § 1701.58(C) (removal of directors); Ohio Rev. Code Ann. § 1701.60(A)(1)(b) (approval of contracts or transactions with directors or officers); Ohio Rev. Code Ann. § 1701.831(E)(1) (authorization of control share acquisitions); and Ohio Rev. Code Ann. § 1701.911(B) (removal of provisional directors).

under the ORC. To that extent, the Proposal would violate Ohio law, and the Company would lack the power and authority to implement the Proposal.

While matters requiring shareholder action other than those enumerated in the ORC could be authorized by a majority of the shares voted for and against if the articles of incorporation or code of regulations so provided, the Proposal is not limited in its scope to those matters, nor does it provide an exception to the proposed voting standard that would apply in situations where a higher percentage vote is required by law. This distinguishes the Proposal from other voting proposals as to which the Commission has declined to take a no-action position. For example, in *First Energy Corp.* (March 13, 2012), the shareholder submitted a proposal that, similar to the one submitted by the Proponent, called for all matters submitted to shareholders to be decided by “a majority of the votes cast for and against.” However, recognizing that such a vote might not be permissible under Ohio law in all circumstances, the shareholder added the following clause at the end of his proposal: “. . . or a simple majority in compliance with applicable laws.”

In contrast, the Proposal contains no such qualification on its scope. Instead, it provides that the voting standard “shall apply to all matters unless shareholders expressly approve a higher threshold for specific types of items.” As noted above, a variety of matters enumerated in the ORC require approval by shares representing at least a majority of the voting power of the corporation. As to these matters, shareholders lack the legal authority to decide whether this higher threshold will apply; it will apply regardless of whether or not they prefer a lower threshold.

In essence, the Proposal mandates a majority of the votes cast standard that would apply to all matters submitted to shareholders, even those for which a higher voting standard is required by Ohio law, unless shareholders specifically decided otherwise. Since the shareholders lack the authority to decide whether or not to comply with a statutorily mandated minimum voting threshold, we are of the opinion that the Proposal, if implemented, would violate Ohio law, and may be excluded from its Proxy Materials under Rule 14a-8(i)(2).

**II. The Proposal can be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(6) because the Company does not have the power and authority to implement the Proposal as submitted.**

Rule 14a-8(i)(6) permits a company to exclude a proposal from a proxy statement if the company would lack the power or authority to implement it. As set forth in Section I of this letter, the Company lacks the power to implement the Proposal because the Proposal violates Ohio corporate law. The Proponent’s voting standard could result in a matter submitted for a shareholder vote being approved by less than the minimum shareholder vote required by the ORC.

The Staff has repeatedly recognized that companies do not have the power and authority to implement proposals that violate state law. See, for example, *Abbott Laboratories* (February 2, 2011) (proposal requesting compliance with applicable law voting standard would violate Illinois law); *Schering-Plough Corp.* (March 27, 2008) (proposal that the board adopt cumulative voting would violate New Jersey law); *Bank of America Corp.* (February 26, 2008) (proposal requesting the board to disclose fees paid to a compensation consultant that was subject to a confidentiality agreement would violate North Carolina law); *PG&E Corp.* (February 25, 2008) (proposal that the board adopt cumulative voting would violate California law); *The Boeing Company* (February 19, 2008) (proposal that the board amend the governing documents to remove restriction on the shareholder right to act by written consent would violate Cayman Islands law); *Xerox Corporation* (February 23, 2004) (proposal for board to amend the certificate of incorporation to reinstate the rights of shareholders to take action by written consent and to call special meetings would violate New York law); and *CoBancorp Inc.* (February 22, 1996) (proposal that the board rescind an executive stock option plan would violate Ohio law).

Therefore, it would be inappropriate for the Company to submit a matter to its shareholders for a vote if the matter, if approved, would violate Ohio corporate law and would be beyond the Company's power and authority to implement. Accordingly, the Company believes that the Proposal is excludable from the Proxy Materials under Rule 14a-8(i)(6).

**III. The Proposal can be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(1) because it is an improper matter for shareholder action under Ohio corporate law.**

Rule 14a-8(i)(1) permits exclusion of a proposal if it is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's incorporation. As set forth in Sections I and II of this letter, the Proposal, if adopted, would cause the Company to violate Ohio corporate law and therefore cannot be implemented. Accordingly, the Company believes that the Proposal is an improper subject for shareholder action under the laws of Ohio and is therefore excludable from the Proxy Materials under Rule 14a-8(i)(1).

**IV. Conclusion**

For the reasons set forth above, the Company respectfully requests that the Staff indicate that it will not recommend enforcement action to the Commission if the Company omits the Proposal from the Proxy Materials for the Company's 2012 Annual Meeting.

We are admitted to the practice of law only in the State of Ohio, and the opinion expressed above is limited to the laws of the State of Ohio. We express no opinion as to the effect or applicability of the laws of any other jurisdiction. Our opinion is being furnished solely for the benefit of the Company in connection with the matters addressed in this letter, and may not be used for any other purpose without our prior written consent.

Calfee, Halter & Griswold LLP

U.S. Securities and Exchange Commission

April 12, 2012

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Should you require further information or if there are any questions concerning the matters set forth above, please do not hesitate to contact John Jenkins ((216) 622-8507; [jjenkins@calfee.com](mailto:jjenkins@calfee.com)) or Greg Harvey ((216) 622-8253; [gharvey@calfee.com](mailto:gharvey@calfee.com)) of this firm.

Very truly yours,

A handwritten signature in cursive script that reads "Calfee, Halter & Griswold LLP".

CALFEE, HALTER & GRISWOLD LLP

cc: Jeannette Knudsen  
Peter Farah

**Exhibit A**



2206 Queen Anne Ave N  
Suite 402  
Seattle, WA 98109  
(206) 522-1944

VIA FACSIMILE (330) 684-3026  
AND ELECTRONIC DELIVERY

Friday, March 9, 2012

Ms. Jeannette Knudsen  
Vice President, General Counsel and Corporate Secretary  
The J.M. Smucker Company  
One Strawberry Lane  
Orrville, OH 44667

**Re: Shareholder Proposal on Bylaw Change in Regard to Vote-Counting**

Investor Voice, on behalf of investors, monitors the financial and social implications of the policies and practices of companies. In so doing, we seek to create higher levels of economic, social, and environmental wellbeing – to the benefit of both investors and the companies they own.

On 8/8/11, because we observed four distinct vote-counting formulas being used in the 2011 Company proxy, we wrote to you (Exhibit D) seeking clarification and explanation of the confusing variety of formulas, and to inquire about the seeming inappropriateness of certain formulas under current law.

Peter Farah contacted us on 8/9/11 and left a voice-mail message (Exhibit E), following which we had a conference call with him on 9/2/11. In that call, Peter was not able to clearly articulate a rationale for the variety of vote-counting formulas (though noted that they had been put in place prior to his tenure with the company). Peter said he would take the matter up with others and be back in touch with us.

That same day, on 9/2/11, we e-mailed Peter (Exhibit F) the text (along with a URL to the SEC's website for the language) of what Plum Creek adopted in their company bylaws and printed in their proxy. In response to a shareholder proposal that we had filed Plum Creek adopted this very clear, consistent, and uniform-across-the-board vote-counting standard.

In contrast, Smucker's 2011 proxy oddly described four different vote-counting formulas – referencing FOR, AGAINST, ABSTAIN, and BROKER NON-VOTES being counted in different ways in different places (even describing the counting of broker non-votes in instances when it might not be legal to do so).

On 9/12/11 we again e-mailed Peter Farah (Exhibit G) requesting a follow-up conversation. We have not received a response to any of the requests for additional clarification or discussion.

Therefore, on behalf of Eric & Emily Johnson, please find the enclosed resolution (Exhibit A) that we submit for consideration and action by stockholders at the next annual meeting, and for inclusion in the proxy statement in accordance with Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. We would appreciate your indicating in the proxy statement that *Investor Voice* is the sponsor of this resolution.

The Johnson's are the beneficial owners of more than 25 shares of common stock entitled to be voted at the next stockholder meeting (supporting documentation is available upon request), which have been continuously held since early 2009. Attached is a Letter of Appointment (Exhibit B) as well as a Letter of Intent (Exhibit C) to hold a requisite quantity of shares in the Company through the date of the upcoming annual meeting of stockholders. In accordance with SEC rules, a representative of the filers will attend the stockholders meeting to move the resolution, if required.

We welcome a continuation of the discussion of our Company's plans and intentions in this area, and believe meaningful steps would not only allow us to withdraw the proposal, they would enhance both our company's financial value and reputation.

Thank you for your consideration of this matter.

Sincerely,



Bruce T. Herbert | AIF  
Chief Executive | ACCREDITED INVESTMENT FIDUCIARY

cc: Eric & Emily Johnson  
Interfaith Center on Corporate Responsibility (ICCR)

enc: Exhibits A - G

## Exhibit A

Smucker's 2012 – Fair Vote-Counting  
(Corner-note for identification only, NOT intended for publication)

**RESOLVED:** Shareholders of the J.M. Smucker Company ("Company" or "Smucker's") hereby ask the Board to amend the Company's governing documents to provide that all matters presented to shareholders shall be decided by a majority of the shares voted FOR and AGAINST an item (or, "withheld" in the case of board elections). This policy shall apply to all matters unless shareholders expressly approve a higher threshold for specific types of items.

### SUPPORTING STATEMENT:

Smucker's is regulated by the Securities and Exchange Commission (SEC). The SEC dictates a vote-counting standard for establishing eligibility for resubmission of shareholder-sponsored proposals. It is the votes cast FOR, divided by the FOR plus AGAINST votes.

Smucker's does not follow the SEC standard, but instead determines results by the votes cast FOR a proposal, divided by the FOR votes, AGAINST votes, and ABSTAIN votes.

This variant method makes Smucker's an outlier among its peers in the S&P 500, which generally follow (with limited exceptions) the SEC standard.

Using ABSTAIN votes as Smucker's does counters a hallmark of democratic voting – honoring the intention of the voter.

Smucker's policy states (for shareholder-sponsored proposals) that abstentions "will have the same effect as votes against this proposal." However, thoughtful voters who choose to abstain should not have their choices universally switched to management's benefit.

### THREE CONSIDERATIONS

[1] Abstaining voters consciously act to abstain – to have their vote noted, but not counted. Yet, Smucker's unilaterally counts all abstentions in favor of management (irrespective of the voter's intent).

[2] Abstaining voters consciously choose not to support management's recommendation against a shareholder-sponsored item. However, again, Smucker's unilaterally counts all abstentions in favor of management (irrespective of the voter's actual intent).

[3] Further, we observe that Smucker's embraces the SEC vote-counting standard (that this proposal requests) for director elections, which excludes abstentions, saying they will "have no effect on the vote." This boosts the vote-count for management-nominated directors.

However, Smucker's does not follow the SEC standard for shareholder-sponsored proposals. Instead, the company switches to a more stringent method that includes abstentions (again, to the benefit of management).

### IN CLOSING

Except to favor management in each instance, these practices are arbitrary, fail to respect voter intent, and run counter to core principles of democracy.

We believe a system that is internally inconsistent harms shareholder best-interest, and instead empowers management at the expense of Smucker's true owners.

Smucker's tacitly acknowledges the inequity of these practices when it applies the SEC standard to board elections, but applies more stringent requirements to shareholder-sponsored proposals.

This proposal calls for democratic, fair, and consistent use of the SEC standard across-the-board, while allowing flexibility for the adoption of higher thresholds for extraordinary items.

**Therefore, please vote FOR this common-sense proposal** that embraces corporate governance best-practices to the benefit of company and owners alike.

**Exhibit B**

Friday, January 13, 2012

**Re: Letter of Appointment**

To Whom It May Concern:

By this letter I/we hereby authorize and appoint Investor Voice and/or Newground Social Investment (and/or any of its agents), to represent me/us in regard to the securities that I/we hold in all matters relating to shareholder engagement – including (but not limited to) proxy voting; the submission, negotiation, and withdrawal of shareholder proposals; and attending and presenting at shareholder meetings.

This authorization and appointment is intended to be forward-looking as well as retroactive.

Sincerely,



signature



signature

Eric W. Johnson  
Emily K. Johnson

c/o Bruce T. Herbert  
2206 Queen Anne Ave N, Suite 402  
Seattle, WA 98109

Exhibit C

Friday, January 13, 2012

**Re: Intent to Hold Shares**

To Whom It May Concern:

Being cognizant of the rules and requirements established by the Securities and Exchange Commission in regard to the filing of shareholder proposals (under Rule 14a-8), I/we hereby give notice – in full compliance with SEC rules – of my/our intent to hold the requisite value of shares from the time of filing a given shareholder proposal through the time of the next annual meeting of stockholders.

This Notice of Intent applies to any company in which I/we hold shares and have filed a shareholder proposal, and is intended to be forward-looking as well as retroactive.

Sincerely,



signature



signature

Eric W. Johnson  
Emily K. Johnson

c/o Bruce T. Herbert  
2206 Queen Annie Ave N, Suite 402  
Seattle, WA 98109

**Exhibit D**



2206 Queen Anne Ave N, Suite 402  
Seattle, Washington 98109

www.newground.net  
(206) 522-1944

Monday, August 8, 2011

Ms. Jeannette Knudsen  
Vice President, General Counsel and Corporate Secretary  
The J.M. Smucker Company  
One Strawberry Lane  
Orrville, OH 44667

**Re: Vote-Counting Practices, Error in Proxy?**

Dear Ms. Knudsen:

Newground Social Investment is a registered investment advisor who, on behalf of its clients, monitors the financial and social implications of the policies and practices of companies in which we invest. In so doing, we seek to create higher levels of economic, social, and environmental wellbeing – to the benefit both investors and the companies they own.

We write today regarding our Company's vote-counting practices, to seek clarification regarding the 2011 proxy.

In reviewing the proxy statement for the 2011 annual meeting of shareholders, we see on page 63 a shareholder proposal put forward by Trillium Asset Management Corporation. We also find, on pages 3 and 4 of the proxy under the heading "What vote is required to approve each proposal?" the following language: "Abstentions and broker non-votes will have the same effect as a vote against this proposal."

**We have two concerns regarding this language:**

[1] Under current rules brokers may not vote at their discretion on non-routine matters, and a shareholder proposal is most clearly a non-routine matter. As you know, this was established on July 1, 2009 when the Securities and Exchange Commission approved amendments to the New York Stock Exchange (NYSE) Rule 452.

So it appears that the Smucker's statement is in error – indicating an intention to engage in a prohibited practice.

We assume that this is merely an oversight (perhaps a holdover of language from before the rule changed), but it is seriously misleading nonetheless, and must be remedied. Our question to the company is how would you propose to do so?

It seems that any reasonable remedy would need to acknowledge the fact that shareowners have been misled by the information that their votes will be diluted (perhaps significantly) by effectively including broker non-votes on the AGAINST side of the ledger.

Please advise what remedy our company proposes for this unfortunate circumstance.

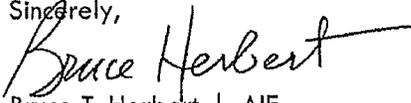
[2] Our second concern does not involve an error in the proxy. Instead, it is to question why a voter is given the choice to mark ABSTAIN on a proposal, when the actual effect of such a choice, according to the proxy, is to effectively change the shareholder's vote from ABSTAIN to AGAINST?

Newground has discussed this issue with other companies, and companies have changed their bylaws regarding vote-counting practices so as to better honor voter intent.

**In closing**

We look forward to hearing from you quickly as to how you plan to inform shareholders of the error referenced in item #1 above, and how you plan to ameliorate the conditions that this situation creates. Thank you.

Sincerely,



Bruce T. Herbert | AIF

Chief Executive | ACCREDITED INVESTMENT FIDUCIARY

Exhibit E

**J.M. Smucker Company (SJM)**  
**Transcript of Telephone Voice-mail Message**

Message left by: Peter Farah  
Message recorded: 8/9/11 @ 1:23pm  
From phone number: 330-682-3000

"Hi Bruce, this is Peter Farah calling from the JM Smucker Company. I was just calling in response to a letter that you sent to our General Counsel.

"If you can give me a call when you get a chance, I just want to talk to you about the voting standard in our proxy. As you may know, if you go and look at our regulations, we actually have a kind of a unique voting standard -- that the vote required is actually a majority of the total voting power -- so 51% of shareholders actually need to vote to approve certain matters.

"So you'll see that on not just the shareholder proposals, but on the other proposals as well, other than the election of directors.

"So, the reason that the broker non-votes and abstentions count against, it's because you really, you need that 51%. So it's not necessarily that they count against, it's that they don't count towards the 51%, so in effect they count against.

"Hopefully that's clear.

"If you can give me a call, we can talk about it some more. My number is 330-684-3864. Thanks a lot, talk to you soon."

~ ~ ~

**Exhibit F**

**Main Identity**

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**From:** "Bruce Herbert (team)" <bh@newground.net>  
**To:** "Peter Farah" <Peter.Farah@jmsmucker.com>  
**Cc:** "NSI Team" <team@newground.net>  
**Sent:** Friday, September 02, 2011 2:00 PM  
**Subject:** SJM. Vote-Counting Material from Plum Creek.

Seattle

Friday 9/2/2011

Dear Peter,

Larry Dohrs joins me in thanking you for our phone conversation today regarding the various vote-counting methodologies at use in the Smucker's proxy.

In follow-up, we wanted to provide you the language that Plum Creek (the nation's largest private landholder) included in this year's proxy. It describes how the Board amended the company Bylaws in response to our shareholder proposal, following which the proposal was withdrawn.

Today, Plum Creek utilizes a uniform vote-counting formula across-the-board for both company-sponsored as well as shareholder-sponsored resolutions (the sole exception would be in the case of a contested director election).

It is the same straightforward, fair, and consistent formula that is required by the SEC when determining resubmission eligibility, which is:

**FOR**

-----  
**FOR + AGAINST**

It is the consistent, fair, and straightforward formula we would like to see the Smucker's board adopt.

We look forward to continuing the conversation after you've had a chance to chat with the corporate Secretary.

Sincerely, . . . Bruce Herbert

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[The text below is drawn directly from Plum Creek's definitive proxy statement, on file with the Securities and Exchange Commission.]

**Voting Standard for Other Items of Business**

The Company Bylaws specifies the vote requirement for other items of business presented to a vote of stockholders in Section 9 of Article II. This section of the Company Bylaws does not govern the election of directors (discussed above) or items of business with a legally specified vote requirement.

Ms. Nancy Herbert, represented by Investor Voice, working on behalf of Newground Social

Investment, submitted a stockholder proposal for the Annual Meeting requesting that the Board change the voting standard for items of business presented to a vote of stockholders to eliminate the effect of abstentions on the vote outcome. The Board carefully considered the matter and approved an amendment to the Company Bylaws, effective February 8, 2011, to change the applicable vote requirement. Ms. Herbert then withdrew her proposal.

Previously, approval of an item of business required the affirmative vote of a majority of shares present and entitled to vote on the specific item in question. Votes to abstain were considered in the vote tally because they represented shares "entitled to vote" on the item in question (an abstention vote is an actual vote on an item of business). Therefore, under the prior standard, votes to abstain had the same effect as a vote "against" the item of business.

Under the new voting standard, which parallels the vote requirement for uncontested director elections (discussed above), an item of business shall be approved by the stockholders if the votes cast in favor of such item exceed the votes cast against such item, with abstentions having no effect on the vote outcome. A copy of the amendment approved by the Board is attached to this Proxy Statement as Appendix B.

url: <http://www.sec.gov/Archives/edgar/data/849213/000119312511077912/ddef14a.htm>

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**PS:** If you missed it live, please listen to the **Public Radio feature on Newground's** transformational shareholder engagement with **McDonald's**.

The story is at: [www.kuow.org/program.php?id=22354](http://www.kuow.org/program.php?id=22354) (or on the [www.Newground.net](http://www.Newground.net) website)

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Bruce T. Herbert | AIF  
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Newground Social Investment  
(206) 522-1944

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[www.newground.net](http://www.newground.net)

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**Exhibit G**

**Main Identity**

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**From:** "Bruce Herbert (team)" <bh@newground.net>  
**To:** "Peter Farah" <Peter.Farah@jmsmucker.com>  
**Cc:** "NSI Team" <team@newground.net>  
**Sent:** Monday, September 12, 2011 3:04 PM  
**Subject:** Re: SJM. Vote-Counting Material from Plum Creek.

Seattle

Monday 9/12/2011

Dear Peter,

Thanks again for the conversation on Friday the 2nd.

You stated an intention to speak with several others about the vote-counting issue, and we hope that you have shared with them the information from Plum Creek Timber regarding the Bylaw changes it made in response to shareholder concerns.

In talking, we agreed that a roughly two-week time frame might be appropriate for revisiting the topic, so we'd like to set up a conversation on the afternoon of Friday, September 16th.

We are available from 1-3pm Pacific (4-6pm Eastern).

Please let us know what time within that window works for you. Thanks.

All the best, . . . Bruce

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----- Original Message -----

**From:** Bruce Herbert (team)  
**To:** Peter Farah  
**Cc:** NSI Team  
**Sent:** Friday, September 02, 2011 3:00 PM  
**Subject:** SJM. Vote-Counting Material from Plum Creek.

Seattle

Friday 9/2/2011

Dear Peter,

Larry Dohrs joins me in thanking you for our phone conversation today regarding the various vote-counting methodologies at use in the Smucker's proxy.

In follow-up, we wanted to provide you the language that Plum Creek (the nation's largest private landholder) included in this year's proxy. It describes how the Board amended the

company Bylaws in response to our shareholder proposal, following which the proposal was withdrawn.

Today, Plum Creek utilizes a uniform vote-counting formula across-the-board for both company-sponsored as well as shareholder-sponsored resolutions (the sole exception would be in the case of a contested director election).

It is the same straightforward, fair, and consistent formula that is required by the SEC when determining resubmission eligibility, which is:

FOR  
-----  
FOR + AGAINST

It is the consistent, fair, and straightforward formula we would like to see the Smucker's board adopt.

We look forward to continuing the conversation after you've had a chance to chat with the corporate Secretary.

Sincerely,                      . . . Bruce Herbert

\_\_\_\_\_  
[The text below is drawn directly from Plum Creek's definitive proxy statement, on file with the Securities and Exchange Commission.]

#### **Voting Standard for Other Items of Business**

The Company Bylaws specifies the vote requirement for other items of business presented to a vote of stockholders in Section 9 of Article II. This section of the Company Bylaws does not govern the election of directors (discussed above) or items of business with a legally specified vote requirement.

Ms. Nancy Herbert, represented by Investor Voice, working on behalf of Newground Social Investment, submitted a stockholder proposal for the Annual Meeting requesting that the Board change the voting standard for items of business presented to a vote of stockholders to eliminate the effect of abstentions on the vote outcome. The Board carefully considered the matter and approved an amendment to the Company Bylaws, effective February 8, 2011, to change the applicable vote requirement. Ms. Herbert then withdrew her proposal.

Previously, approval of an item of business required the affirmative vote of a majority of shares present and entitled to vote on the specific item in question. Votes to abstain were considered in the vote tally because they represented shares "entitled to vote" on the item in question (an abstention vote is an actual vote on an item of business). Therefore, under the prior standard, votes to abstain had the same effect as a vote "against" the item of business.

Under the new voting standard, which parallels the vote requirement for uncontested director elections (discussed above), an item of business shall be approved by the stockholders if the votes cast in favor of such item exceed the votes cast against such item, with abstentions having no effect on the vote outcome. A copy of the amendment approved by the Board is attached to this Proxy Statement as Appendix B.

url: <http://www.sec.gov/Archives/edgar/data/849213/000119312511077912/ddef14a.htm>

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