

# MAYER • BROWN

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December 30, 2014

## VIA EMAIL

[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

### **Re: YUM! Brands, Inc. — Shareholder Proposal Submitted by Marco Consulting Group**

Ladies and Gentlemen:

We are writing on behalf of our client, YUM! Brands, Inc., a North Carolina corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to inform the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that, pursuant to Rule 14a-8(i)(9), the Company plans to omit from its proxy statement and form of proxy (collectively, the “2015 Proxy Materials”) the shareholder proposal and the statements in support thereof (the “Proponent’s Proposal”) submitted by the Marco Consulting Group Trust I (the “Proponent”). A copy of the Proponent’s Proposal is attached hereto as Exhibit A. The Company respectfully requests that the Staff concur with the Company’s view that the Proponent’s Proposal may properly be excluded from the Company’s 2015 Proxy Materials pursuant to Rule 14a-8(i)(9).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its attachments are being emailed to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j), copies of this letter and its attachments are being sent simultaneously to the Proponent as notice of the Company’s intent to omit the Proponent’s Proposal from the 2015 Proxy Materials.

### **THE PROPONENT’S PROPOSAL**

The Proponent’s Proposal requests that the Company’s Board of Directors (the “Board”) adopt, and seek shareholder approval for, amendments to the Company’s Amended and Restated Bylaws (the “Bylaws”) to implement proxy access for director nominations. Under the Proponent’s Proposal, any shareholder or group of shareholders that collectively have beneficially owned at least three percent (3%) of the Company’s outstanding common stock continuously for at least three years would be permitted to nominate candidates for election to the Board, and the Company would be required to list such nominees with the Board’s nominees

in the Company's proxy statement. Under the Proponent's Proposal, shareholders would be permitted to nominate up to one-quarter of the directors to be elected to the Board at the relevant shareholder meeting. A copy of the Proponent's Proposal is attached to this letter as Exhibit A.

### **BASIS FOR EXCLUSION**

We believe that the Proponent's Proposal may properly be excluded from the 2015 Proxy Materials pursuant to Rule 14a-8(i)(9) because the Proponent's Proposal directly conflicts with a proposal to be submitted by the Company in the 2015 Proxy Materials.

### **THE COMPANY'S PROPOSAL**

The Board has determined to submit a proposal to shareholders at the 2015 Annual Meeting with respect to proxy access for director nominations (the "Company Proposal"). Specifically, the Board intends to seek shareholder approval of amendments to the Bylaws to permit any single shareholder (but not a group of shareholders) that has beneficially owned at least five percent (5%) of the Company's outstanding common stock continuously for at least four (4) years to nominate candidates for election to the Board and require the Company to list such nominees with the Board's nominees in the Company's proxy statement. Under the Company Proposal, the shareholder would be permitted to nominate the greater of (x) one (1) director and (y) ten percent (10%) of the Board, rounding down to the nearest whole number of directors to be elected to the Board at the relevant shareholder meeting. The specific text of the proposed Bylaw amendments implementing the Company Proposal will be included in the 2015 Proxy Materials.

### **ANALYSIS**

#### **The Proponent's Proposal May Be Excluded Under Rule 14a-8(i)(9) Because It Directly Conflicts with a Proposal to Be Submitted by the Company in the 2015 Proxy Materials.**

The Company may exclude the Proponent's Proposal under Rule 14a-8(i)(9) because the Proposal directly conflicts with a proposal to be submitted by the Company in the 2015 Proxy Materials. A shareholder proposal may be excluded under Rule 14a-8(i)(9) if "the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." The Commission has stated that a company's proposal need not be "identical in scope or focus for the exclusion to be available." See Exchange Act Release No. 40018, at n. 27 (May 21, 1998). Accordingly, a company may exclude a shareholder-sponsored proposal where it seeks to address a similar right or matter as is covered by a company-sponsored proposal if the terms of the two proposals are different or conflicting (*e.g.*, the ownership percentage threshold of the shareholder-sponsored proposal is different from the ownership percentage threshold included in the company-sponsored proposal). The Company Proposal seeks to address the same right as the Proponent's Proposal (the right of the Company's shareholders to nominate candidates for the Board to be included in the Company's proxy statement). The Company Proposal provides that a single shareholder (rather than a group of shareholders, as set forth in the Proponent's Proposal) owning 5% or more of the Company's shares for four years (rather than 3% of the Company's shares for three years, as was proposed by the Proponent) could nominate a candidate for election to the Board to be included in the Company's proxy statement. Moreover, the Company Proposal provides that shareholder would be permitted to nominate the

greater of (x) one director and (y) 10% of the Board, rounding down to the nearest whole number of directors to be elected to the Board at the relevant shareholder meeting, rather than be permitted to nominate up to one-quarter of the directors to be elected to the Board at the relevant shareholder meeting, as was proposed by the Proponent. Because (i) the number of shareholders able to nominate a candidate, (ii) the required share ownership percentage, (iii) the number of years that the required shares must have been owned and (iv) the number of directors that can be nominated cannot be set at different levels, the Proponent's Proposal directly conflicts with the Company Proposal. Submitting the Proponent's Proposal and the Company Proposal at the 2015 Annual Meeting would present alternative and conflicting decisions for the Company's shareholders that would likely result in inconsistent and ambiguous results. The Staff has recently granted no action relief under Rule 14a-8(i)(9) in nearly identical circumstances. *See Whole Foods Market, Inc.* (December 1, 2014) (concurring with the exclusion of a shareholder proposal seeking proxy access for director nominations under Rule 14a-8(i)(9) where the company proposal provided that a single shareholder (rather than a group of shareholders, as set forth in the proponent's proposal) owning 9% or more of the company's shares for five years (rather than 3% of the company's shares for three years, as was proposed by the proponent) could nominate a candidate for election to the board to be included in the company's proxy statement, and where the company proposal provided that a shareholder would be permitted to nominate the greater of (x) one director or (y) 10% of the Board, rounding down to the nearest whole number of board seats, rather than be permitted to nominate up to 20% of the board or not less than two directors if the board size was reduced, as was proposed by the proponent).

Accordingly, the Company requests that the Staff concur that the Proponent's Proposal may properly be excluded from the 2015 Proxy Materials because, under Rule 14a-8(i)(9), it conflicts with a proposal to be submitted by the Company in the 2015 Proxy Materials.

### CONCLUSION

The Company respectfully requests that the Staff concur with the Company's view that it may properly omit the Proponent's Proposal from the Proxy Materials. Should the Staff disagree with the Company's conclusions regarding the omission of the Proponent's Proposal, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of your response.

If you should have any questions or require any further information regarding this matter, please do not hesitate to contact me at (312) 701-7363 or by email at [dschuette@mayerbrown.com](mailto:dschuette@mayerbrown.com).

Sincerely,



David A. Schuette

Cc: John Daly, Vice President and Associate General Counsel (YUM! Brands, Inc.)  
Greg A. Kinczewski, Vice President/Senior Counsel (Marco Consulting Group Trust I)

**Exhibit A**  
**PROPONENT'S PROPOSAL**

See attached.



November 19, 2014

BY OVERNIGHT DELIVERY AND FAX: 502-874-8016

YUM! Brands, Inc.  
1441 Gardiner Lane  
Louisville, Kentucky 40213  
Attention: Corporate Secretary, Christian Campbell

RE: Marco Consulting Group Trust I

Dear Mr. Campbell:


As the duly authorized representative of the Marco Consulting Group Trust I (the "Trust"), I write to give notice that pursuant to the 2014 proxy statement of YUM! Brands, Inc. (the "Company"), the Trust intends to present the attached proposal (the "Proposal") at the 2015 annual meeting of shareholders (the "Annual Meeting"). The Trust requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

A letter from the Trust's custodian documenting the Trust's continuous ownership of the requisite amount of the Company's stock for at least one year prior to the date of this letter is being sent under separate cover. The Trust also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting.

I represent that the Trust or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Trust has no "material interest" other than that believed to be shared by stockholders of the Company generally.

Please direct all questions or correspondence regarding the Proposal to me. My email is [kinczewski@marcoconsulting.com](mailto:kinczewski@marcoconsulting.com) and my direct line is 312-612-8452

Very Truly Yours,

  
Greg A. Kinczewski  
Vice President/Senior Counsel

Enclosure

RESOLVED: shareholders of Yum! Brands Inc. ("Yum!") ask the Board of Directors (the "Board") to adopt, and seek shareholder approval for, a "proxy access" bylaw (the "Bylaw"). The Bylaw shall require Yum! to include in its proxy materials provided to shareholders in connection with a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (both defined below) of any person ("Nominee") nominated for election to the Board by a shareholder or group of shareholders ("Nominator") that satisfies the requirements below and to allow shareholders to vote for the Nominee on Yum!'s proxy card.

The number of Nominees required to be included in proxy materials for a shareholder meeting shall not exceed one-quarter of the directors to be elected at that meeting. The Bylaw shall provide that a Nominator must:

- (a) have beneficially owned 3% or more of Yum!'s outstanding common stock continuously for at least three years on the date on which the nomination is submitted;
- (b) provide written notice received by the Secretary within the time period specified in the bylaws; such notice shall contain the information required to be disclosed about the Nominee and the Nominator by SEC rules in connection with a contested director election solicitation (with separate disclosure for each shareholder in a group) (all disclosure in this section is the "Disclosure"); and
- (c) execute an undertaking that it agrees to (i) assume all liability arising out of any violation of law or regulation in connection with the Nominator's communications with Yum!'s shareholders, including the Disclosure; (ii) to the extent it uses soliciting material other than Yum!'s proxy materials, comply with all laws and regulations relating thereto.

The Nominator may furnish a 500-word statement in support of the Nominee's election (the "Statement") for inclusion in the proxy statement. The Board shall adopt a procedure for timely resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the Bylaw and applicable SEC rules and the priority to be given in if the number of Nominees nominated exceeds the limit.

#### SUPPORTING STATEMENT

We believe that stockholders of U.S. public companies currently have no meaningful control over the director nomination and election process. In our view, access to the proxy for purposes of electing a director nominated by stockholders with a significant stake in Yum! is the most effective mechanism for ensuring accountability. We believe that greater accountability would benefit Yum!, where food safety concerns in China, a key market, have increased risks for investors.

We urge shareholders to vote for this proposal.