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December 6, 2017

**VIA E-MAIL: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

**Re: Bloomin' Brands, Inc.  
Stockholder Proposal of The Humane Society  
of the United States  
Securities Exchange Act of 1934 - Rule 14a-8**

Ladies and Gentlemen:

This letter is to inform you that our client, Bloomin' Brands, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the "2018 Proxy Materials") a stockholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from The Humane Society of the United States (the "Proponent").

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 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”) provide that a stockholder proponent is required to send the company 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 Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this 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**, that shareholders ask that Bloomin’ Brands adopt a policy, and amend other governing documents as necessary, to require that the Board’s Chair be held by an independent director, as defined in accordance with applicable requirements of The NYSE. This independence requirement shall apply prospectively, so as not to violate any contractual obligation at the time this resolution is adopted. Compliance with this policy is waived if no independent director is available and willing to serve as Chair. The policy should also specify how to select a new independent Chair if a current Chair ceases to be independent between annual shareholder meetings.

A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

### **BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite.

### **ANALYSIS**

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including [Rule] 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” The Staff has consistently taken the position that a stockholder proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite, and therefore misleading, if “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB 14B”). In Staff Legal Bulletin No. 14G (October 16, 2012) (“SLB 14G”), the Staff further explained that “[i]n evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement

and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.”

Consistent with these standards and long-standing Staff precedent, the Proposal is excludable as impermissibly vague and indefinite under Rule 14a-8(i)(3) because it relies solely on a reference to external requirements (the applicable requirements of the NYSE) for a central aspect of the proposal (the independence standard to be applied in this independent chair proposal) without providing any additional information within the Proposal or the Supporting Statement to define or explain those requirements. In considering a no-action request with respect to an independent chair proposal similar to the Proposal in *Chevron Corp.* (March 15, 2013), the Staff found that the definition of independent director is a “central aspect of the proposal” and concurred that the proposal’s reference to the standard of the New York Stock Exchange caused the proposal to be impermissibly vague and indefinite. Therefore, the Staff agreed that there was some basis to exclude the proposal under Rule 14a-8(i)(3). In reaching this conclusion, the Staff, after the citing the language from SLB 14G quoted above, noted that:

“[B]ecause the proposal does not provide information about what the New York Stock Exchange’s definition of “independent director” means, we believe shareholders would not be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”

There are numerous other examples where the Staff has concurred that there was some basis to exclude as impermissibly vague and indefinite pursuant to Rule 14a-8(i)(3) independent chair proposals referencing stock exchange independence standards without including in the proposal or supporting statement any additional information or explanation as to those standards or other standards to be applied. Many of these proposals were substantially similar to the Proposal in all relevant respects. *See, e.g., Wellpoint, Inc.* (February 24, 2012, reconsideration denied March 27, 2012), *The Proctor & Gamble Co.* (July 6, 2012, reconsideration denied Sept. 20, 2012), *The Clorox Co.* (August 13, 2012), *Comcast Corp.* (March 15, 2013) and *McKesson Corp.* (April 17, 2013, reconsideration denied May 31, 2013). The Staff has also consistently reached similar conclusions with respect to independent chair proposals referencing, but not describing, other external guidelines for a central aspect of the proposal. *See, e.g., Boeing Co.* (February 10, 2004) (the Staff concurred that the company could exclude a proposal pursuant to Rule 14a-8(i)(3) that sought a bylaw requiring the chairman of the company’s board of directors to be an independent director “according to the 2003 Council of Institutional Investors definition”) and *General Electric Co.* (January 15, 2015) (proposal referencing Staff Legal Bulletin 14C with respect to process to cure chairman’s non-independence excludable as vague and indefinite under Rule 14a-8(i)(3)).

The Proposal is clearly distinguishable from independent chair proposals that do not rely solely on external standards for the central aspect of the relevant independence standards, but that instead include some definition or other substantive description of the relevant standard within the proposal and supporting statement, whether alone or together with a reference to external standards such as stock exchange guidelines. *See, e.g., PepsiCo., Inc.* (February 2, 2012) (proposal requested

that the chair be independent in accordance with NYSE standards, and be someone who has not served as an executive officer of the company), *Boeing Co.* (February 26, 2015, reconsideration denied March 4, 2015) (proposal requested that chair be an independent director who is not a current or former employee and who has no nontrivial connections to the company other than the directorship) and *Wal-Mart Stores, Inc.* (March 20, 2015) (including a substantive definition of independence within the proposal). The Proposal is also clearly distinguishable from proposals that do not include or reference any independence standards at all, in which cases stockholders and companies could reasonably understand that stockholders were voting on a general concept of independence as opposed to a specified, external standard that is not defined or explained within the proposal or supporting statement. *See, e.g., Comcast Corp.* (February 8, 2016) and *Kohl's Corp.* (February 8, 2016) (in both cases, the Staff did not concur that the company could exclude an independent chair proposal as vague and indefinite when the proposal did not include or reference any independence standard).

Lastly, we note that the Company's common stock is not listed on the NYSE. Rather, it has been listed on the NASDAQ Global Select Market since the Company's initial public offering in 2012. Even if the Proposal had referenced NASDAQ's independence requirements instead of the NYSE's requirements, it would nonetheless be excludable under the Staff's SLB 14B and 14G positions quoted above and long-standing precedent because no additional information with respect to the central aspect of independence is provided within the four corners of the Proposal and Supporting Statement. However, we consider this worth noting because, even if the Staff were to depart from its historical approach and take into consideration information that might be included elsewhere in the proxy statement, the Company's stockholders would not find any references to the NYSE's independence standards and the Proposal would still be impermissibly vague and indefinite.

Accordingly, for the reasons set forth above, we believe that the Proposal is so vague and indefinite that it is excludable under Rule 14a-8(i)(3).

## CONCLUSION

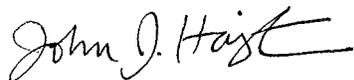
Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(3).

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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 [jharrington@bakerlaw.com](mailto:jharrington@bakerlaw.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (216) 861-6697.

Very truly yours,

A handwritten signature in black ink, appearing to read "John J. Harrington". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

John J. Harrington

Enclosure

cc: Joseph J. Kadow, Executive Vice President and Chief Legal Officer  
Kelly Lefferts, Group Vice President, US General Counsel and Secretary  
John M. Gherlein, Baker & Hostetler LLP  
Matthew Prescott, The Humane Society of the United States



**THE HUMANE SOCIETY  
OF THE UNITED STATES**

Eric L. Bernthal, Esq.  
*Chair of the Board*

Jennifer Leaning, M.D., S.M.H.  
*Vice Chair*

Kathleen M. Linehan, Esq.  
*Board Treasurer*

Wayne Pacelle  
*President & CEO*

Michael Markarian  
*Chief Program & Policy Officer*

Laura Maloney  
*Chief Operating Officer*

G. Thomas Waite III  
*Treasurer & CFO*

Andrew N. Rowan, Ph.D.  
*Chief International Officer  
& Chief Scientific Officer*

Roger A. Kindler  
*General Counsel  
Vice President & CLO*

Janet D. Frake  
*Secretary*

**DIRECTORS**

Jeffrey J. Arciniaco  
Eric L. Bernthal, Esq.  
Michael J. Blackwell, D.V.M., M.P.H.  
Jerry Cesak  
James Costos  
Anita W. Coupe, Esq.  
Neil B. Fang, Esq., CPA  
Jane Greenspun Gale  
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Joshua S. Reichert, Ph.D.  
Walter J. Stewart, Esq.  
Andrew Weinstein  
Jason Weiss  
David O. Wiebers, M.D.  
Lona Williams

October 23, 2017

Bloomin' Brands, Inc.  
Attn: Corporate Secretary  
2202 North West Shore Boulevard, Suite 500  
Tampa, Florida 33607

Via UPS and email: [CorporateSecretary@bloominbrands.com](mailto:CorporateSecretary@bloominbrands.com)

RE: Shareholder Proposal for Inclusion in the 2018 Proxy Materials

Dear Corporate Secretary,

Enclosed with this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2018 annual meeting and a letter from The Humane Society of the United States' (HSUS) brokerage firm, BNY Mellon, confirming ownership of Bloomin' Brands, Inc. common stock. The HSUS has continuously held at least \$2,000 in market value of common stock for the one-year period preceding and including the date of this letter and will hold at least this amount through and including the date of the 2018 shareholder meeting.

Please contact me if you need any further information or have any questions. If Bloomin' Brands, Inc. will attempt to exclude any portion of this proposal under Rule 14a-8, please advise me within 14 days of your receipt of this proposal. I can be reached at 240-620-4432 or [mprescott@humanesociety.org](mailto:mprescott@humanesociety.org). Thank you for your assistance.

Sincerely,

Matthew Prescott  
Senior Director, Food Policy



Frank J. Mangone  
Vice President  
Sr. Relationship Manager

BNY Mellon Wealth Management  
Family Office  
200 Park Avenue, Floor 8  
New York, NY 10016

T 212 922 7526 F 877 340 3476  
frank.mangone@bnymellon.com

October 23, 2017

Bloomin' Brands, Inc.  
Attn: Corporate Secretary  
2202 North West Shore Boulevard, Suite 500  
Tampa, Florida 33607

Dear Corporate Secretary,

BNY Mellon National Association, custodian for The Humane Society of the United States, verifies that The Humane Society of the United States has continuously held at least \$2,000.00 in market value of Bloomin' Brands, Inc. common stock for the one-year period preceding and including the date of this letter. Thank you.

Best Regards,

A handwritten signature in cursive script that reads 'Frank J. Mangone'.

Frank J. Mangone  
Vice President  
BNY Mellon Wealth Management  
212-922-7526

**RESOLVED**, that shareholders ask that Bloomin' Brands adopt a policy, and amend other governing documents as necessary, to require that the Board's Chair be held by an independent director, as defined in accordance with applicable requirements of The NYSE. This independence requirement shall apply prospectively, so as not to violate any contractual obligation at the time this resolution is adopted. Compliance with this policy is waived if no independent director is available and willing to serve as Chair. The policy should also specify how to select a new independent Chair if a current Chair ceases to be independent between annual shareholder meetings.

**SUPPORTING STATEMENT:**

Having a combined Board Chair/CEO role, as Bloomin' Brands does, represents risky governance:

1. The role of management is to run the company; and
2. the Board's role is to provide independent oversight of management; therefore
3. there is a potential conflict of interest and lack of checks and balances when a company's CEO is his or her own overseer.

As well, a non-independent Chair may harm shareholder value. It's worth pointing out that in 2013, Bloomin' Brands' stock traded at USD \$26.20. Five years later, in October 2018 (when this proposal was filed), it traded at a mere \$18.01 – a drop of more than 30%. Bloomin' competitors fared much better. For example, the same day Bloomin' stock traded at \$18.01:

- Darden Restaurants traded 360% higher (at \$82.77),
- Brinker International traded nearly 80% higher (at \$31.87), and
- Cracker Barrel traded 775% higher (at \$157.58).

Each of those companies enjoy an independent Board Chair.

As Intel's former Chair Andrew Grove stated on this topic: "If [the CEO] an employee, he needs a boss, and that boss is the Board. The Chairman runs the Board. How can the CEO be his own boss?"

Increasingly, board members seem to agree. According to a Sullivan & Cromwell survey of 400 Board members, approximately 70% of respondents believe the head of management should not concurrently Chair the Board. Indeed, shareholders are best served by an independent Board Chair who can provide a balance of power between the company and its Board and support strong Board leadership. The primary duty of a Board of Directors is to oversee company management on behalf of its shareholders. We believe a non-independent Chairman position creates a conflict of interest, resulting in excessive influence by, and oversight of, management.

Not surprisingly, numerous institutional investors recommend that Board Chairs be independent directors. For example, the California Public Employees' Retirement System (CalPERS)—America's largest public pension fund—encourages such a policy. And proxy analysis and voting firm Institutional Shareholder Services (ISS) recommends voting in favor of proposals such as this one which seek policies to ensure the Board Chair is an independent director.

We believe that ensuring the Board Chair position is held by an independent director would benefit the company and its shareholders and encourage shareholders to vote **FOR** this proposal.