



DIVISION OF
CORPORATION FINANCE

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

February 9, 2018

Luke J. Valentino
Sears Holdings Corporation
luke.valentino@searshc.com

Re: Sears Holdings Corporation
Incoming letter dated December 27, 2017

Dear Mr. Valentino:

This letter is in response to your correspondence dated December 27, 2017 concerning the shareholder proposal (the "Proposal") submitted to Sears Holdings Corporation (the "Company") by The Humane Society of the United States for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: PJ Smith
The Humane Society of the United States
pjsmith@humanesociety.org

February 9, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Sears Holdings Corporation
Incoming letter dated December 27, 2017

The Proposal asks that the Company 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.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Evan S. Jacobson
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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 company's management omit the proposal from the company's proxy materials.

SEARS HOLDINGS CORPORATION

Luke Valentino
Associate General Counsel &
Corporate Secretary

Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, IL 60179
Phone: (847) 286-9551
Email: luke.valentino@searshc.com

December 27, 2017

Via email: shareholderproposals@sec.gov

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

Re: Sears Holdings Corporation – Shareholder Proposal submitted by The Humane Society of the United States

Ladies and Gentlemen:

This letter is to inform you that, pursuant to Exchange Act Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), Sears Holdings Corporation, a Delaware corporation (the “Company”), intends to omit from its proxy statement and form of proxy (collectively, the “2018 Proxy Materials”) for its 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting”) a stockholder proposal (the “Proposal”) submitted by The Humane Society of the United States (the “Proponent”) under cover of a letter dated July 31, 2017.

This letter, together with the Proposal and the related correspondence, are being submitted to the Staff of the Division of Corporation Finance (the “Staff”) via email in lieu of mailing paper copies. A copy of this letter and the attachments are being sent on this date to the Proponent via email and Federal Express. We respectfully remind the Proponent that if it elects to submit the correspondence to the U.S. Securities and Exchange Commission (the “Commission”) or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned pursuant to Rule 14a-8(k).

The Proposal

The Proposal constitutes a request that the Company’s stockholders approve the following resolution:

RESOLVED, that shareholders ask that Sears 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.

The text of the Proposal is followed by a supporting statement that is not reproduced in this letter but that is set forth in the copy of the Proposal attached hereto as Exhibit A.

Analysis

The Proposal may be excluded under Rule 14a-8(i)(3) because the Proposal relies upon reference to the NYSE independence definition for a central aspect of the Proposal, rendering the Proposal impermissibly vague and indefinite.

Rule 14a-8(i)(3) provides that a company may exclude a shareholder proposal from its proxy materials if 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 solicitation materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "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); *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."). 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."

The Staff has consistently concurred with the exclusion of proposals that, like the Proposal, rely solely on a reference to external requirements (i.e. "in accordance with the applicable requirements of The NYSE") for a central aspect of the proposal. For example, in *McKesson Corporation* (April 17, 2013), the stockholder proposal was nearly identical to the Proposal in requesting that McKesson adopt a policy that "the Board's chairman be an independent director according to the definition set forth in the New York Stock Exchange listing standards." In its no-action request, McKesson stated that the proposal relied upon an external standard of independent (the New York Stock Exchange standard) in order to implement

a central aspect of the proposal but failed to describe the substantive provisions of the standard. In concurring with the exclusion of the proposal under Rule 14a-8(i)(3), the Staff concurred with McKesson's argument that the proposal was so vague and indefinite that neither stockholders nor McKesson "would be able to determine with reasonable certainty exactly what actions or measures the proposal requires." *McKesson* is just one of numerous examples of the Staff concurring with exclusions of proposals under Rule 14a-8(i)(3) that sought to impose the New York Stock Exchange standard of independence for the board chairman but failed to explain the substantive provisions of that standard. *See, e.g., WellPoint, Inc.* (February 24, 2012, *recon. denied* March 27, 2012); *The Clorox Company* (August 13, 2012); *Harris Corporation* (August 13, 2012); *The Procter & Gamble Company* (July 6, 2012, *recon. denied* September 20, 2012); *Cardinal Health, Inc.* (July 6, 2012); and *Mattel, Inc.* (February 9, 2012).

In *Chevron Corporation* (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) noting 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."

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" but did not include that definition anywhere in the proposal or supporting statement) 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 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 Corporation* (February 8, 2016) and *Kohl's Corporation* (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, it is noteworthy that the Company's common stock is not even listed on the New York Stock Exchange. Rather, it is listed on the NASDAQ Stock Exchange Global Select Market. Even if the Proposal had referenced NASDAQ's independence requirements instead of

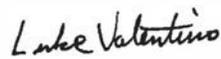
the New York Stock Exchange's requirements, it would still be excludable under the long-standing precedent discussed above because no additional information with respect to the central aspect of independence is provided within the four corners of the Proposal and its supporting statement. However, it is 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 2018 Proxy Materials, the Company's stockholders would not find any references to the New York Stock Exchange's independence standards in the 2018 Proxy Materials 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. If you have any questions regarding this request or desire additional information, please contact the undersigned by phone at (847) 286-9551 or by email at luke.valentino@searshc.com, or John Kelsh of Sidley Austin LLP by phone at (312) 853-7097 or by email at jkkelsh@sidley.com.

Sincerely yours,



Luke J. Valentino
Associate General Counsel & Corporate Secretary

Attachment:
Exhibit A – Proposal

cc: PJ Smith, The Humane Society of the United States

Exhibit A



**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.
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Jane Greenspun Gale
Cathy Kangas
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Paula A. Kislak, D.V.M.
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Sharon Lee Patrick
Judy J. Peil
Marian G. Probst
Jonathan M. Ratner
Joshua S. Reichert, Ph.D.
Walter J. Stewart, Esq.
Andrew Weinstein
Jason Weiss
David O. Wiebers, M.D.
Lona Williams

July 31, 2017

Jonathan C. Babb, Vice President, Deputy General Counsel and Corporate Secretary
Sears Holding Corporation
Law Department
3333 Beverly Road
Hoffman Estates, IL 60179

RE: Shareholder Proposal for Inclusion in the 2018 Proxy Materials

Dear Mr. Babb,

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 Sears Holdings common stock. The HSUS has continuously held at least \$2,000 in market value of Sears Holdings 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 Sears Holdings 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 301-366-6074 or pjsmith@humanesociety.org. Thank you for your assistance.

Sincerely,

PJ Smith
Sr. Manager, Fashion Policy



BNY MELLON

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

July 31, 2017

Jonathan C. Babb, Vice President, Deputy General Counsel and Corporate Secretary
Sears Holding Corporation
Law Department
3333 Beverly Road
Hoffman Estates, IL 60179

Dear Mr. Babb,

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 Sears Holdings common stock for the one-year period preceding and including the date of this letter. Thank you.

Best Regards,

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

RESOLVED, that shareholders ask that Sears 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 Sears does, represents risky governance and puts shareholders at risk.

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 top executive is his or her own overseer.

A non-independent Chairman may weaken that company's governance structure and harm shareholder value. As Intel's former Chair Andrew Grove stated: "If he's 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.