

**KIRKLAND & ELLIS LLP**  
AND AFFILIATED PARTNERSHIPS

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December 12, 2018

*VIA E-MAIL:* [shareholderproposals@sec.gov](mailto: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: Kellogg Company – Exclusion of Shareholder Proposal Pursuant to  
Rule 14a-8**

Ladies and Gentlemen:

On behalf of Kellogg Company, a Delaware corporation (the “**Company**”), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934 (the “**Exchange Act**”), I am writing to 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 Company may exclude the shareholder proposal entitled “Item 4 – Elect Each Director Annually” and the supporting statement (the “**Proposal**”) received from James McRitchie and Myra K. Young (the “**Proponents**”), who have appointed John Chevedden to act on their behalf regarding the Proposal (“**Mr. Chevedden**”), from the proxy materials to be distributed by the Company in connection with its 2019 Annual Meeting of Shareowners (the “**2019 Proxy Materials**”).

In accordance with Section C of Staff Legal Bulletin No. 14D (November 7, 2008), the Company is emailing this letter and its attachments to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j). In accordance with Rule 14a-8(j), the Company (i) is filing this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission and (ii) is concurrently sending a copy of this letter and its attachments to Mr. Chevedden as notice of the Company’s intent to omit the Proposal from the 2019 Proxy Materials. Pursuant to Rule 14a-8(k) and Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), Mr. Chevedden and the Proponents are requested to copy the undersigned on any correspondence they choose to make to the Staff.

\*\*\*FISMA & OMB Memorandum M-07-16

Beijing Boston Dallas Hong Kong Houston London Los Angeles Munich New York Palo Alto San Francisco Shanghai Washington, D.C.

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### THE PROPOSAL

The proposal states: “RESOLVED: Kellogg Company (“Company” or “Kellogg”) shareholders ask that our Board take the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year and to complete this transition within one-year.”

The Proposal, the accompanying supporting statement and copies of all relevant correspondence between the Company and Mr. Chevedden are attached to this letter as Exhibit A.

### BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(8)(ii), which provides that a shareholder proposal may be omitted from a company’s proxy materials if the proposal would remove a director from office before his or her term expired. As described in greater detail below, the Proposal would have the effect of removing several members of the Company’s Board of Directors (the “**Board**”) from their positions on the Board prior to the expiration of the terms for which they were duly elected. As a result, the Company may exclude the Proposal from the 2019 Proxy Materials under Rule 14a-8(i)(8).

### ANALYSIS

#### **The Proposal May Be Excluded Under Rule 14a-8(i)(8) Because it Would Remove Directors from Office Before Their Terms Expire**

Rule 14a-8(i)(8)(ii) allows a company to exclude a shareholder proposal from its proxy statement if the proposal would remove a director from office before his or her term expired. The purpose of Rule 14a-8(i)(8), according to the Commission, “is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature, since other proxy rules, including Rule 14a-11, are applicable thereto.” SEC Release No. 34-12598 (July 7, 1976). With this in mind, the Commission amended Rule 14a-8(i)(8) in 2010 to codify a long-standing position of the Staff pursuant to which the Commission permitted the exclusion of shareholder proposals that would have removed a director from office before his or her term expired. *See generally* SEC Release No. 34-60089 (June 10, 2009).

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The Company has a classified Board comprised of directors that were elected to three-year terms. In any given year, approximately one-third of the Board is up for election, while the remaining directors are not up for election until one of the following two annual meetings of shareholders. As a result of this governance structure, at least six of the Company's directors — Carter Cast, Zachary Gund, Jim Jenness, Don Knauss, Mary Laschinger and Carolyn Tastad — will not be standing for reelection until the Company's 2021 or 2022 annual meetings of shareowners. As drafted, however, the Proposal would require that the Company reorganize the Board into one class with each director subject to election each year and to complete this transition within one year. Assuming, for the sake of argument, that the Company were to make the necessary amendments to its charter and bylaws according to the timeline proposed by the Proponents (*i.e.*, in time for the Company's directors to be elected to one-year terms at the 2020 Annual Meeting of Shareowners), the election of all of the Company's directors to one-year terms at the 2020 Annual Meeting of Shareowners would necessarily require that the terms of those directors that had been elected to three-year terms at each of the 2018 and 2019 Annual Meetings be cut short. The Proposal seeks to implement the declassification of the Company's Board in "one-year." As explained above, at the time by which the Proponents request the Proposal to have been implemented, two classes of the Company's directors will have been duly elected to serve three-year terms. If the Company and its shareowners were to adopt the changes necessary to implement the proposal at such time, thereby requiring that all directors stand for election by the Company's shareowners to new, one-year terms, the terms of the then-serving directors would be cut short prior to the expiration of the three-year terms for which they had been duly elected. Therefore, the Proposal may be excluded pursuant to Rule 14a-8(i)(8).

The Staff has allowed the exclusion of numerous shareholder proposals in similar circumstances. *See, for example, ES Bancshares, Inc.* (Feb 2, 2011) (proposal seeking removal of members of the board excludable under Rule 14a-8(i)(8)); *Commonwealth Biotechnologies, Inc.* (Dec. 28, 2010) (proposal seeking removal of members of the board excludable under Rule 14a-8(i)(8)). The Staff has extended this approach to proposals like the Proposal, where the proposal seeks the implementation of annual director elections, but would have the effect of removing sitting directors prior to the expiration of their terms. *See, e.g., Simpson Manufacturing Co., Inc.* (Jan. 25, 2017) (proposal requesting that the board eliminate the classification of the board and requiring that all directors elected by shareholders to be elected on an annual basis, excludable under Rule 14a-8(i)(8), where the Staff noted "There appears to be some basis for your view that Simpson Manufacturing may exclude the proposal under rule 14a-8(i)(8) to the extent it could, if implemented, disqualify directors previously elected from completing their terms on the board"); *NeuStar, Inc.* (Mar. 19, 2014) (proposal requesting that the board be reorganized into one class with directors elected every year, excludable under Rule 14a-8(i)(8), where the Staff noted "There appears to

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be some basis for your view that NeuStar may exclude the proposal under rule 14a-8(i)(8) to the extent it could, if implemented, disqualify directors previously elected from completing their terms on the board"); *The Brink's Company* (Jan. 17, 2014) (same); *Kinetic Concepts, Inc.* (Mar. 21, 2011) (same) and *Illumina, Inc.* (February 1, 2018) (same).

Here, as was the case in each of the letters cited above, the Proposal would remove members of the Company's Board from office before their terms expire. As a result, the Company is entitled to exclude the Proposal from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(8).

**CONCLUSION**

Based upon the foregoing analysis, on behalf of the Company, I respectfully request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from the 2019 Proxy Materials. Please do not hesitate to contact the undersigned at (312)-862-7317 or via e-mail at [robert.goedert@kirkland.com](mailto:robert.goedert@kirkland.com) if you have any questions or require any additional information regarding this matter.

Sincerely,



Robert Goedert

cc:

John Chevedden (via email at \*\*\* )  
James McRitchie and Myra K. Young (c/o John Chevedden)  
Gary H. Pilnick  
*Vice Chairman, Corporate Development and Chief Legal Officer*

**Exhibit A**

(see attached)

Mr. Gary Pilnick, Corporate Secretary  
Kellogg Company (K)  
One Kellogg Square  
Battle Creek MI 49016  
PH: 269-961-2190  
FX: 269-660-4358  
[Gary.Pilnick@kellogg.com](mailto:Gary.Pilnick@kellogg.com)

Dear Corporate Secretary,

We are pleased to be shareholders in the Kellogg Company (K) and appreciate the company's leadership in food products. We believe Kellogg has further unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting to allow each director to be elected annually.

The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden (PH):

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to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to

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Sincerely,



October 8, 2018

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James McRitchie

Date



October 8, 2018

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Myra K. Young

Date

cc: John Chevedden  
Deb Ball <[deb.ball@kellogg.com](mailto:deb.ball@kellogg.com)>  
Assistant to Gary Pilnick  
PH: 269-961-2308  
FX: 269-660-4358

[K: Rule 14a-8 Proposal, October 8, 2018]  
[This line and any line above it – Not for publication.]  
ITEM 4\* – Elect Each Director Annually

RESOLVED: Kellogg Company (“Company” or “Kellogg”) shareholders ask that our Board take the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year and to complete this transition within one-year.

Supporting Statement: Arthur Levitt, former Chairman of the Securities and Exchange Commission said, "In my view it's best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them."

In 2010 over 70% of S&P 500 companies had annual election of directors. Now that number stands at more than 89%.

Shareholder resolutions on this topic won an average of 86% support in 2018 as of early August. Wins included 96% at Haemonetics, 94% at Hecla Mining, 88.4% at FleetCor Technologies, 86.9% at Whitestone REIT, and 84.4% at Illumina Inc. No shareholder on this topic was recorded as willing less than 67.3% of the vote. That low support was at Axon Enterprise Inc. ISS, Glass Lewis and Egan-Jones did not recommend against any of these proposals.

According to one of our largest shareholders; BlackRock, “Directors should be elected annually to discourage entrenchment and allow shareholders sufficient opportunity to exercise their oversight of the board.” BlackRock voted for shareholder proposals to declassify boards 8 times out of 8 in 2018 as of early August, as did Vanguard.

According to Equilar; “A classified board creates concern among shareholders because poorly performing directors may benefit from an electoral reprieve. Moreover, a fraternal atmosphere may form from a staggered board that favors the interests of management above those of shareholders. Since directors in a declassified board are elected and evaluated each year, declassification promotes responsiveness to shareholder demands and pressures directors to perform to retain their seat. Notably, proxy advisory firms ISS and Glass Lewis both support declassified structures.”

This proposal should also be evaluated in the context of our Company’s overall corporate governance as of the date of this submission: Kellogg retains supermajority voting provisions. Shareholders cannot call special meetings. Shareholders have no right to act by written consent. The combined effect is to lock the board into an out-dated corporate governance structure and reduce board accountability to shareholders.

Please vote for: Elect Each Director Annually – Proposal [4\*]  
[This line and any below are *not* for publication]  
Number 4\* to be assigned by Kellogg

James McRitchie and Myra K. Young,  
this proposal.

\*\*\*

sponsored

Notes:

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

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

From:

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>

Sent: Thursday, October 18, 2018 11:18 PM

To: Pilnick, Gary <[Gary.Pilnick@kellogg.com](mailto:Gary.Pilnick@kellogg.com)>

Cc: Kile, Kathryn <[Kathryn.Kile@kellogg.com](mailto:Kathryn.Kile@kellogg.com)>

Subject: [EXTERNAL] Rule 14a-8 Proposal (K) blb

Mr. Pilnick,

Please see the attached broker letter.

Sincerely,

John Chevedden



10/10/2018

James McRitchie & Myra K Young  
\*\*\*

Re: Your TD Ameritrade Account Ending in \*\*\*

Dear James McRitchie & Myra K Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie and Myra K. Young held, and have held continuously for at least 13 months, 100 shares of Kellogg Company (K) in their account ending in \*\*\* at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in cursive script that appears to read "Lindsey Olsen".

Lindsey Olsen  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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**From:** Pilnick, Gary  
**To:** \*\*\*  
**Cc:** [Kile, Kathryn](#); [Haigh, Todd](#)  
**Subject:** RE: Rule 14a-8 Proposal (K)`  
**Date:** Tuesday, October 30, 2018 12:29:32 PM

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Dear Mr. Chevedden:

Thank you for your emails on October 8, 2018, and October 18, 2018, submitting a shareowner proposal and providing a proof of ownership letter from TD Ameritrade. Thanks again and please let us know if you have any further questions.

Gary Pilnick  
Vice Chairman  
**Kellogg Company**  
One Kellogg Square - Battle Creek, MI 49017  
Phone: 269.961.2190 Fax: 269.660.4358  
[gary.pilnick@kellogg.com](mailto:gary.pilnick@kellogg.com)

**From:** \*\*\*  
**To:** [Pilnick, Gary](#)  
**Cc:** [Kile, Kathryn](#); [Haigh, Todd](#)  
**Subject:** [EXTERNAL] Rule 14a-8 Proposal (K)  
**Date:** Tuesday, October 30, 2018 1:21:14 PM

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Thank you.