



DIVISION OF
CORPORATION FINANCE

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

March 21, 2018

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: The Home Depot, Inc.
Incoming letter dated January 12, 2018

Dear Ms. Ising:

This letter is in response to your correspondence dated January 12, 2018 concerning the shareholder proposal (the "Proposal") submitted to The Home Depot, Inc. (the "Company") by People for the Ethical Treatment of Animals 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: Jared Goodman
PETA Foundation
jaredg@petaf.org

March 21, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Home Depot, Inc.
Incoming letter dated January 12, 2018

The Proposal encourages the Company to end its sale of glue traps.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates to the products and services offered for sale by the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

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.

January 12, 2018

VIA E-MAIL

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

Re: *The Home Depot, Inc.*
Shareholder Proposal of People for the Ethical Treatment of Animals
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Home Depot, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (collectively, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from People for the Ethical Treatment of Animals (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.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect 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.

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THE PROPOSAL

The Proposal states, in relevant part:

RESOLVED: As a matter of social and public policy, the shareholders encourage The Home Depot to end its sale of glue traps, because they cause egregious suffering to mice, pose a danger to other wildlife and companion animals, and are a human health hazard.

Copies of the Proposal, including the Supporting Statement, as well as related correspondence from the Proponent are attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating To The Company's Ordinary Business Operations And Does Not Focus On A Significant Policy Issue.

A. *The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Sale Of A Particular Product By The Company*

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." Under well-established precedent, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company's ordinary business activities, namely, the sale of a particular product by the Company.

The Commission has stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Securities Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission explained that the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but that the term "is rooted in the corporate law concept providing

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management with flexibility in directing certain core matters involving the company's business and operations." The Commission further explained that the ordinary business exclusion rests on two "central considerations." *Id.* The first, and more relevant to this Proposal, is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

In seeking to dictate the types of products sold in Company stores, the Proposal necessarily implicates the above-described policy considerations. The Company is the world's largest home improvement retailer, selling hundreds of thousands of different products to a broad base of customers throughout the United States, Mexico and Canada. Decisions concerning product selection are inherently based on complex considerations outside the purview of shareholders. The ability to make such decisions is fundamental to management's ability to control the operations of the Company and, as such, is not appropriately delegated to shareholders.

The Staff has been asked on numerous occasions to consider proposals seeking the prohibition of specific items from sale. In each instance, the Staff has taken the position that proposals regarding the selection of products for sale relate to a company's ordinary business operations and thus may be excluded from the company's proxy materials pursuant to Rule 14a-8(i)(7), even where the proposal may have referenced a significant policy issue. For instance, in *Papa John's International, Inc.* (avail. Feb. 13, 2015), the Staff concurred with exclusion of a proposal requesting that the company include more vegan offerings in its restaurants, despite the Proponent's assertion that the proposal would promote animal welfare—a significant policy issue. In allowing for exclusion, the Staff noted that, fundamentally, the proposal related to "the products offered for sale by the company" and was therefore a matter of ordinary business. *See also Dominion Resources, Inc.* (avail. Feb. 19, 2014) (concurring with exclusion of a proposal relating to use of alternative energy because, while touching on a significant policy issue, it related to the company's choice of technologies for use in its operations); *Danaher Corp.* (avail. Mar. 8, 2013) (concurring with exclusion of a proposal, where, even though a portion of the report requested by the proposal implicated a social policy issue (health concerns related to amalgam products), the scope of the requested report was so broad that the preponderance of the report addressed ordinary business matters that directly involved the company's ordinary business operations); *PetSmart, Inc.* (avail. Apr. 14, 2006) (concurring with exclusion of a proposal requesting a report on terminating the company's sale of pet birds). *See also Wal-Mart Stores, Inc.* (avail.

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Mar. 20, 2014), aff'd and cited in *Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 327 (3d Cir. 2015) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal seeking to limit the sale of any “product that especially endangers public safety and well-being, has the substantial potential to impair the reputation of the company and/or would reasonably be considered by many offensive to the family and community values integral to the company’s promotion of its brand” on the basis that the proposal related to “the products and services offered for sale by the company”).

Most importantly, the Staff has determined in several instances that proposals that raise the issue of animal welfare/cruelty in connection with the sale of products are excludable under Rule 14a-8(i)(7) as dealing with matters of ordinary business operations under Rule 14a-8(i)(7). Two such proposals are virtually identical to the Proposal. Specifically, in *The Home Depot, Inc.* (avail. Jan. 24, 2008), the Proponent submitted a proposal asking “Home Depot to end its sale of glue traps because they are cruel and inhumane to the target animals and pose a danger to companion animals and wildlife as well.” Although the Proponent argued that the proposal focused on a significant policy issue, the Staff concurred with exclusion of the proposal under Rule 14a-8(i)(7) as relating to the Company’s “ordinary business operations (*i.e.*, the sale of particular product).” *See also Lowe’s Companies, Inc.* (avail. Feb. 1, 2008) (same). The Staff has also reaffirmed the view it expressed in those letters when it concurred with exclusion of proposals encouraging the addition of a warning label to glue traps sold in the companies’ stores. *See The Home Depot, Inc.* (avail. Mar. 12, 2010) (concurring with exclusion of a proposal encouraging the Company to label all glue traps sold in its stores with a warning on the basis that the proposal “relate[d] to the manner in which Home Depot sells particular products” despite the fact that the “resolved” clause of the proposal argued that “these traps pose [further danger] to companion animals, wildlife, and human health” and noting that proposals “concerning the sale of particular products are generally excludable under rule 14a-8(i)(7)”; *Lowe’s Companies, Inc.* (avail. Mar. 18, 2010) (same).

The only differences between the proposal considered by the Staff in *The Home Depot, Inc.* (avail. Jan. 24, 2008) and the current Proposal are modest wording changes and a newly added reference to glue traps being a “human health hazard” on the theory that “animals caught on ... [glue traps] lose control of their bodily functions, thereby increasing humans’ risk of being exposed to diseases.” However, as described in greater detail below and demonstrated by the Staff’s subsequent decisions in *The Home Depot, Inc.* (avail. Mar. 12, 2010) and *Lowe’s Companies, Inc.* (avail. Mar. 18, 2010) cited above, an auxiliary reference to a potential significant policy issue does not take the Proposal out of the realm of ordinary business. For these reasons, the Proposal is excludable under Rule 14a-8(i)(7) as it relates to the sale of a particular product by the Company.

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B. The Proposal Does Not Focus On A Significant Policy Issue

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not be excludable because the proposals would “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” However, shareholder proposals that merely touch on policy issues (such as animal welfare/cruelty) remain excludable, as is demonstrated by the Staff’s decisions in *The Home Depot, Inc.* (avail. Jan. 24, 2008), *Lowe’s Companies, Inc.* (avail. Feb. 1, 2008), *The Home Depot, Inc.* (avail. Mar. 12, 2010) and *Lowe’s Companies, Inc.* (avail. Mar. 18, 2010) discussed above. *See also Amazon.com, Inc.* (avail. Mar. 11, 2016) (concurring with exclusion of a proposal requesting that Amazon issue a report addressing animal cruelty in the supply chain because the proposal related to “the products and services offered for sale by the company”).

The fact that the Proposal also includes a passing reference to the glue traps being a “human health hazard” does not change this analysis. For instance, in the above-discussed *Papa John’s International, Inc.* (avail. Feb. 13, 2015), the Proponent submitted a proposal encouraging the board of the company to include vegan meat and cheese options, on grounds that doing so would “advance animal welfare, reduce its ecological footprint, expand its healthier options, and meet a growing demand for plant-based foods.” In the supporting statement to the proposal, the Proponent noted that vegetarians and vegans enjoy health benefits as a result of their dietary choices, and added details about the environmental impact, such as increased greenhouse gas emissions, of raising livestock. Despite these references to “animal welfare, human health, and environmental issues” and the Proponent’s argument that the proposal, therefore, implicated significant policy issues “even one of which would be sufficient to fall within the exception to Rule 14a-8(i)(7),” the Staff concurred with exclusion of the proposal under Rule 14a-8(i)(7), stating that “the proposal relates to the products offered for sale by the company and does not focus on a significant policy issue.” *See also Amazon.com, Inc.* (avail. Mar. 17, 2016) (concurring with exclusion of a proposal requesting a report “on the company’s policy options to reduce potential pollution and public health problems from electronic waste generated as result of its sales to consumers, and to increase the safe recycling of such wastes,” noting that the proposal “relates to the company’s products and services and does not focus on a significant policy issue”); *Amazon.com, Inc.* (avail. Mar. 27, 2015) (concurring with exclusion of a proposal requesting that the company disclose any reputational and financial risks it may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells); *The Home Depot, Inc.* (avail. Mar. 4, 2009) (concurring with exclusion of a proposal to report on options for reducing consumer exposure to and increasing awareness of mercury

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and other toxins in certain products as “relating to Home Depot’s ordinary business operations (*i.e.*, the sale of particular products)”).

As such, as in the precedents cited above, the Proposal does not focus on a significant policy issue; rather, the subject matter of the Proposal directly relates to the Company’s ordinary business operations as a retailer and its choice of which products the Company offers for sale to its customers. This is the case even with the addition of statements that glue traps may cause “egregious suffering to mice, pose a danger to other wildlife and companion animals, and are a human health hazard,” as the Proposal does not maintain an overall focus on these issues; rather, it is focused on the Company’s sale of a particular product, *i.e.*, glue traps. As noted in Staff Legal Bulletin No. 14H, “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.” *See also* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a shareholder proposal focusing on a significant policy issue “generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.”) No such nexus exists here, as glue traps are only one of the hundreds of thousands of different products the Company sells, as the world’s largest home improvement retailer, to a broad base of customers throughout the United States, Mexico and Canada.

As discussed above, the Proposal is virtually identical to the proposals analyzed by the Staff in *The Home Depot, Inc.* (avail. Jan. 24, 2008) and *Lowe’s Companies, Inc.* (avail. Feb. 1, 2008) and found to be excludable as relating to the sale of a particular product by the Company and Lowe’s Companies, Inc., respectively. Moreover, the Proposal’s treatment of the human health issue is similar to the Proponent’s treatment of such in *Papa John’s International, Inc.* (avail. Feb. 13, 2015) and other precedent cited above. While the Proposal and the *Papa John’s* proposal both touch upon certain human health concerns—exposure to animal-borne diseases and consequences of certain dietary choices, respectively—these concerns are ultimately rooted in using or consuming particular products sold by a company. Therefore, the Proposal ultimately focuses on and intrudes on the Company’s ordinary business operations and remains excludable under Rule 14a-8(i)(7).

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 and the Supporting Statement from its 2018 Proxy Materials.

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 shareholderproposals@gibsondunn.com. If we can be of any further

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assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Stacy S. Ingram, the Company's Associate General Counsel and Deputy Corporate Secretary, at (770) 384-2858.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Stacy S. Ingram, The Home Depot, Inc.
Sara Britt, People for the Ethical Treatment of Animals
Jared S. Goodman, PETA Foundation

EXHIBIT A

From: Sara Britt [<mailto:SaraB@peta.org>]
Sent: Friday, December 1, 2017 12:44 PM
To: Roseborough, Teresa W <TERESA_W_ROSEBOROUGH@homedepot.com>
Subject: [EXTERNAL] PETA shareholder proposal for The Home Depot:

December 1, 2017

Teresa Roseborough

Corporate Secretary

The Home Depot, Inc.

Via e-mail: teresa_roseborough@homedepot.com

Dear Ms. Roseborough,

Attached is a Shareholder Proposal submitted for inclusion in the proxy materials for the 2018 annual meeting. Also enclosed in the attached is a cover letter from myself designating People for the Ethical Treatment of Animals Foundation counsel Jared Goodman as an authorized representative and a broker letter certifying requisite ownership of the company's stock.

These materials are being delivered via UPS Next Day Air Saver.

Please confirm receipt of this e-mail. Thank you.

Sincerely,

Sara Britt

Sara Britt

Corporate Affairs Department | Corporate Liaison

People for the Ethical Treatment of Animals (PETA)

Ph: (323) 842-9064 | SaraB@peta.org

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PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

December 1, 2017

Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, Georgia 30339

Via UPS Next Day Air Saver

Dear Ms. Roseborough:

Attached to this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2018 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals' (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 30 shares of The Home Depot, Inc. common stock, which were acquired at least one year ago. PETA has held at least \$2,000 worth of common stock continuously for more than one year and intends to hold at least this amount through and including the date of the 2018 shareholders meeting.

Please communicate with PETA's authorized representative Jared S. Goodman if you need any further information. Mr. Goodman can be reached at Jared S. Goodman, PETA Foundation, 2154 W. Sunset Blvd., Los Angeles, CA 90026, by telephone at (323) 210-2266, or by e-mail at JaredG@PetaF.org. If The Home Depot, Inc. will attempt to exclude any portion of this proposal under Rule 14a-8, please advise Mr. Goodman within 14 days of your receipt of this proposal.

Sincerely,

Sara Britt, Corporate Liaison
PETA Corporate Affairs

Enclosures: 2018 Shareholder Resolution
RBC Wealth Management letter

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Oakland
554 Grand Ave.
Oakland, CA 94610
510-763-PETA

Info@peta.org
PETA.org

Affiliates

- PETA India
- PETA Australia
- PETA Germany
- PETA Asia-Pacific
- PETA Netherlands
- PETA Foundation (U.K.)

2018 Shareholder Resolution Regarding the Sale of Glue Traps The Home Depot

RESOLVED:

As a matter of social and public policy, the shareholders encourage The Home Depot to end its sale of glue traps, because they cause egregious suffering to mice, pose a danger to other wildlife and companion animals, and are a human health hazard.

SUPPORTING STATEMENT:

Glue traps sold by The Home Depot ensnare animals by trapping any who step on them with a strong adhesive material. By their very design, they cause immense and prolonged suffering, as panicked animals struggle mightily to escape—in the process, tearing their own flesh, breaking their bones, and becoming increasingly entangled in the adhesive. Some chew off their own limbs in an effort to free themselves. They often suffer for *days* before succumbing to shock, dehydration, starvation, asphyxiation, or blood loss.

Not only do glue traps cause a substantial amount of suffering, they are also indiscriminate and catch animals who are not their intended targets. Birds, squirrels, hamsters, and other small animals may be killed by traps placed in public areas and private residences. Nearly every animal who becomes ensnared endures a prolonged and painful death.

Glue traps are also dangerous to human health. The Centers for Disease Control and Prevention specifically warns against their use because animals caught on them lose control of their bodily functions, thereby increasing humans' risk of being exposed to diseases, such as hantavirus pulmonary syndrome and lymphocytic choriomeningitis.

Public sentiment on matters of cruelty to animals is evolving, and increasingly, consumers are rejecting products that cause animals to suffer. As a result, many prominent retailers—including Dollar Tree, CVS, and Rite Aid—have banned the sale of glue traps.

In June 2017, a mouse was discovered convulsing on a glue trap that had been placed in a Home Depot store. Once the company was forced to confront the reality that glue traps cause immense and prolonged suffering, it agreed to stop using them. Clearly, The Home Depot recognizes the cruelty inherent in glue traps, yet it continues to profit from their sale.

We ask The Home Depot to be a responsible corporate citizen and end the sale of this cruel form of rodent control.



**Wealth
Management**

99 Almaden Boulevard
Suite 300
San Jose, CA 95113-1603

Office: 408.292.2442
Toll Free: 800.421.2746
Fax: 408.298.8295

December 1, 2017

Tracy Reiman
Executive Vice President
People for the Ethical Treatment of Animals
501 Front Street
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in The Home Depot, Inc.

Dear Ms. Reiman:

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 30 shares of The Home Depot, Inc. common stock and that PETA has continuously held at least \$2,000.00 in market value for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3322.

Sincerely,

A handwritten signature in cursive script that reads 'Thach Nguyen'.

Thach Nguyen
Registered Client Associate to Joshua Levine
Senior Vice President – Financial Advisor
RBC Wealth Management