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

DIVISION OF
CORPORATION FINANCE

May 11, 2018

Gavin B. Grover
Morrison & Foerster LLP
ggrover@mofo.com

Re: RH
Incoming letter dated March 16, 2018

Dear Mr. Grover:

This letter is in response to your correspondence dated March 16, 2018 and April 12, 2018 concerning the shareholder proposal (the "Proposal") submitted to RH (the "Company") by People for the Ethical Treatment of Animals (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated March 27, 2018. 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

May 11, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: RH
Incoming letter dated March 16, 2018

The Proposal encourages the board to enact a policy that will ensure that no down products are sold by the Company.

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 our view, the Proposal micromanages the Company by seeking to impose specific methods for implementing complex policies. See Securities Exchange Act Release No. 40018 (May 21, 1998). 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.

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1934 Act/Rule 14a-8

April 12, 2018

VIA E-MAIL (*shareholderproposals@sec.gov*)

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

Re: RH
Stockholder Proposal of People for the Ethical Treatment of Animals

Dear Ladies and Gentlemen:

This letter concerns the request, dated March 16, 2018 (the "***Initial Request Letter***"), that we submitted on behalf of our client RH, a Delaware corporation (the "***Company***"), seeking confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "***Exchange Act***"), the Company omits the shareholder proposal (the "***Proposal***") and supporting statement (the "***Supporting Statement***") submitted by People for the Ethical Treatment of Animals (the "***Proponent***") from the Company's proxy materials for its 2018 Annual Meeting of Stockholders (the "2018 Proxy Materials"). The Proponent submitted a letter to the Staff, dated March 27, 2018 (the "***Proponent Letter***"), asserting its view that the Proposal is required to be included in the 2018 Proxy Materials. The Proponent Letter is attached as Exhibit A to this letter.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and respond to the assertions made in the Proponent Letter. We also renew our request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8.

We have concurrently sent copies of this correspondence to the Proponent.

I. THE PROPOSAL

On January 9, 2018, the Company received a letter from the Proponent containing the Proposal for inclusion in the Company's 2018 Proxy Materials. We provided the letter and the Proposal as attachments to the Initial Request Letter. As discussed in the Initial Request Letter, the Company believes that it may properly omit the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(7), as it deals with matters relating to the Company's ordinary business operations.

The Proponent Letter expresses the view that the Proposal and Supporting Statement may not be excluded from the 2018 Proxy Materials under Rule 14a-8 because (1) the Proposal relates to a "significant policy issue" and (2) the Proposal does not "micromanage" the Company.

As discussed below, the Proponent Letter does not alter the analysis of the application of Rule14a-8(i)(7) to the Proposal. Specifically, the Proponent Letter further demonstrates that the Proposal (1) seeks to "micromanage" the Company and (2) relates, at least in part, to an ordinary business matter – the determination of specific products to be offered by the company – that is fundamentally related to the ordinary business operations of the Company.

II. EXCLUSION OF THE PROPOSAL

A. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7), as It Deals With Matters Relating to the Company's Ordinary Business Operations

As discussed in the Initial Request Letter, the Proposal may be properly excluded in reliance on Rule 14a-8(i)(7) because the action sought by the Proposal deals with matters related to the Company's ordinary business operations.

1. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7) Because It Seeks to Micromanage the Company

As discussed in the Initial Request Letter, it is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the action sought by the Proposal would micromanage the Company's decisions with respect to the specific products it offers.

As discussed in the Initial Request Letter and confirmed in the Proponent Letter, the Proposal seeks to impose upon the Company a policy "that will ensure that no down products are sold by Restoration Hardware, Inc." In this regard, it is important to note that the Proposal is not limited to the establishment of a policy; rather, the Supporting Statement and the Initial Request Letter state that the Proposal seeks "to end [the Company's] use of down" and that the "Company take steps to end its use of down" in favor of "down alternatives." The impact of the Proposal would, therefore, significantly impact the day-to-day decision making of the Company

regarding its sales of particular products. The Proponent Letter attempts to dispute this basis to omit the Proposal by arguing that the Proposal "urges the board to make a *single decision* regarding RH's use of down (emphasis added),"[1] while distinguishing *SeaWorld Entertainment, Inc.* (March 30, 2017),[2] a letter cited by the Company in its Initial Request Letter. The proposal in *SeaWorld Entertainment* asked the company to "retire the current resident orcas to seaside sanctuaries," an action that – in the opinion of the Proponent – required a greater number of considerations by management to implement than the Proposal at issue. Despite the Proponent's assertion, the Company's decision-making process with respect to its sale of particular products, such as down products, does not involve a single product and is complex. The Company is a leading retailer in the home furnishings marketplace, selling thousands of different products to a broad base of customers throughout the United States, Canada, and the United Kingdom. Decisions concerning product selection are inherently based on complex considerations that require the expertise of the Company's management with regard to a broad range of products and a broad range of markets. The expertise required to make these numerous, complex determinations is "of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment." Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998).

The Proponent cites Staff no-action letters from prior proxy seasons as support for its position that the Proposal does not micromanage the Company's decisions. The Proponent, however, fails to address the most compelling, recent precedent for the Company's position – the several no-action letters the Staff has issued over the last few months concurring in the exclusion of proposals similar to the Proposal at issue in that the proposals relate to the sale of particular products. For example, in *Amazon.com, Inc.* (Jan. 18, 2018), the Staff concurred with the omission of a proposal requesting that the company list specific showerheads before the listing of other showerheads and include additional disclosure about the highlighted showerheads, noting that the proposal "seeks to micromanage" 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." Similarly, in *JPMorgan Chase & Co.* (Mar. 30, 2018) (Christensen Fund), the proponent sought a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing for tar sands production and transportation, including consideration of a policy that would prohibit the company from financing tar sands projects. The Staff concurred that the proposal, the subject matter of which included a ban on particular products and services, could be excluded as it "micromanages the [c]ompany by seeking to impose specific methods for implementing complex policies."

As stated in the Initial Request Letter, "the Proposal would impose a specific, over-riding requirement regarding day-to-day management decisions." Consistent with the Staff's concurrence in the *Amazon* and *JPMorgan Chase* letters discussed above, the Proposal would

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[1] *See Proponent Letter* at p. 7.
[2] *See Proponent Letter* at pp. 8-9.

micromanage the Company for purposes of Rule 14a-8(i)(7) as the Proposal seeks to "prob[e] 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" and "impose specific methods for implementing complex policies." Accordingly, the Company remains of the view that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) as the Proposal seeks to micromanage the Company's decisions with respect to specific products it offers to its customers.

2. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7) Because It Relates to the Offering of Particular Products and Services, an Ordinary Business Matter

If the Staff were to disagree with the Company's view that the Proposal attempts to micromanage the Company, the Company continues to be of the view that the Proposal may be excluded under Rule 14a-8(i)(7) as the Proposal relates, at least in part, to the Company's ordinary business matters of deciding which products and services to offer to its customers.

As discussed in the Initial Request Letter, even if the Proposal touches upon a policy issue that may be of such significance that the matter transcends ordinary business and would be appropriate for a shareholder vote, if the Proposal does not focus solely on a significant policy issue or if it addresses, even in part, matters of ordinary business in addition to a significant policy issue, the Staff has consistently concurred with the exclusion of the proposal. *See, e.g., McKesson Corp.* (June 1, 2017); *Hewlett-Packard Co.* (Jan. 23, 2015); *Dominion Resources, Inc.* (Feb. 14, 2014); and *Capital One Financial Corp.* (Feb. 3, 2005). The Proponent asserts in the Proponent Letter that "the Proposal at issue here relates solely to down production due to the cruelty inherent in its production . . . and these decisions are therefore inapposite."[3] This position fails to reflect the continued viability of the basis to exclude that was set forth in those letters and the recent Staff position in *The Home Depot, Inc.* (Mar. 21, 2018). In *The Home Depot*, the Staff concurred with the omission of a proposal that stated, 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." In its response concurring with the issuer's view that it could omit the proposal in reliance on Rule 14a-8(i)(7), the Staff noted that the Proposal "relates to the products and services offered for sale." In this regard, the Proponent Letter re-affirms the discussion in the Initial Request Letter that the Proposal relates, at least in part, to specific decisions regarding the sale of a range of particular products to the Company's customers. By noting that the Proposal relates, at least in part, to the determination all down products, across all categories of the products sold by the Company, the Proponent Letter affirms the ordinary business nature of the Proposal and Supporting Statement – they relate to the day-to-day decisions made by the Company's management related to deciding which specific products to offer to its customers.

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[3] *See Proponent Letter* at pp. 5-6.

As the Proposal relates, at least in part and supported by the Proponent's assertion, to ordinary course determinations regarding the products the Company offers to its customers, the Company is of the view that the Proposal may be excluded pursuant to Rule 14a-8(i)(7).

3. Any Policy Issue Raised by the Proposal Does Not Transcend the Company's Ordinary Business Operations

The Proponent also asserts in the Proponent Letter that the Company's process in assessing whether the Proposal involves a policy issue that is significant to the Company pursuant to the Staff's guidance in Staff Legal Bulletin 14I ("***SLB 14I***") "should not be given deference."[4] As discussed in the Initial Request Letter, consistent with SLB 14I, the Company's Board undertook an analysis of the Proposal and came to the conclusion that any policy issues presented by the Proposal were not "significant" to the Company. The Initial Request Letter included an extensive discussion of the Board's analysis in that regard. The Proponent Letter disagrees with the Board's conclusion and asserts that the Initial Request Letter is inadequate because "[t]he Company provides no detail whatsoever about the board's decision, let alone a well-developed discussion of the board's analysis."[5]

The Staff has stated what it is seeking in a no-action request following SLB 14I:

> Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

The Initial Request Letter provided precisely the discussion called for by SLB 14I and presented the Board's conclusion following the "specific process" described. Further, despite the assertion in the Proponent Letter, the discussion sought by SLB 14I is solely for purposes of providing the Staff assistance in considering the no-action request. This purpose is made clear in SLB 14I – "We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7)."

Accordingly, while the Proponent Letter does not agree with the Board's conclusion, that disagreement is not a sufficient basis for ignoring the Board's consideration of the issue and the description of that process in the Initial Request Letter. For the reasons discussed in the Initial Request Letter, the Company continues to be of the view that it may omit the Proposal in reliance on Rule 14a-8(i)(7).

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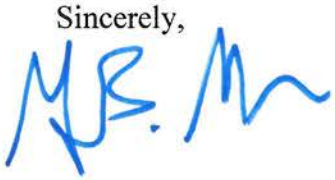
[4] *See Proponent Letter* at p. 7.
[5] *See Proponent Letter* at p. 7.

III. CONCLUSION

For the reasons discussed in the Initial Request Letter and discussed further above, the Proponent Letter does not impact the application of Rule 14a-8(i)(7) to the Proposal and the Company continues to be of the view that it may properly omit the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8. If we can be of further assistance in this matter, please do not hesitate to contact me at (415) 268-7113.

Sincerely,



Gavin B. Grover
of Morrison & Foerster LLP

Attachments

cc: Sara Britt, Corporate Liaison PETA Corporate Affairs
Jared S. Goodman, Authorized Representative of PETA
Karen Boone, RH
Edward Lee, RH

Exhibit A

AN INTERNATIONAL ORGANIZATION DEDICATED TO PROTECTING THE RIGHTS OF ALL ANIMALS

PETA FOUNDATION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS FOUNDATION

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March 27, 2018

Via e-mail

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
shareholderproposals@sec.gov

Re: Restoration Hardware, 2018 Annual Meeting Shareholder Proposal Submitted by PETA

Dear Sir or Madam:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) and pursuant to Rule 14a-8(k) in response to Restoration Hardware, Inc. ("RH" or "Company") request that the Staff of the Division of Corporation Finance ("Staff") of the Securities and Exchange Commission ("Commission") concur with its view that it may properly exclude PETA's shareholder resolution and supporting statement ("Proposal") from the proxy materials to be distributed by RH in connection with its 2018 annual meeting of shareholders ("No-Action Request").

The Company seeks to exclude the Proposal on the basis of Rules 14a-8(i)(7). As the Proposal focuses on the significant social policy issue of the humane treatment of animals and is not too complex for shareholders to make an informed judgment, PETA respectfully requests that RH's request for a no-action letter be denied.

I. The Proposal

PETA's resolution, titled "2018 Shareholder Resolution on Phasing Out Items That Contain Down Feathers," provides:

> RESOLVED, that, given the cruel and inhumane treatment of birds used tor down and that Restoration Hardware already sells alternatives that mimic down, the Board is strongly encouraged to enact a policy that will ensure that no down products are sold by Restoration Hardware, Inc.

The supporting statement then focuses on the cruelty inherent in down production, and notes the minimal impact that adopting the Proposal would have on the Company in light of its highly-touted down alternative.

II. The Proposal Focuses on a Significant Social Policy Issue and May Not Be Excluded Pursuant to Rule 14a-8(i)(7).

Rule 14a-8(i)(7) provides that a company may exclude a proposal "[i]f the proposal deals with a matter relating to the company's ordinary business

operations." Only "business matters that are mundane in nature and do not involve any substantial policy" considerations may be omitted under this exemption. Adoption of Amendments Relating to Proposals by Security Holders, 41 Fed. Reg. 52,994, 52,998 (1976). As the Company notes, the policy underlying this rule rests on two central considerations. The first 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 stockholders, as a group, would not be in a position to make an informed judgment." Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998) ("Rule 14a-8 Release").

Second, "certain 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 Commission has stated and repeatedly found since that "proposals relating to such matters but focusing on sufficiently significant social policy issues … generally would not be considered to 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*." Rule 14a-8 Release (emphasis added).

PETA's Proposal does not implicate a day-to-day operation that is "mundane in nature," but rather involves an important "substantial policy" consideration, and does not seek to "'micro-manage' the company by probing too deeply into matters of a complex nature."

A. The Proposal focuses on the significant social policy issue of animal welfare.

A company may rely on Rule 14a-8(i)(7) to exclude a proposal only where that proposal relates to the company's ordinary business operations—those matters that are "mundane in nature and do not involve any substantial policy" considerations. Release No. 34-12999 (Dec. 3, 1976). Proposals that relate to ordinary business matters but that focus on "sufficiently significant social policy issues … would not be considered to 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." Release No. 34-40018 (May 21, 1998).

i. The humane treatment of animals is a significant social policy issue.

The Staff has repeatedly concluded that animal welfare is a significant policy consideration. In *Coach, Inc.*, 2010 WL 3374169 (Aug. 19, 2010), for example, much like the Proposal at issue in this case, PETA's resolution encouraged the company "to enact a policy that will ensure that no fur products are acquired or sold by [Coach]." In seeking to exclude the proposal, the company argued that "[t]he use of fur or other materials is an aesthetic choice that is the essence of the business of a design and fashion house such as Coach," "luxury companies must be able to make free and independent judgments of how best to meet the desires and preferences of their customers," and that the proposal "does not seek to improve the treatment of animals[, but] to use animal treatment as a pretext for ending the sale of fur products at Coach entirely." *Id.* The Staff disagreed, writing:

> In arriving at this position, we note that although the proposal relates to the acquisition and sale of fur products, it focuses on the significant policy issue of the humane treatment of animals, and it does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate. Accordingly, we do not believe that Coach may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Id.

Likewise, in *Revlon, Inc.* (Mar. 18, 2014), PETA requested that the company issue an annual report to shareholders accurately disclosing, among other things, whether the company has conducted, commissioned, paid for, or allowed tests on animals anywhere in the world for its products, the types of tests, the numbers and species of animals used, and the specific actions the company has taken to eliminate this testing. Revlon sought to exclude the proposal because "it deals with the sale of the company's products," and argued specifically that its decisions regarding in which countries to sell its products "are ordinary business matters that are fundamental to management's running of [Revlon] on a day-to-day basis and involve complex business judgments that stockholders are not in a position to make." *Id.* The Staff disagreed and did not permit the company to exclude the proposal pursuant to Rule 14a-8(i)(7), finding that it "focuses on the significant policy issue of the humane treatment of animals." *Id.*; *see also, e.g., Bob Evans Farms, Inc*. (June 6, 2011) (finding that a proposal to encourage the board to phase-in the use of "cage-free" eggs so that they represent at least five percent of the company's total egg usage "focuses on the significant policy issue of the humane treatment of animals and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate"); *Denny's* (March 17, 2009) (finding that a proposal requesting the board to commit to selling at least 10% cage-free eggs by volume could not be excluded in reliance on Rule 14a-8(i)(7)); *Wendy's Int'l Inc.* (Feb. 19, 2008) (finding that a proposal requesting that the board issue a report on the feasibility of committing to purchase a percentage of its eggs from cage-free hens could not be excluded in reliance on Rule 14a-8(i)(7)); *Outback Steakhouse, Inc.* (Mar. 6, 2006) (finding that a proposal requesting that the board issue a report on progress towards the implementation of controlled-atmosphere killing for birds by suppliers could not be excluded in reliance on Rule 14a-8(i)(7)); *Wendy's Int'l, Inc.* (Feb. 8, 2005) (finding that a proposal requesting that the board issue a report on the feasibility of requiring suppliers to implement controlled-atmosphere killing for birds could not be excluded in reliance on Rule 14a-8(i)(7)); *Hormel Foods Corp.* (Nov. 10, 2005) (same); *Wyeth* (February 4, 2004) (finding that a proposal requesting that the board issue a policy statement publicly committing to use *in vitro* tests and generally committing to the elimination of product testing on animals could not be excluded in reliance on Rule 14a-8(i)(7)); *American Home Products Corp.* (February 25, 1993) (finding that a proposal requesting that the board take all necessary steps to eliminate all animal testing could not be excluded in reliance on Rule 14a-8(i)(7)).

ii. The Proposal's focus is the humane treatment of animals, which transcends day-to-day business matters.

Although the Proposal focuses exclusively on RH's sale of down in light of the cruelty inherent in down production, RH does not dispute that down production is cruel or that the Proposal relates to the humane treatment of animals,[1] and RH acknowledges that the relevant consideration is the "underlying subject matter of the proposal," *No-Action Request*, at 6-7, RH argues that the Proposal may be excluded because it "relates, at least in part, to the Company's ordinary business matters of deciding which products to offer to its customers," *No-Action Request*, at 5.

Specifically, RH argues that even if the Proposal "relates to a policy issue that transcends ordinary business and would be appropriate for a stockholder vote, … the Proposal may nonetheless be excluded pursuant to Rule 14a-8(i)(7) because it is not focused solely on such policy issue and clearly addresses matters related to … the ordinary business matter of the Company's decisions to sell particular products to its customers." *No-Action Request*, at 8-9. In other words, even assuming that the sale of down transcends ordinary business matters, the Proposal may be excluded simply because "it concerns the sale of particular products." *Id.* at 8.

First, the Company's interpretation of Rule 14a-8(i)(7)'s significant policy exception has already been rejected by the Commission. In Staff Legal Bulletin ("SLB") No. 14H, the Commission specifically rejected the Third Circuit's interpretation of the exception as requiring a two-part test: (1) the proposal must focus on a significant policy issue; (2) the significant policy issue must "transcend" ordinary business by being "divorced from how a company approaches the nitty-gritty of its core business." SLB No. 14H (citing *Trinity Wall St. v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 347 (3d Cir.), *cert. dismissed*, 136 S. Ct. 499 (2015)). The Commission reasoned that "a proposal's focus [is not] separate and distinct from whether a proposal transcends a company's ordinary business," but instead:

> [P]roposals focusing on a significant policy issue are not excludable under the ordinary business exception "*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." Thus, a proposal may transcend a company's ordinary business operations *even if the significant policy issue relates to the "nitty-gritty of its core business."*

Id. (citing Release No. 34-40018) (second emphasis added). Accordingly, the question is whether the focus of the Proposal—the sale of down—falls within the significant policy issue of the humane treatment of animals, and thereby transcends RH's ordinary business operations. The Proposal's supporting statement makes clear that this question must be answered affirmatively.

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[1] The Company bears the burden of demonstrating that it is entitled to exclude the Proposal. Rule 14a-8(g). Since RH has not disputed that that down production is cruel or that it relates to the humane treatment of animals, PETA does not address those issues in this response.

Second, in an attempt to support its position, the Company cites to instances in which the Staff allowed for exclusion where the proponent alleged significant policy issues, but where the proposal was not narrowly focused on such an issue and requested conduct that extended beyond significant issues recognized by the Staff. *Mckesson Corp.* (June 1, 2017) (requesting a report describing complete distribution systems "to prevent the diversion of restricted medicines to prisons for use in executions" and how those systems are monitored, audited, and reported on to manufacturers); *Amazon.com, Inc.* (Mar. 27, 2015) (requesting broad disclosure on risks that may be related to "the treatment of animals used to produce products it sells," and as the company noted, without reference to cruelty or any particular type of product or relationship to the company);[2] *Hewlett-Packard Co.* (Jan. 23, 2015) (requesting a report on "sales of products and services to the military, police and intelligence agencies of foreign countries," not limited to military equipment, which had previously been recognized as a significant policy issue); *Dominion Res., Inc.* (Feb. 14, 2014) (broadly requesting that the board review "the risks Dominion faces under its current plan for developing solar generation, including a review of other US programs, and … develop a report on those risks as well as benefits of increased solar generation"); *Capital One Fin. Corp.*, (Feb. 3, 2005) (requesting a report on the elimination and relocation of jobs, including decision-making processes, cost savings, and impacts, even entirely unrelated to the purported significant policy issue of outsourcing).

Similarly, the Company cites several instances where it explicitly acknowledges that the proposals encompassed issues far beyond their alleged focus, *General Electric Co. (St. Joseph Health System)* (Jan. 10, 2005) (smoking under the guise of executive compensation); *The Walt Disney Co.* (Dec. 15, 2004) (same); *Johnson & Johnson (Northstar)* (Feb. 10, 2014) (focus on specific political contributions), and where the proposals did not clearly focus on a significant policy issue at all, *Wal-Mart Stores, Inc.* (Mar. 20, 2014) (relating to "oversight concerning the formulation and implementation of policies and standards that determine whether or not the company should sell a 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"), *Wal-Mart Stores, Inc.* (Mar. 30, 2010) ("requires all Wal-Mart stores to stock regularly "a minimum of one shelf stable locally produced packaged food for each 1,000 non-perishable SKU's (individually stocked products) in each of its grocery departments"), *Wal-Mart Stores, Inc.* (Mar. 26, 2010) (requiring that all products and services offered for sale in the United States by Wal-Mart and Sam's Club stores be manufactured or produced in the United States).

In none of these instances did the proposal focus on a significant policy issue recognized by the Staff, but was nonetheless found to be excludable because that issue related to ordinary business operations. Rather, the Staff found against the proponent specifically because the proposal did not focus exclusively on a significant policy issue. The Proposal at issue here relates solely to down production due to the cruelty inherent in its production, as discussed in the supporting statement, and these

[2] RH cites to a staff decision of February 3, 2015, but no such decision was issued on that date. PETA believes that the Company intended to cite to this decision of March 27.

decisions are therefore inapposite. *See Bristol-Myers Squibb Company* (Mar. 7, 1991) (a proposal recommending "that, with regard to cosmetics and non-medical household products, the Company: (1) immediately stop all animal tests not required by law; and (2) begin to phase out those products which in management's opinion cannot, in the near future, be legally marketed without live animal testing" could not be excluded because it "relates not just to a decision whether to discontinue a particular product but also to the substantial policy issue of the humane treatment of animals in product development and testing").

Third, the Company notes that, consistent with SLB 14E, "the Staff on numerous occasions has concurred that a "proposal relating to a retailer's sale of a product that may involve a significant policy issue may nevertheless be excluded because a sufficient nexus does not exist between the nature of the proposal and the company." *No-Action Request*, at 9-10. PETA agrees with RH's representation of the Staff position on this issue, and this position is precisely why the Proposal should not be excluded. Despite the Company's attempt to position itself as a mere retailer of down products, as Wal-Mart is of guns and ammunition, Rite Aid and Walgreens are of tobacco products, Home Depot is of glue traps, and Dillard's is of raccoon dog fur products, RH sells house-brand products and is intimately involved in their production.

As the Company has itself stated in litigation, "RH *designs, manufactures* and sells a wide variety of home furnishings, including furniture, lighting, bed, bath, hardware, and other products" and it "work[s] with top designers, artisans, and photographers from around the world on the designs for RH's products, and select[s] top-quality manufacturers to produce those products." First Amended Complaint, *Restoration Hardware, Inc. v. Haynes Furniture Co. Inc.*, 2016 WL 8577255, at ¶¶ 17, 20 (N.D.Ill. Dec. 23, 2016) (emphasis added). As further described in RH's 10-K:

> We have developed a proprietary product development platform that is fully integrated from ideation to presentation. Key aspects of our product development platform are:
>
> - *Organization*—We have established a collaborative, cross-functional organization centered on product leadership and coordinated across our product development, sourcing, merchandising, inventory and creative teams….
> - *Process*—For many of our products, we work closely with our network of artisan partners who possess specialized product development and manufacturing capabilities and who we consider an extension of our product development team. We collaborate with our global network of specialty vendors and manufacturers to produce artisanal pieces on a large scale with a high level of quality and value, including both distinctive original designs and reinterpretations of antiques.
> - *Facility*—We have built the RH Center of Innovation and Product Leadership, a facility which supports the entire product development process from product ideation to presentation for all channels.

See also RH's Prospectus, at 2 (describing involvement with the development of new products, being "curators and composers of inspired design and experiences," "work[ing] closely with our network of artisan partners," and "travel[ing] the world in search of people, ideas, items, experiences and inspiration, and then creat[ing] a composition that is unique and entirely our own."). This is further supported by a simple review of the Company's website, which sells, among many other down items, "our signature down blanket" under its own label.

Fourth, the Company fails to acknowledge the many instances in which the Staff has declined to issue no-action relief where a proposal concerns the sale of particular products but also focuses on a significant policy issue—most notably *Coach*, which was remarkably similar to this case but was related to fur rather than down, and requested that the company "enact a policy that will ensure that no fur products are acquired or sold." The Company does not even attempt to distinguish *Coach* from the Proposal at issue.

Finally, the Company's representation of the board's consideration of the significance of this policy issue should not be given deference. First, the Staff has already determined that the use of animal fur (in this case, feathers) in a company's own product line raises a significant policy issue that transcends ordinary business and is appropriate for a shareholder vote. Second, the No-Action Request does not include "a well-developed discussion of the board's analysis of" the particular policy issue raised and its significance, as required by SLB 14I. Rather, the Company sets forth a list of the general categories of information presented to the board, that the board considered relevant factors, and its bare conclusion that "the policy issues relating to the use of down in products sold by the Company that the Proposal addresses in part, while important to society in general and considered by the Company in the various contexts noted above, those policy issues do not transcend the Company's ordinary business operations and, as such, the Proposal would not be appropriate for a shareholder vote." *No-Action Request* at 12. The Company provides no detail whatsoever about the board's decision, let alone a well-developed discussion of the board's analysis. If SLB 14I requires nothing more than a company recitation of broad categories of information and the board's conclusion without no reasoning or explanation, it would allow for the Commission's application of Rule 14a-8(i)(7) to essentially swallow the significant policy exception entirely.

B. The Proposal does not seek to micromanage the company.

The Company argues that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it "seeks the Company's discontinuation of sales of specific products (i.e., products containing down)" and therefore "seeks to micromanage management's decisions regarding its sales of particular products." *No-Action Request*, at 4. Yet the Proposal urges the board to make a single decision regarding RH's use of down, which is inherently cruel and results in poor animal welfare. Accordingly, this is not a complex matter into which shareholders seek to "prob[e] too deeply," and is one for which they can make an informed judgment. *See* Rule 14a-8 Release.

As described in the supporting statement, and undisputed by the Company:

> Eyewitness investigations have revealed that birds used for down are often plucked while they're still alive. They're commonly clamped between workers' knees as fistfuls of their feathers are ripped out—exposing raw skin—causing them to struggle and shriek in pain. Afterward, many lie on the floor bleeding and trembling in fear and pain. They're often plucked so violently that their skin is ripped open, leaving them with gaping wounds, which workers then sew up with a needle and thread—and without administering any painkillers.
>
> Buying down also supports the notoriously cruel foie gras industry, in which tubes are rammed down birds' throats in order to pump their stomachs so full of concentrated feed that their livers painfully swell to as much as 10 times their normal size.
>
> Even if the birds aren't live-plucked or force-fed, they often experience intensive confinement on factory farms, where they're denied everything that's natural and important to them. Later, they're shipped—on open-air trucks, even in extreme weather conditions—to the slaughterhouse, where they're often improperly stunned before their throats are cut and they're dumped into a defeathering tank full of scalding-hot water while still conscious. No matter where it comes from, down is a product of cruelty to birds.

RH argues that this single decision is not appropriate for a shareholder vote because "[p]roduct decisions involve complex, day-to-day operational determinations of management that are dependent on management's underlying expertise." *No-Action Request* at 5. However, the need address complex issues is undoubtedly common to virtually any decision made by a large public company and to allow for companies to exclude a Proposal on that basis would virtually gut Rule 14a-8. It also ignores that the Staff has specifically rejected this argument in *Coach*, discussed above, in which the Staff found that a proposal to end the sale of fur products "does not seek to micromanage the company to such a degree that we believe exclusion of the proposal would be appropriate." *See also Revlon, Inc.* (Mar. 18, 2014) (information on animal tests and actions taken to eliminate them); *Phillip Morris Companies, Inc.* (Feb. 22, 1990) (denying no-action relief where proposal requested that the board to amend the charter to provide that it "shall not conduct any business in tobacco or tobacco products").

Moreover, RH's reference to balancing "applicable laws, regulations and industry standards and internal vender and sourcing compliance practices" in an attempt to buttress the complexity of the Proposal is misguided, as the Proposal's request to take steps to end the sale of down does not implicate any of them.

Finally, RH's attempt to liken the Proposal to *SeaWorld Entertainment, Inc.* (Mar. 30, 2017), is unavailing. In *SeaWorld*, the Staff did not find the Proposal to be excludable because it sought "to have the Company halt particular product offerings – 'captive-area' [sic] exhibits," but rather the focus of the proposal was to "retire the current resident orcas to seaside sanctuaries." SeaWorld argued, and the Staff ultimately agreed, that "[b]y attempting to impose upon the Company a specific decision with respect to the environment in which its animals should be housed, the Proposal seeks

to micro-manage the Company's operations, interfering with complex animal well-being decisions upon which the Company's shareholders are not in a position to make an informed judgment." That is, the proposal was not simply to end a particular product offering, but to develop, receive permits for, and relocate more than twenty captive killer whales to sanctuary.

The Proposal requests that the Company take steps to end its use of down, and notes that the Company already offers down alternatives in its product lines. Accordingly, the Proposal does not address any matter too complex for which shareholders can make an informed judgment.

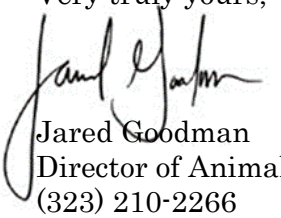
III. Conclusion

We respectfully request that the Staff decline to issue a no-action response to RH and inform the company that it may not omit the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Should you need any additional information in reaching your decision, please contact me at your earliest convenience. If you intend to issue a no-action letter to RH, we would welcome the opportunity to discuss this matter further before that response is issued.

Thank you.

Very truly yours,



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1934 Act/Rule 14a-8

March 16, 2018

VIA E-MAIL (*shareholderproposals@sec.gov*)

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

Re: RH Stockholder Proposal of People for the Ethical Treatment of Animals

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client RH, a Delaware corporation (the "***Company***"), which requests confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "***Exchange Act***"), the Company omits the enclosed stockholder proposal (the "***Proposal***") and supporting statement (the "***Supporting Statement***") submitted by People for the Ethical Treatment of Animals (the "***Proponent***") from the Company's proxy materials for its 2018 Annual Meeting of Stockholders (the "***2018 Proxy Materials***").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- submitted this letter to the Staff 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.

Copies of the Proposal and Supporting Statement, the Proponent's cover letter submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Gavin Grover, on behalf of the Company, via email at GGrover@mofo.com or via facsimile at (415) 268-7522, and to Jared S. Goodman, the Proponent's authorized representative, via email at JaredG@PetaF.org.

I. THE PROPOSAL

On January 9, 2018, the Company received a letter from the Proponent containing the Proposal for inclusion in the Company's 2018 Proxy Materials. The Proposal reads as follows:

> ***RESOLVED**, that, given the cruel and inhumane treatment of birds used for down and that Restoration Hardware already sells alternatives that mimic down, the Board is strongly encouraged to enact a policy that will ensure that no down products are sold by Restoration Hardware, Inc.*

The Supporting Statement consists of eight paragraphs, the majority of which focus on the process for producing down products and the Company's offering of down alternative products. The Supporting Statement is included in Exhibit A.

II. EXCLUSION OF THE PROPOSAL

A. Basis for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(7), as the Proposal deals with matters related to the Company's ordinary business operations.

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7), as It Deals With Matters Relating to the Company's Ordinary Business Operations

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company's "ordinary business operations." According to the Commission, 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." *Exchange Act Release No. 40018, Amendments to Rules on Shareholder Proposals*, [1998 Transfer Binder] Fed Sec. L. Rep. (CCH) 86,018, at 80,539 (May 21, 1998) (the "***1998 Release***").

In the 1998 Release, the Commission described the two "central considerations" for the ordinary business exclusion. The first is that certain 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" and, as such, may be excluded, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. The

second consideration of the 1998 Release 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." *Id.* at 86,017-18 (footnote omitted).

Further, the Staff has consistently agreed with the exclusion of proposals that relate to both ordinary business matters and significant policy issues in reliance on Rule 14a-8(i)(7).[1] *See Wal-Mart Stores, Inc.* (Mar. 15, 1999) (concurring in the exclusion of a proposal requesting that the Board of Directors report on Wal-Mart's actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, child labor or who fail to comply with laws protecting employees' rights and describing other matters to be included in the report, because paragraph 3 of the description of matters to be included in the report relates to ordinary business operations"). In addition, in a 2005 letter to the *General Electric Company* (Feb. 3, 2005), the Staff expressed the view that a proposal requesting General Electric to issue a statement that provided information relating to the elimination of jobs within General Electric and/or the relocation of U.S.-based jobs by General Electric to foreign countries, as well as any planned job cuts or offshore relocation activities, could be omitted in reliance on Rule l4a-8(i)(7) as relating to General Electric's ordinary business operations (*i.e.*, management of the workforce). Although it appeared the stockholder proponent intended the proposal to address the issue of "offshoring" (also called outsourcing or the movement of jobs from the U.S. to foreign countries), the proposal submitted to General Electric was not limited to that issue and encompassed both ordinary business matters and extraordinary business matters and, as such, the Staff agreed with General Electric's view that the proposal could be omitted.

In addition, on March 15, 2018, the RH Board determined that the policy issue underlying the Proposal is not sufficiently significant to the Company's business operations so as to implicate policy considerations that transcend ordinary business and make it appropriate for a shareholder vote. On November 1, 2017, the Staff published Staff Legal Bulletin 14I ("***SLB 14I***"), which announced an updated Staff policy regarding the application of Rule 14a-8(i)(7). The Staff stated in SLB 14I that the applicability of the significant policy exception "depends, in part, on the connection between the significant policy issue and the company's business operations." The Staff noted further that a well-informed board, exercising its fiduciary duties in overseeing management and the strategic direction of the company, "is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." Where the board concludes that the policy issue underlying a proposal is not sufficiently significant to the company's business operations, the Staff said that the company's letter notifying the Staff of the company's intention to exclude the proposal should set forth the board's analysis of "the particular policy issue raised and its significance" and describe the "processes employed by the board to ensure that its conclusions are well-informed and well-reasoned."

[1] In Staff Legal Bulletin 14C (June 28, 2005) ("***SLB 14C***"), the Staff stated that in determining whether the focus of a proposal is a significant policy issue, it considers both the proposal and supporting statement as a whole.

We set forth in Section 3. below the analysis undertaken by the RH Board and the conclusions reached by the Board in accordance with the requirements set forth in SLB 14I.

1. The Proposal May be Omitted Because it Seeks to Micromanage the Company

It is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly recognized that a proposal that seeks to micromanage the determinations of a company's management regarding day-to-day decisions may be excluded under Rule 14a-8(i)(7) as a component of "ordinary business."

The Proposal requests that the Company establish a policy "that will ensure no down products are sold by" the Company. The Commission has long held that proposals requesting the establishment of a policy are evaluated by the Staff by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See* Commission Release No. 34-20091 (Aug. 16, 1983) (the "***1983 Release***"). In this regard, it is important to note further that the Proposal is not limited to the establishment of a policy; rather, the Proposal and Supporting Statement are clear that they seek a specific action by the Company regarding a specific product. In this regard, in addition to the explicit request in the Proposal for a policy that would prevent the Company's sales of down products, the Supporting Statement states that the Proposal seeks "to end [the Company's] use of down" and to "phas[e] out down" in favor of "high quality alternatives that mimic down." As the Proposal explicitly seeks the Company's discontinuation of sales of specific products (*i.e.*, products containing down) the Proposal seeks to micromanage management's decisions regarding its sales of particular products.

The Company is a leading luxury retailer in the home furnishings marketplace, offering furniture, lighting, textiles, bathware, décor, outdoor and garden, tableware, and child and teen furnishing. The Company's decisions with respect to the mix of products which it sells to its customers are central to its ability to run the business on a day-to-day basis. The Company's management invests a significant amount of time, energy and effort on a daily basis to determine the type of products the Company will offer to its customers. In fact, decisions regarding which products to offer customers are a foundation of the Company's business. Decisions with respect to the Company's product mix involve a complex analysis of numerous factors, including the features of a particular product, the product's cohesiveness with the Company's other home furnishing offerings, and competitive factors, among others. The Company has determined that products that include down are an important element of the Company's overall product offering and that customers strongly prefer down to synthetic alternatives in a number of product areas that the Company offers in its business.

Company personnel must consider those and other factors in making specific decisions regarding whether to sell a particular product. As the Proposal seeks to have the Company discontinue the sales of specific products, the Proposal would micromanage the Company by requiring a specific action regarding a specific product (*i.e.*, determining that the number of products containing down sold by the Company would be zero).

In *SeaWorld Entertainment, Inc.* (March 30, 2017), the proposal sought to "retire the current resident orcas to seaside sanctuaries and replace the captive-area exhibits with innovative virtual and augmented reality or other types of non-animal experiences." The company argued, among other things, that the proponent sought to micromanage the company's decisions with respect to the entertainment products it offered to customers because those decisions involved myriad complex factors about which stockholders are not in a position to make an informed judgment. The Staff concurred in the omission of the proposal under Rule 14a-8(i)(7) as the proposal sought to "micromanage 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." *See also The Wendy's Company* (March 2, 2017) (concurring with the exclusion of a proposal addressing company practices in the purchase of produce as micromanaging the company).

As was the case in *Sea World*, the Proposal seeks to have the Company halt particular product offerings – "captive-area" exhibits offered by Sea World Entertainment, Inc. and "down products" offered by the Company. As in *Sea World*, the Company's decisions with respect to the products it offers to customers involve myriad complex factors about which stockholders are not in a position to make an informed judgment. Decisions with respect to the Company's product offerings require deep knowledge of the Company's business and operations, including knowledge of customer preferences – information to which the Company's shareholders do not have access. Product decisions involve complex, day-to-day operational determinations of management that are dependent on management's underlying expertise. The Proposal and Supporting Statement, however, asks shareholders to impose their judgment with respect to the sale of specific products (products containing down), a judgment for which they, as a group, are not adequately informed.

As the Proposal would impose a specific, over-riding requirement regarding day-to-day management decisions, the Company is of the view that the Proposal seeks to micromanage the Company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment. As a result, the Proposal may be omitted pursuant to Rule 14a-8(i)(7) as it seeks to micromanage the Company.

2. The Proposal May be Omitted because it Relates to Ordinary Business Matters

a. The Company's Determinations Regarding the Offering of Particular Products Are Ordinary Business Matters

If the Staff were to disagree with the Company's view that the Proposal attempts to micromanage the Company, the Company is of the view that the Proposal may be excluded under Rule 14a-8(i)(7) as the Proposal relates, at least in part, to the Company's ordinary business matters of deciding which products to offer to its customers.

The Proposal requests that the Company enact a policy that will ensure no down products are sold by the Company. The Supporting Statement then states that the Company should "end

its use of down," and "phase out down" in favor of "high-quality alternatives that mimic down." The underlying subject matter to be addressed by the requested policy and the resultant procedures requested in the Proposal and Supporting Statement relate directly to the ordinary business matter of determining the particular products the Company should or should not provide to its customers.

It is well established in Staff precedent that a company's decisions as to whether to offer particular products and services to its customers are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule l4a-8(i)(7). For example, in *Dillard's, Inc.* (Feb. 27, 2012), the Staff concurred that a proposal "to develop a plan . . . to phase out the sale of" products containing certain animal fur could be excluded under Rule 14a-8(i)(7). Dillard's, a retailer of products principally through a chain of several hundred department stores, argued that the proposal could be excluded consistent with prior Staff precedent because "[a]n integral part of [the retail] business is the selection of the products to be sold in its stores." The Staff concurred with the exclusion of the proposal, noting that the proposal "relates to the products offered for sale by the company [and p]roposals concerning the sale of particular products are generally excludable under rule 14a-8(i)(7)." As in *Dillard's*, the proposal requests that the Company, a retailer, discontinue the sale of particular products that contain materials – animal fur in the case Dillard's, Inc. and down in the case of the Company. Consistent with the result in *Dillard's*, the Proposal "relates to the product offered for sale" by the Company, and therefore is excludable under Rule 14a-8(i)(7).

The Staff's concurrence in *Dillard's* is consistent with the Staff's longstanding position on proposals that address the products and services a company offers to its customers. *See, e.g., Walgreens Boots Alliance, Inc.* (Nov. 7, 2016, recon. denied Nov. 22, 2016) (concurring in the omission under Rule 14a-8(i)(7) of a proposal that requested the company's board to prepare a report assessing the financial risk facing the company based on its continued sales of tobacco products); *Amazon.com, Inc.* (Mar. 27, 2015) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requesting that the company report on risks that it may face as a result of certain products it sells); *Papa John's International, Inc.* (Feb. 13, 2015) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requesting that the company expand its menu offerings to include vegan cheeses and vegan meats in order to advance animal welfare, reduce the company's ecological footprint, expand healthier options, and meet growing demand for plant-based foods, noting in particular that "the proposal relates to the products offered for sale by the company and does not focus on a significant policy issue"); *Wal-Mart Stores, Inc.* (Mar. 20, 2014) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requesting board oversight of determinations as to whether selling certain products that endanger public safety and well-being could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to "the products and services offered for sale by the company"), *aff'd and cited in Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 327 (3d Cir. 2015); *Wells Fargo & Co.* (Jan. 28, 2013, recon. denied Mar. 4, 2013) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report discussing the adequacy of the company's policies in addressing the social and

financial impacts of the company's direct deposit advance lending service, noting in particular that "the proposal relates to the products and services offered for sale by the company"); *Pepco Holdings, Inc.* (Feb. 18, 2011) (concurring in the omission under Rule 14a-8(i)(7) of a proposal that urged the company to pursue the market for solar technology and noting that "the proposal relates to the products and services offered for sale by the company"); *Wal-Mart Stores, Inc. (Albert)* (Mar. 30, 2010) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning "the sale of particular products"); *Wal-Mart Stores, Inc. (Porter)* (Mar. 26, 2010) (concurring in the omission under Rule 14a-8(i)(7) of a proposal "to adopt a policy requiring all products and services offered for sale in the United States of America by Wal-Mart and Sam's Club stores . . . be manufactured or produced in the United States of America," and noting that "the proposal relates to the products and services offered for sale by the company"); *Lowe's Cos., Inc.* (Feb. 1, 2008) (concurring in the omission under Rule 14a-8(i)(7) of a proposal encouraging the company to end the sale of glue traps as relating to "the sale of a particular product"); *Marriott International, Inc.* (Feb. 13, 2004) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requesting that the company eliminate sexually explicit content from its hotel gift shops and television programming as relating to "the sale and display of a particular product and the nature, content and presentation of programming").

The Proposal requests that the Company enact a policy that will ensure no down products are sold by the Company. As noted above, the Commission has long held that proposals requesting the enactment of a policy are evaluated by the Staff by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See* the *1983 Release*. We note further, however, that the Proposal is not limited to the enactment of a policy; rather, the Proposal and Supporting Statement make clear that the Proponent wants the Company to "end its use of down" in favor of "high-quality alternatives that mimic down." As such, the Proposal clearly relates to the Company's decisions regarding which products it offers to its customers, an ordinary business matter.

As a leading luxury retailer in the home furnishings marketplace, it is a fundamental responsibility of the Company's merchandise buying organization to select which products to sell and to define the practices related to the sourcing of such products. The process of procuring a wide-range of merchandise to be offered through the Company's online and other customer channels, the Company's merchandise buyers must consider myriad factors when making buying decisions in the marketplace, including, for example, customer tastes and preferences and market opportunities, as well as applicable laws, regulations and industry standards and internal vendor and sourcing compliance practices. Balancing such interests is a complex issue, and is "so fundamental to management's ability to run [the C]ompany on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." *See* the *1998 Release*. Accordingly, because the Proposal seeks to have the Company discontinue the sales of specific products and would require a specific action regarding a specific product (*i.e.*, determining that the number of products containing down sold by the Company would be zero), the Proposal may

be omitted pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it concerns the sale of particular products.

b. The Proposal Does Not Focus Solely on a Significant Policy Issue; it Focuses, at least in part, on Ordinary Business Matters

Even assuming arguendo that the Proposal is found to touch upon a policy issue that may be of such significance that the issue transcends ordinary business and would be appropriate for a stockholder vote, if the Proposal does not focus solely on a significant policy issue or if it addresses, even in part, matters of ordinary business in addition to a significant policy issue, the Staff has consistently concurred with the exclusion of the proposal. For example, in *McKesson Corp.* (June 1, 2017), the Staff permitted the company's exclusion of a stockholder proposal that requested a report on the company's processes to "safeguard against failure" in its distribution system for restricted medicines despite the fact that the proponent argued that the proposal touched upon a significant policy issue (the impermissible use of medicines to carry out execution by lethal injection). In granting relief under Rule 14a-8(i)(7), the Staff concurred with the company that the proposal related to the sale or distribution of the company's products. Similarly, in *Amazon.com, Inc.* (Feb. 3, 2015), the Staff permitted the company to exclude a proposal requesting that it "disclose to shareholders 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" despite the proponent's argument that the sale of foie gras raised a significant policy issue (animal cruelty). The Staff concluded that the proposal related to "the products and services offered for sale by the company." *See also Hewlett-Packard Co.* (Jan. 23, 2015) (concurring with the exclusion of a proposal requesting that the board provide a report on the company's sales of products and services to the military, police, and intelligence agencies of foreign countries, with the Staff noting that the proposal related to ordinary business and "does not focus on a significant policy issue"); *Dominion Resources, Inc.* (Feb. 14, 2014) (permitting the exclusion of a proposal relating to use of alternative energy because the proposal related, in part, to ordinary business operations (the company's choice of technologies for use in its operations)); and *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when a proposal asked a company to disclose information about the ordinary business matter of how it managed its workforce, even though the proposal also involved the significant policy issue of outsourcing). As was the case in the letters cited above, the Proposal clearly relates, at least in part, to the ordinary business matter of the sale of particular products by the Company.

Further, as noted above, the Staff stated in SLB 14C that "[i]n determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole." Accordingly, the fact that the Proposal addresses a policy issue that may be significant will not prevent the Proposal from being excludable under Rule 14a-8(i)(7) if the resolved clause and Supporting Statement makes clear that the Proposal relates, at least in part, to the Company's ordinary business. Consistent with the Staff's statement in SLB 14C, in *General Electric Co. (St. Joseph Health System)* (Jan. 10, 2005), the Staff

considered a proposal raising a general corporate governance matter by requesting that the company's compensation committee "include social responsibility and environmental (as well as financial) criteria" in setting executive compensation, where the proposal was preceded by a number of recitals addressing executive compensation but the supporting statement read, "we believe that it is especially appropriate for our company to adopt social responsibility and environmental criteria for executive compensation" followed by several paragraphs regarding an alleged link between teen smoking and the depiction of smoking in movies. The company argued that the supporting statement evidenced the proponents' intent to "obtain[] a forum for the [p]roponents to set forth their concerns about an alleged risk between teen smoking and the depiction of smoking in movies," a matter involving the company's ordinary business operations. The Staff permitted exclusion of the proposal under Rule 14a-8(i)(7), noting that "although the proposal mentions executive compensation, the thrust and focus of the proposal is on the ordinary business matter of the nature, presentation and content of programming and film production." *See also Johnson & Johnson* (*Northstar*) (Feb. 10, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal with a resolution concerning the general political activities of the company where the preamble paragraphs to the proposal demonstrated that the thrust and focus of the proposal was on specific company political expenditures, which are ordinary business matters); *The Walt Disney Co.* (Dec. 15, 2004) (permitting exclusion under Rule 14a-8(i)(7) of a proposal identical to the proposal in *General Electric Co. (St. Joseph Health System)* (Jan. 10, 2005), where the company argued that the proponents were attempting to "us[e] the form of an executive compensation proposal to sneak in its otherwise excludable opinion regarding a matter of ordinary business (on-screen smoking in the [c]ompany's movies)").

If the Staff were to conclude that the Proposal, even in part, relates to a policy issue that transcends ordinary business and would be appropriate for a stockholder vote, as was the case in the letters discussed above, the Proposal may nonetheless be excluded pursuant to Rule 14a-8(i)(7) because it is not focused solely on such policy issue and clearly addresses matters related to the Company's ordinary business operations. The Company is of the view that the Proposal relates, at least in part, to the ordinary business matter of the Company's decisions to sell particular products to its customers. The Company's view is supported by the language of the Supporting Statement, in which the Proponent specifically requests that the implementation of the policy requested by the Proposal would require the Company "to end its use of down" and to "phas[e] out down" in favor of "high quality alternatives that mimic down." Through the requested policy, the Proponent seeks to subject the Company's day-to-day decision-making regarding whether to offer for sale particular products to its customers. Such a request would clearly impact how the Company evaluates its product line and mix of offerings, which are day-to-day operational determinations of management and are fundamental to decisions the Company's management makes regarding the sale of particular products.

Further, although the Staff has found that some proposals addressing the humane treatment of animals implicate significant policy issues, whether a proposal relates to a significant policy issue depends not only on the subject matter underlying the proposal but also on how that underlying subject matter relates to the company. The Staff has

consistently drawn a distinction between manufacturers of products and the retailers who sell those product, concurring with the exclusion under Rule 14a-8(i)(7) of proposals relating to the sale of products by a retailer as relating to the retailer's ordinary business operations. The distinction between manufacturers and retailers is consistent with the Staff's guidance in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("***SLB 14E***"), in which the Staff stated 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." Consistent with the Staff's position stated in SLB 14E, the Staff on numerous occasions has concurred that a proposal relating to a retailer's sale of a product that may involve a significant policy issue may nevertheless be excluded because a sufficient nexus does not exist between the nature of the proposal and the company. *See Sturm, Ruger & Co.* (Mar. 5, 2001) (declining to concur in the exclusion of a proposal that requested that a gun manufacturer provide a "report on company policies and procedures aimed at stemming the incidence of gun violence in the United States") versus *Wal-Mart Stores, Inc.* (Mar. 9, 2001) (concurring with the exclusion on the basis of Rule 14a-8(i)(7) of a proposal that requested the retailer to stop selling "handguns and their accompanying ammunition"). The Staff's position reflected in *Sturm, Ruger* and *Wal-Mart Stores* is consistent with how the Staff has responded to similar requests in numerous other letters. *See, e.g., Dillard's*; *Walgreens Boots Alliance*; *Wal-Mart Stores, Inc.* (Mar. 20, 2014); *Rite Aid Corp. (New York City Police Pension Fund et al.)* (Mar. 26, 2009) (concurring with a retailer's exclusion under Rule 14a-8(i)(7) of a shareholder proposal requesting the board to report on the company's response to regulatory and public pressures to end sales of tobacco products because the proposal related to the "sale of a particular product"); *The Home Depot, Inc.* (Jan. 24, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company "end its sale of glue traps" because it related to "the sale of a particular product," notwithstanding the proponent's argument that their sale had been "the subject of public debate and controversy"); *Walgreen Co.* (Sept. 29, 1997) (concurring in the retailer's exclusion under the predecessor to Rule 14a-8(i)(7) of a proposal to end the retailer's sale of tobacco). Similarly, the Proposal addresses the sale of particular products containing goose down, and thus the subject matter of the Proposal directly relates to the Company's ordinary business operations as a retailer and not a manufacturer of such products. Thus, consistent with *Dillard's*, *Walgreens Boots Alliance*, *Wal-Mart Stores*, *Rite Aid*, *Home Depot*, and *Walgreen*, where the Staff concurred that those retailers could exclude proposals relating to the sale of particular products under Rule 14a-8(i)(7), the Proposal here lacks a sufficient nexus to the Company and is therefore excludable.

3. Any Policy Issue Raised by the Proposal Does Not Transcend the Company's Ordinary Business Operations

As discussed above, the Company is of the view that the Proposal deals, at least in part,

with matters relating to the Company's ordinary business operations. Should the Staff disagree with that position, however, the Company believes that it may omit the Proposal because any policy issue raised by the Proposal does not transcend the Company's ordinary business matters and would not be appropriate for a shareholder vote, a conclusion made with due consideration by RH's Board of Directors, as discussed below. Accordingly, even if the Staff disagrees that the Proposal relates, at least in part, to ordinary business matters relating to the day-to-day decisions regarding the provision of products and services, the Company believes that it may exclude the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(7).

In SLB 14I, the Staff stated that a board of directors, acting pursuant to its fiduciary duties and with the knowledge of the company's business and the implications for a particular proposal on that company's business, is well situated to "analyze, determine and explain whether a particular issue is sufficiently significant [to the company] because the matter transcends ordinary business and would be appropriate for a shareholder vote." In SLB 14I, the Staff stated that, where the board of directors concludes that the proposal is not so sufficiently significant, the company's no-action request should discuss the board's analysis of the policy issue and its significance to the company. Further, the Staff stated that the explanation would be most helpful if it detailed the specific "processes employed by the board to ensure that its conclusions are well-informed and well-reasoned." Consistent with the Staff's guidance, the discussion below describes the Board of Directors' analysis with respect to the policy issue addressed in the Proposal and whether such policy issue transcends ordinary business, including the Board's process in conducting its analysis.

The RH Board is regularly updated on the Company's business operations, which includes the manner in which various policy issues may impact the Company and the manner in which the Company addresses those issues in the course of its day-to-day operations. On March 15, 2018, the RH the Board held a regular meeting (the "***Board Meeting***"), and as part of the agenda, discussed the Proposal. We note as well that the RH Nominating and Governance Committee (the "Nominating and Governance Committee") separately considered the policy issue raised in the Proposal at a meeting held on March 12, 2018 and the significance of the issue to the Company. The discussion with respect to the Board's analysis contained in this letter reflects the process undertaken by the full Board of Directors. The Nominating and Governance Committee undertook a similar process in its consideration of the issues and its conclusion with respect to the Proposal is consistent with that of the Board described in this letter. In addition, the Nominating and Governance Committee delivered a recommendation to the Board in conjunction with Board Meeting regarding its conclusion with respect to the Proposal.

The Board was presented with information prepared by management about the Proposal and its implications to the Company, including information about the Company's approach to the policy issues presented by the Proposal, the Company's existing policies, practices and frameworks, investor feedback and any prior communications with the Proponent, the impact of the Proposal on the Company's business operations, and the Board's oversight of the Company's approach to the policy issues raised by the Proposal.

The Board also considered the Company's on-going efforts with respect to Corporate Social Responsibility ("CSR") including with respect to responsible sourcing, product safety and compliance, sustainability and philanthropy. The Company's management team discussed with the Board some of the Company's current initiatives in the area of CSR. The Board also considered the Company's efforts with respect to various aspects of the sourcing of down feathers.

The Board undertook a thorough review of the Proposal, asked questions of management regarding the relationship of the Proposal to the Company's operations, and discussed the Proposal's implications for the Company's business and policies. The Board considered that the Company is a leading luxury home furnishings brand. The Board considered the extent to which management of the Company makes day-to-day business decisions regarding the products and services the Company offers and to whom the Company chooses to offer particular products and services, which is the focus of the Proposal. In addition, the Board considered financial information provided by management regarding the Company's products including those products that include down feathers.

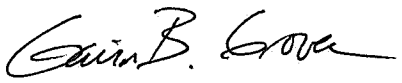
Acting consistent with its fiduciary duties, and after due consideration of the Company's business and the implications of the Proposal on the Company's business, the Board was of the view that it had received sufficient information from management to render a conclusion regarding the Proposal and its significance to the Company. The Board then concluded that the policy issues relating to the use of down in products sold by the Company that the Proposal addresses in part, while important to society in general and considered by the Company in the various contexts noted above, those policy issues do not transcend the Company's ordinary business operations and, as such, the Proposal would not be appropriate for a shareholder vote.

As discussed above, the Proposal deals, at least in part, with matters relating to the Company's ordinary business operations. Further, as discussed in SLB 14I, the Board has concluded that the policy issues raised by the Proposal do not transcend the Company's ordinary business operations. Accordingly, the Company is of the view that it may exclude the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(7).

III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2018 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2018 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (415) 268-7113.

Sincerely,



Gavin B. Grover
of Morrison & Foerster LLP

Attachments

cc: Sara Britt, Corporate Liason PETA Corporate Affairs
Jared S. Goodman, Authorized Representative of PETA
Karen Boone, RH
Edward Lee, RH

EXHIBIT A

AN INTERNATIONAL ORGANIZATION DEDICATED TO PROTECTING THE RIGHTS OF ALL ANIMALS

PETA

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

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

January 8, 2018

Corporate Secretary
Restoration Hardware, Inc.
15 Koch Road, Suite K
Corte Madera, CA 94925

Via UPS Next Day Air Saver

Dear Secretary:

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 188 shares of Restoration Hardware, 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 Restoration Hardware, 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

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

RBC | 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

January 8, 2018

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

Re: Verification of Shareholder Ownership in Restoration Hardware, Inc.

Dear Ms. Reiman:

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 188 shares of Restoration Hardware, 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,

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

2018 Shareholder Resolution on Phasing Out Items That Contain Down Feathers

RESOLVED, that, given the cruel and inhumane treatment of birds used for down and that Restoration Hardware already sells alternatives that mimic down, the Board is strongly encouraged to enact a policy that will ensure that no down products are sold by Restoration Hardware, Inc.

Statement of Support

Eyewitness investigations have revealed that birds used for down are often plucked while they're still alive. They're commonly clamped between workers' knees as fistfuls of their feathers are ripped out—exposing raw skin—causing them to struggle and shriek in pain. Afterward, many lie on the floor bleeding and trembling in fear and pain. They're often plucked so violently that their skin is ripped open, leaving them with gaping wounds, which workers then sew up with a needle and thread—and without administering any painkillers.

Buying down also supports the notoriously cruel foie gras industry, in which tubes are rammed down birds' throats in order to pump their stomachs so full of concentrated feed that their livers painfully swell to as much as 10 times their normal size.

Even if the birds aren't live-plucked or force-fed, they often experience intensive confinement on factory farms, where they're denied everything that's natural and important to them. Later, they're shipped—on open-air trucks, even in extreme weather conditions—to the slaughterhouse, where they're often improperly stunned before their throats are cut and they're dumped into a defeathering tank full of scalding-hot water while still conscious. No matter where it comes from, down is a product of cruelty to birds.

Restoration Hardware has the opportunity to end its use of down and prevent an enormous amount of suffering with no negative impact on the company, because—as is aptly described on its website—its down-alternatives are plush, lofty, supportive, and resilient:

> Filled with the world's lightest, loftiest and most natural-feeling down alternative, our inserts give shams and decorative pillow covers a plump look and luxurious, sink-in feel. ... [T]he pillows emulate the softness of down while offering easy care and exceptional longevity.

It goes on to say that the down alternative "beautifully mimics the softness and comfort of down."

Given that Restoration Hardware already sells high-quality alternatives that mimic down, phasing out down would be an especially easy transition.

Accordingly, we call on shareholders to support this ethically and economically responsible resolution.