



DIVISION OF  
CORPORATION FINANCE

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

March 23, 2018

Shilpi Gupta  
Skadden, Arps, Slate, Meagher & Flom LLP  
shilpi.gupta@skadden.com

Re: The Middleby Corporation  
Incoming letter dated January 8, 2018

Dear Mr. Gupta:

This letter is in response to your correspondence dated January 8, 2018 concerning the shareholder proposal (the "Proposal") submitted to The Middleby Corporation (the "Company") by the Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponents dated January 11, 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: Jonas Kron  
Trillium Asset Management, LLC  
jkron@trilliuminvest.com

March 23, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: The Middleby Corporation  
Incoming letter dated January 8, 2018

The Proposal requests that the Company issue a report describing the Company's environmental, social and governance policies, quantitative performance metrics, and improvement targets, including a discussion of greenhouse gas emissions management strategies and metrics.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Caleb French  
Attorney-Adviser

**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 11, 2018

VIA email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: The Middleby Corporation – 2018 Annual Meeting No-Action Request of Shareholder Proposal submitted by Trillium Asset Management, LLC, on behalf of the Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle

Dear Sir/Madam:

This letter is submitted on behalf of the Trillium Asset Management Small/Mid Cap Fund and Plymouth Congregational Church of Seattle and is the designated representative in this matter (hereinafter referred to as “Proponents”), who have submitted a shareholder proposal (hereinafter referred to as “the Proposal”) to The Middleby Corporation (hereinafter referred to as “Middleby” or the “Company”), in response to the letter dated January 8, 2018 sent to the Office of Chief Counsel by Shilpi Gupta of Skadden, Arps, Slate, Meagher & Flom on behalf of the Company, in which it contends that the Proposal may be excluded from the Company's 2018 proxy statement under Rule 14a-8(i)(7).

I have reviewed the Proposal and the Company's letter, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion that the Proposal must be included in Middleby's 2018 proxy statement because the Company has not met the exclusion requirements of the Rule. Therefore, we respectfully request that the Staff not issue the no-action letter sought by the Company.

Pursuant to Staff Legal Bulletin 14D (November 7, 2008) we are filing our response via e-mail in lieu of paper copies and are providing a copy to the Company's representative Shilpi Gupta at [shilpi.gupta@skadden.com](mailto:shilpi.gupta@skadden.com) and Lance Phillips at [lance.phillips@skadden.com](mailto:lance.phillips@skadden.com).

The Proposal:

**RESOLVED**

Shareholders request The Middleby Corporation (Middleby) issue a report describing the company's environmental, social, and governance (ESG) policies, quantitative performance metrics, and improvement targets, including a discussion of greenhouse

gas (GHG) emissions management strategies and metrics. This report should be updated annually, be prepared at reasonable cost, and omit proprietary information.

This is the second time Trillium has filed a sustainability reporting proposal at Middleby on behalf of its clients. The first time was last year when the proposal went to a vote at the Company annual meeting in May and received a 44.6% vote.

The real heart of the Company's argument appears to be that 14a-8(i)(7) permits proposals that are focused on sustainability reporting, but not proposals that are focused on the company's environmental, social, and governance (ESG) policies. From page 6 of the Company's letter:

However, unlike those proposals, the Proposal here does not limit itself to "sustainability" or "environmental impacts." Rather, the Proposal focuses on Middleby's products, employees and supply chain management, all matters that, as described above, are part of Middleby's ordinary business operations, and these ordinary business operations do not morph into significant policy matters simply because the Proponents have labeled them "significant ESG issue areas."

In other words, "ESG" is not the same as "sustainability." Not only does this argument stretch credulity, but it is clearly inconsistent with a long history of virtually identical proposals being found not excludable by the Staff.

Consider the following three examples of proposals challenged under Rule 14a-8(i)(7) and nevertheless found permissible by the Staff:

*Chesapeake Energy Corporation (April 2, 2010)*

RESOLVED Shareholders request that the Board of Directors issue a sustainability report describing the company's short- and long-term responses to ESG-related issues, including greenhouse gas emissions data and plans to manage emissions. The sustainability report should also include a company-wide review of policies, practices, and metrics related to ESG issues. The report should be prepared at reasonable cost, omitting proprietary information, and made available to shareholders by November 30, 2010.

*Cleco Corporation (January 26, 2012)*

RESOLVED: Shareholders request that Cleco Corporation issue a sustainability report that includes a comprehensive discussion of the company's sustainability risks and opportunities, including an analysis of material water-related risks. The report should be available by September 1, 2012, be prepared at reasonable cost, and omit proprietary information.

*SunTrust Banks, Inc.* (January 13, 2010)

RESOLVED: Shareholders request that the Board of Directors prepare a sustainability report describing strategies to address the environmental and social impacts of SunTrust's business, including strategies to address climate change. The report, prepared at reasonable cost and omitting proprietary information, should be published within six months of SunTrust's 2010 annual meeting.

All three of these proposals were deemed permissible under Rule 14a-8(i)(7) because they **focused on sustainability**. Most notably, the example of *Chesapeake* makes it abundantly clear that *a sustainability report is an ESG report*. The Proposal is for all intents and purposes cut of the same exact cloth as these three permissible proposals.

The Company has focused its no-action request on selective information that it claims is ordinary business. But even this cherry picked information, is not what is at the heart of the shareholder proposal. Considering the title of the Proposal is "Corporate Sustainability Report", the Company's claims that the Proposal does not pertain to sustainability seem inapposite.

The Company is also de-emphasizing the resolved clause and paying excessive attention to the supporting statement. The resolved clause requests the Company issue a report:

"describing the Company's environmental, social, and governance (ESG) policies, quantitative performance metrics, and improvement targets, including a discussion of greenhouse gas emissions management strategies and metrics."

**The carefully considered language here clearly and appropriately leaves it up to the Company to determine the topics that ultimately end up in the report. The topics in the Supporting Statement are only suggestions that were drawn from topics that external frameworks frequently identify as material sustainability topics.** Notably, the Company does not contest the other suggested topics (e.g. GHG emissions, energy use, water use, and chemicals and hazardous materials management) indicating that it understands these topics transcend its ordinary business operations. Therefore its arguments to exclude the Proposal are misplaced.

We also observe that the Staff has long recognized climate change and carbon reduction strategies as addressing a significant policy issue that transcends ordinary business matters. See SEC Release 34-40,018 (May 21, 1998); *Devon Energy Corporation* (March 19, 2014) proposal not excludable because it "focused on significant policy issue of climate change"; *Goldman Sachs* (February 7, 2011) proposals focusing on "the significant policy issue of climate change" not excludable as ordinary business.

Furthermore, it is evident that the terms "environmental, social, and governance" or "ESG" are virtually synonymous with sustainability. For example, Goldman Sach's 2016 "Environmental,

Social and Governance Report” uses ESG interchangeably with the term “sustainable”.<sup>1</sup> From the report: “Our 2016 Environmental, Social and Governance Report describes how we approach the environment, our people and corporate governance — all fundamental areas that underpin our approach to sustainability.”

Another example is found at PwC in its “PwC's 2016 ESG Pulse”:

While companies are increasingly issuing **sustainability reports that disclose aspects of their ESG programs**—81% of S&P 500 companies did so in 2015— more than nine in ten of those we polled aren’t doing it in a way that makes it easy for investors to compare across peer groups. Using a common standard could help bridge the gap: most corporates are using GRI. Investors prefer SASB.<sup>2</sup>

Even the company’s counsel, Skadden, seems to recognize this. For example, a January 2017 Skadden memorandum states:

**Environmental and Social Issues.** The level of assets managed using ESG — environmental, social and governance — factors continues to grow, as does the number of mainstream investors that consider **ESG** to some degree in their portfolio decision-making. Much like corporate governance, some investors view environmental and social issues as additional lenses through which to analyze risk in their portfolio companies. It is worth recalling the role that environmental and social concerns played in selecting the companies initially targeted by investors for proxy access shareholder proposals. In 2016, a record nine shareholder proposals on environmental and social issues received majority support, including proposals on board diversity, gender pay equity, political contributions disclosure and **sustainability reporting**. (emphasis added)<sup>3</sup>

Finally, the highly respected Sustainability Accounting Standards Board is built on the premise that ESG factors are sustainability factors. As described on the organizations website:

Established in 2011, the Sustainability Accounting Standards Board (SASB) is the independent standards-setting organization for sustainability accounting standards that meet the needs of investors by fostering high-quality disclosure of material sustainability information. The standards focus on known trends and uncertainties that are reasonably likely to affect the financial condition or operating performance of a company and therefore would be considered material under Regulation S-K. The

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<sup>1</sup> <http://www.goldmansachs.com/citizenship/esg-reporting/esg-content/esg-report-2016-highlights.pdf>

<sup>2</sup> <https://www.pwc.com/us/en/governance-insights-center/publications/esg-environmental-social-governance-reporting.html>

<sup>3</sup> <https://www.skadden.com/insights/publications/2017/01/us-corporate-governance-will-private-ordering-trum>

standards are designed to improve the effectiveness and comparability of corporate disclosure on material environmental, social, and governance (ESG) factors in SEC filings such as Forms 8-K, 10-K, 20-F, and 40-F.

For these reasons we respectfully request the Staff conclude the Proposal is not excludable under Rule 14a-8(i)(7).

**Conclusion**

In conclusion, we respectfully request the Staff to inform the Company that Rule 14a-8 requires a denial of the Company's no-action request. Please contact me at (503) 592-0864 or [jkron@trilliuminvest.com](mailto:jkron@trilliuminvest.com) with any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonas Kron', with a long horizontal flourish extending to the right.

Jonas Kron  
Senior Vice President

cc: Shilpi Gupta at [shilpi.gupta@skadden.com](mailto:shilpi.gupta@skadden.com)  
Lance Phillips at [lance.phillips@skadden.com](mailto:lance.phillips@skadden.com)

## Appendix A

### Sustainability Report

#### **RESOLVED**

Shareholders request The Middleby Corporation (Middleby) issue a report describing the company's environmental, social, and governance (ESG) policies, quantitative performance metrics, and improvement targets, including a discussion of greenhouse gas (GHG) emissions management strategies and metrics. This report should be updated annually, be prepared at reasonable cost, and omit proprietary information.

#### **SUPPORTING STATEMENT**

Middleby should consider the resources and recommendations made by the widely accepted Global Reporting Initiative, CDP, Sustainability Accounting Standards Board, and the Financial Stability Board's Taskforce on Climate related Financial Disclosures when identifying ESG topics to be included in this report. Proponents believe significant ESG issue areas for Middleby include operational environmental impacts (including air emissions, energy use, and water use); product safety and quality; employee health and safety; chemicals and hazardous materials waste management; and manufacturing and supply chain management.

#### **WHEREAS**

Tracking and reporting on ESG practices strengthens a company's ability to compete and adapt in today's global business environment, which is characterized by heightened public expectations for corporate accountability. Transparent, substantive reporting allows companies to better integrate and capture value from existing sustainability efforts, identify gaps and opportunities in policies and practices, strengthen risk management programs, stimulate innovation, enhance company-wide communications, and recruit and retain employees.

Middleby last published a sustainability report in 2010. In the absence of an up to date discussion of ESG policies and practices, performance metrics, and goals to reduce environmental impacts, investors are unable to evaluate whether Middleby is adequately prepared to adapt and respond to key ESG risks and opportunities.

In contrast, Assa Abloy, Barnes Group, Donaldson Company, Masco Corporation, Flowserve Corporation, Lennox International, and Lincoln Electric are examples of the numerous small industrial companies publishing sustainability metrics alongside qualitative supporting details.

Corporate Sustainability Reporting is widespread:

- In 2015, KPMG found that of 4,500 global companies, 73% had ESG reports.
- The Governance & Accountability Institute reports 82% of the S&P 500 published corporate sustainability reports in 2016.
- CDP, representing 827 institutional investors globally with approximately \$100 trillion in assets, calls for company disclosure on GHG emissions and climate change management programs. Seventy percent of the S&P 500 reported to CDP in 2015.

The link between strong sustainability management and value creation is increasingly evident. The University of Oxford and Arabesque Partners recently reviewed 200 studies on sustainability and corporate performance and concluded 90 percent of studies show "sound sustainability standards lower the cost of capital of companies" and 80 percent show "stock price performance of companies is positively influenced by good sustainability practices."

Furthermore, a study by the Society for Human Resource Management found employee morale was 55% better, loyalty 38% better, and workforce productivity 21% better in firms with strong sustainability programs.

Last year, this proposal received a vote of 44.6%, a significant level of support that management should not ignore.

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SHANGHAI  
SINGAPORE  
TOKYO  
TORONTO

January 8, 2018

**BY EMAIL** (shareholderproposals@sec.gov)

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

RE: The Middleby Corporation – 2018 Annual Meeting  
Omission of Shareholder Proposal Submitted by  
Trillium Asset Management, on behalf of the Trillium  
Small/Mid Cap Fund and Plymouth Congregational Church of  
Seattle

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Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, The Middleby Corporation, a Delaware corporation (“Middleby” or the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Middleby’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Trillium Asset Management (“Trillium”), on behalf of Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle (the “Proponents”), from the proxy materials to be distributed by Middleby in connection with its 2018 Annual Meeting of Stockholders (the “2018 Proxy Materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB No. 14D”), we are emailing this letter and its attachments to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to Trillium, acting on behalf of the Proponents, as notice of Middleby’s intent to exclude the Proposal from the 2018 Proxy Materials.

Rule 14a-8(k) and Section E of SLB No. 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponents that if they submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to Middleby.

### **I. The Proposal**

The resolution contained in the Proposal is set forth below:

Resolved: Shareholders request The Middleby Corporation (Middleby) issue a report describing the company’s environmental, social, and governance (ESG) policies, quantitative performance metrics, and improvement targets, including a discussion of greenhouse gas (GHG) emissions management strategies and metrics. This report should be updated annually, be prepared at reasonable cost, and omit proprietary information.

### **II. Basis for Exclusion**

We hereby respectfully request that the Staff concur in Middleby’s view that it may exclude the Proposal from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to Middleby’s ordinary business operations.

### **III. Background**

Middleby received the Proposal from Trillium, accompanied by a letter from each of the Proponents authorizing Trillium to file the Proposal and to act on behalf of the Proponents, by email on November 27, 2017. On December 11, 2017, Middleby sent a letter to Trillium requesting a written statement verifying that the Proponents beneficially held the requisite number of shares of Middleby common stock continuously for at least one year (the “Deficiency Letter”). On December 14, 2017, Middleby received correspondence from Trillium, including a letter from Charles Schwab & Co. verifying the ownership of the Plymouth Congregational

Church of Seattle as of November 27, 2017, and a letter from US Bank verifying the ownership of Trillium Small/Mid Cap Fund as of November 27, 2017. Copies of the Proposal, the Deficiency Letter, and related correspondence are attached hereto as Exhibit A.

**IV. Middleby May Exclude the Proposal Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to Middleby's Ordinary Business Operations.**

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes 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. 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.

The Proposal requests that Middleby issue a report "describing the company's environmental, social, and governance (ESG) policies, quantitative performance metrics, and improvement targets, including a discussion of greenhouse gas (GHG) emissions management strategies and metrics." Specifically, the Proposal cites Middleby's (1) product safety and quality, (2) employee health and safety, and (3) manufacturing and supply chain management as "significant ESG issue areas" that Middleby should consider when identifying topics to be included in the report. Collectively, these issue areas relate to Middleby's ordinary business operations in that they are so fundamental to management's ability to run the Company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Thus, the report contemplated by the Proposal is precisely the type of report which the Staff, in similar circumstances, has found to be excludable pursuant to Rule 14a-8(i)(7).

*1) Product Safety and Quality*

The Proposal cites "product safety and quality" as a significant ESG issue area for Middleby. However, the Staff has consistently concurred in the exclusion under Rule 14a-8(i)(7) of proposals that relate to the products that a company sells.

In the 1998 Release, the Staff explicitly stated that examples of ordinary business matters excludable under Rule 14a-8(i)(7) include decisions on productions quality. In *Dominion Resources, Inc.* (Feb. 22, 2011), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company offer its electric power customers the option of directly purchasing electricity generated from 100% renewable energy as dealing with a decision of whether to provide a particular service offering to its customers. Despite the proponent arguing that the proposal related to the significant policy issue of greenhouse gas emissions, the Staff concurred in the exclusion of the proposal, noting that it “relates to the products and services that the company offers” and that “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7).” *See also, e.g., General Electric Company* (Jan. 7, 2011) (permitting exclusion of a proposal that directed the company’s board of directors to focus on enhancing certain business sectors and on deemphasizing other business lines, in which the Staff noted that proposals “concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)”; *Coca-Cola Co.* (Feb. 17, 2010) (permitting exclusion of a proposal because decisions relating to product quality are matters relating to the company’s ordinary business operations); *International Business Machines Corp.* (Dec. 22, 1997) (concurring in the exclusion of a proposal under Rule 14a-8(i)(7) that sought to cause the company to focus on promoting and advertising certain of its products designed for consumers and small businesses); *Alliant Techsystems Inc.* (May 7, 1996) (concurring in the exclusion of a proposal requesting the board establish a policy to end all research, development, production and sales of antipersonnel mines, noting that “the proposal is directed at matters relating to the conduct of the [c]ompany’s ordinary business operations (i.e., the sale of a particular product”).

2) *Employee Health and Safety*

The Proposal also recommends reporting on the health and safety of Middleby’s employees. The Staff, however, has long held that a company’s safety initiatives, including those relating to workplace safety, are a matter of ordinary business and thus may be excluded under Rule 14a-8(i)(7).

In the 1998 Release, the Staff explicitly stated that an example of ordinary business matters excludable under Rule 14a-8(i)(7) includes the management of the workforce. In *Pilgrim’s Pride Corp.* (Feb. 25, 2016), for example, the proposal requested that the company publish a report describing the company’s policies, practices, performance and improvement targets related to occupational health and safety. The Staff concurred with the omission of the proposal as relating to ordinary business operations, noting that the proposal related to workplace safety. *See also,*

*e.g.*, *Intel Corp.* (Mar. 18, 1999) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking adoption of an “Employee Bill of Rights” that would have established various protections for employees because it related to the company’s “ordinary business operations, (i.e., management of the workforce)”); *Wal-Mart Stores, Inc.* (Mar. 23, 1998) (permitting exclusion of a proposal requesting a report on working conditions for employees); *Nike, Inc.* (July 10, 1997) (permitting exclusion of a proposal requesting a report on employment policies in foreign countries because it related to the company’s “ordinary business operations (i.e., principally employment-related matters)”); *Capital Cities/ABC, Inc.* (April 4, 1991) (excluding a proposal under Rule 14a-8(i)(7) that involved a request for detailed information on the composition of the company’s workforce, employment practices and policies); *Chevron Corp.* (Feb. 22, 1988) (concurring in the exclusion of a proposal as ordinary business because it related to the protection and safety of company employees).

### 3) *Manufacturing and Supply Chain Management*

Lastly, the Proposal identifies Middleby’s “manufacturing and supply chain management” as a significant ESG issue. However, the Staff has consistently concurred in the exclusion of proposals that deal with supplier relationships under Rule 14a-8(i)(7).

In the 1998 Release, the Staff explicitly stated that an example of ordinary business matters excludable under Rule 14a-8(i)(7) includes the retention of suppliers. The Staff in *Kraft Foods, Inc.* (Feb. 23, 2012) concurred in the exclusion of a proposal pursuant to Rule 14a-8(i)(7) that requested a report detailing the ways in which the company was assessing water risk to its agricultural supply chain because the proposal addressed “decisions relating to supplier relationships.” Similarly, in *Tyson Foods, Inc.* (Nov. 25, 2009), the Staff permitted the exclusion of a proposal requesting a policy for the company’s own hog production and its contract suppliers of hogs to phase out the use of certain animal feeds and to implement specific animal raising practices as relating to the company’s ordinary business operations, specifically the choice of production methods and decisions relating to supplier relationships. *See also, e.g., Dean Foods Co.* (Mar. 9, 2007) (permitting exclusion of a proposal on the basis that customer relations and decisions relating to supplier relationships were related to the company’s ordinary business operations).

In this instance, the Proposal requests that Middleby describe its ESG policies, performance metrics and improvement targets, and the Proposal identifies product safety and quality, employee health and safety and manufacturing and supply chain management as “significant ESG issue areas.” In support of this

request, the Proposal asserts that “[t]ransparent, substantive reporting allows companies to better...stimulate innovation...and recruit and retain employees” and that “[t]racking and reporting on ESG practices strengthens a company’s ability to compete and adapt in today’s global business environment.” However, each of these “issue areas” are matters that are fundamental to Middleby’s ordinary business operations and cannot, as a practical matter, be subject to shareholder oversight. For example, evaluating the quality and safety of Middleby’s products is a central responsibility of management in running the Company. Similarly, Middleby has a duty to protect the health, safety and welfare of its employees and to effectively manage its workforce. Maintaining policies and procedures that create a safe work environment and that protect the safety of its employees are matters that are best left to Middleby’s management. Furthermore, a company’s supply chain consists of the systems and organizations involved from the design and manufacturing to the marketing and distribution of its products. As a result, the management of Middleby’s supply chain involves fundamental business decisions that are connected to virtually all aspects of the day-to-day operations of the business and such decisions cannot be left to the discretion of shareholders.

Finally, Middleby recognizes that the Staff has noted that certain topics related to sustainability may present a significant policy issue and has in the past declined to concur in the exclusion of proposals that focus solely on sustainability and environmental reports. *See also, e.g., Chesapeake Energy Corp.* (April 13, 2010) (the Staff was unable to concur in the exclusion of a proposal requesting a report summarizing the environmental impact of the company’s fracturing operations, policies for reducing environmental hazards and information regarding material risks due to environmental concerns regarding fracturing); *SunTrust Banks, Inc.* (Jan. 13, 2010) (the Staff was unable to concur in the exclusion of a proposal requesting a sustainability report to address the environmental and social impacts of the company’s business and strategies to address climate change). However, unlike those proposals, the Proposal here does not limit itself to “sustainability” or “environmental impacts.” Rather, the Proposal focuses on Middleby’s products, employees and supply chain management, all matters that, as described above, are part of Middleby’s ordinary business operations, and these ordinary business operations do not morph into significant policy matters simply because the Proponents have labeled them “significant ESG issue areas.”

Accordingly, Middleby believes that the Proposal deals with matters relating to its ordinary business operations and that the Proposal is excludable under Rule 14a-8(i)(7).

**V. Conclusion**

For the foregoing reasons, Middleby respectfully requests the concurrence of the Staff that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

If we can be of any further assistance, or if the Staff should have any questions, please do not hesitate to contact me at the telephone number or email address appearing on the first page of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shilpi Gupta", written in a cursive style.

Shilpi Gupta

Attachments

cc: Allan Pearce, Shareholder Advocate  
Trillium Asset Management, LLC

EXHIBIT A

(see attached)



November 27, 2017

Mr. Martin Lindsay  
Secretary of the Company  
The Middleby Corporation  
1400 Toastmaster Drive  
Elgin, Illinois  
60120

Dear Mr. Lindsay,

Trillium Asset Management LLC ("Trillium") is an investment firm based in Boston specializing in sustainable and responsible investing. We currently manage over \$2 billion for institutional and individual clients.

Trillium hereby submits the enclosed shareholder proposal with The Middleby Corporation (Middleby) on behalf of the Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle for inclusion in the Company's 2018 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, the Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle hold more than \$2,000 of Middleby common stock, acquired more than one year prior to today's date and held continuously for that time. As evidenced in the attached letters, the Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle will remain invested in this position continuously through the date of the 2018 annual meeting. We will forward verification of each position separately. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We welcome the opportunity to discuss the subject of the enclosed proposal with company representatives.

Please direct any communications to me at (503) 953-8345, or via email at [apearce@trilliuminvest.com](mailto:apearce@trilliuminvest.com).

I would appreciate receiving a confirmation of receipt of this letter via email.

Sincerely,

A handwritten signature in cursive script that reads "Allan C Pearce".

Allan Pearce  
Shareholder Advocate  
Trillium Asset Management, LLC

## CORPORATE SUSTAINABILITY REPORT

### RESOLVED

Shareholders request The Middleby Corporation (Middleby) issue a report describing the company's environmental, social, and governance (ESG) policies, quantitative performance metrics, and improvement targets, including a discussion of greenhouse gas (GHG) emissions management strategies and metrics. This report should be updated annually, be prepared at reasonable cost, and omit proprietary information.

### SUPPORTING STATEMENT

Middleby should consider the resources and recommendations made by the widely accepted Global Reporting Initiative, CDP, Sustainability Accounting Standards Board, and the Financial Stability Board's Taskforce on Climate related Financial Disclosures when identifying ESG topics to be included in this report. Proponents believe significant ESG issue areas for Middleby include operational environmental impacts (including air emissions, energy use, and water use); product safety and quality; employee health and safety; chemicals and hazardous materials waste management; and manufacturing and supply chain management.

### WHEREAS

Tracking and reporting on ESG practices strengthens a company's ability to compete and adapt in today's global business environment, which is characterized by heightened public expectations for corporate accountability. Transparent, substantive reporting allows companies to better integrate and capture value from existing sustainability efforts, identify gaps and opportunities in policies and practices, strengthen risk management programs, stimulate innovation, enhance company-wide communications, and recruit and retain employees.

Middleby last published a sustainability report in 2010. In the absence of an up to date discussion of ESG policies and practices, performance metrics, and goals to reduce environmental impacts, investors are unable to evaluate whether Middleby is adequately prepared to adapt and respond to key ESG risks and opportunities.

In contrast, Assa Abloy, Barnes Group, Donaldson Company, Masco Corporation, Flowserve Corporation, Lennox International, and Lincoln Electric are examples of the numerous small industrial companies publishing sustainability metrics alongside qualitative supporting details.

Corporate Sustainability Reporting is widespread:

- In 2015, KPMG found that of 4,500 global companies, 73% had ESG reports.
- The Governance & Accountability Institute reports 82% of the S&P 500 published corporate sustainability reports in 2016.
- CDP, representing 827 institutional investors globally with approximately \$100 trillion in assets, calls for company disclosure on GHG emissions and climate change management programs. Seventy percent of the S&P 500 reported to CDP in 2015.

The link between strong sustainability management and value creation is increasingly evident. The University of Oxford and Arabesque Partners recently reviewed 200 studies on sustainability and corporate performance and concluded 90 percent of studies show "sound sustainability standards lower the cost of capital of companies" and 80 percent show "stock price performance of companies is positively influenced by good sustainability practices."

Furthermore, a study by the Society for Human Resource Management found employee morale was 55% better, loyalty 38% better, and workforce productivity 21% better in firms with strong sustainability programs.

Last year, this proposal received a vote of 44.6%, a significant level of support that management should not ignore.

Allan Pearce  
Shareholder Advocate  
Trillium Asset Management, LLC  
721 NW Ninth Ave  
Suite 250  
Portland, OR  
97209

Fax: 617-482-6179

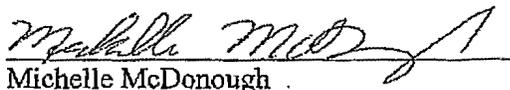
Dear Mr. Pearce:

I hereby request Trillium Asset Management, LLC file a shareholder proposal on behalf of The Trillium Small/Mid Cap Fund at The Middleby Corporation on the subject of Corporate Sustainability and Greenhouse Gas Emissions Reporting.

The Trillium Small/Mid Cap Fund is the beneficial owner of more than \$2,000 of Middleby common stock that it has held continuously for more than one year. The Trillium Small/Mid Cap Fund intends to hold the aforementioned shares of stock continuously through the date of the company's 2018 annual meeting.

The Trillium Small/Mid Cap Fund specifically gives Trillium Asset Management, LLC full authority to deal on its behalf, with any and all aspects of the aforementioned shareholder proposal. This authorization will terminate upon the conclusion of the Company's 2018 Annual Meeting. The Trillium Small/Mid Cap Fund intends for all communications from the company and its representatives to be directed to Trillium Asset Management, LLC. I understand that my name may appear on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,



Michelle McDonough

Partner

Trillium Asset Management, LLC, Investment Advisor to the Trillium Small/Mid Cap Fund

10/19/17  
Date



PLYMOUTH CHURCH  
UNITED CHURCH OF CHRIST

1217 Sixth Avenue, Seattle, WA 98101  
206.622.4865  
plymouthchurchseattle.org

Allan Pearce  
Shareholder Advocate  
Trillium Asset Management, LLC  
721 NW Ninth Ave  
Suite 250  
Portland, OR  
97209

Fax: 617-482-6179

Dear Mr. Pearce:

I hereby authorize Trillium Asset Management, LLC to file a shareholder proposal on behalf of Plymouth Congregational Church of Seattle at The Middleby Corporation (MIDD) on the subject of corporate sustainability reporting.

Plymouth Congregational Church of Seattle is the beneficial owner of more than \$2,000 of MIDD common stock that it has held continuously for more than one year. Plymouth Congregational Church of Seattle intends to hold the aforementioned shares of stock continuously through the date of the company's annual meeting in 2018.

I specifically give Trillium Asset Management, LLC full authority to deal, on Plymouth Congregational Church of Seattle's behalf, with any and all aspects of the aforementioned shareholder proposal. Plymouth Congregational Church of Seattle intends for all communications from the company and its representatives to be directed to Trillium Asset Management, LLC. I understand that Plymouth Congregational Church of Seattle's name may appear on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

A handwritten signature in cursive script that reads "Rev. Steven Davis".

Rev. Steven Davis  
Executive Minister  
Plymouth Congregational Church of Seattle

11/17/2017  
Date

The Middleby Corporation  
1400 Toastmaster Drive  
Elgin, Illinois 60120

December 11, 2017

BY EMAIL AND FEDERAL EXPRESS

Allan Pearce  
Trillium Asset Management, LLC  
721 NW Ninth Ave  
Suite 250  
Portland, OR 97209  
apearce@trilliuminvest.com  
(503) 953-8345

RE: Notice of Deficiency

Dear Mr. Pearce:

I am writing you to acknowledge receipt on November 27, 2017 of the shareholder proposal (the "Proposal"), submitted to The Middleby Corporation ("Middleby") by Trillium Asset Management, LLC, pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, for inclusion in Middleby's proxy materials for the 2018 Annual Meeting of Stockholders (the "Annual Meeting"), on behalf of Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle (the "Proponents"). Under the proxy rules of the Securities and Exchange Commission (the "SEC"), in order to be eligible to submit a proposal for the Annual Meeting, a proponent must have continuously held at least \$2,000 in market value of Middleby common stock for at least one year preceding and including the date that the proposal is submitted. In addition, the proponent must continue to hold at least this amount of common stock through the date of the Annual Meeting. A copy of Rule 14a-8 is attached to this letter as Exhibit A for reference.

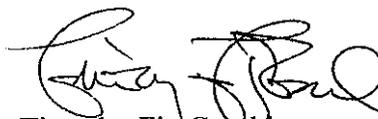
Our records indicate that the Proponents are not registered holders of Middleby common stock. Please provide a written statement from the record holder of each Proponent's shares of Middleby common stock (usually a bank or broker) and a participant in the Depository Trust Company ("DTC"), or an affiliate of a DTC participant, verifying that the Proponent had beneficially held the requisite amount of Middleby common stock continuously for at least one year preceding and including November 27, 2017, which is the date the Proposal was submitted to Middleby.

Mr. Allan Pearce  
December 11, 2017  
Page 2

In order to determine if the bank or broker holding each Proponent's shares is a DTC Participant, the DTC's participant list can be checked, which is currently available on the Internet at <http://www.dtcc.com/client-center/dtc-directories>. If the bank or broker holding each Proponent's shares is not a DTC participant or an affiliate of a DTC participant, proof of ownership must also be obtained from the DTC participant or affiliate of the DTC participant through which the shares are held. The DTC participant or affiliate of the DTC participant should be identifiable by asking each Proponent's broker or bank. If the DTC participant or affiliate of the DTC participant knows the applicable Proponent's broker or bank's holdings, but does not know the Proponent's holdings, Rule 14a-8 can be satisfied by obtaining and submitting two proof of ownership statements verifying that, preceding and including the date the Proposal was submitted, the required amount of shares were continuously held for at least one year – with one statement from each Proponent's broker or bank confirming the Proponent's ownership, and the other statement from the DTC participant or affiliate of the DTC participant confirming the broker or bank's ownership. For additional information regarding the acceptable methods of proving ownership of the requisite amount of Middleby common stock, please see Rule 14a-8(b)(2) in Exhibit A.

The SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date this letter is received. Once we receive this documentation, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. Middleby reserves the right to seek relief from the SEC as appropriate.

Very truly yours,



Timothy FitzGerald  
Chief Financial Officer

Enclosure

## **EXHIBIT A**

### **§ 240.14a-8 Shareholder proposals.**

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*  
(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3: How many proposals may I submit?* Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9*: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) *Improper under state law*: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law*: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a “say-on-pay vote”) or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year ( *i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.



December 6, 2017

Mr. Martin Lindsay  
Secretary of the Company  
The Middleby Corporation  
1400 Toastmaster Drive  
Elgin, Illinois  
60120

Dear Mr. Lindsay,

As stated in Trillium's Filing Letter of November 27, 2017 and in accordance with the SEC Rules, please find the attached custodial letters from U.S. Bank and Charles Schwab Advisor Services documenting that the Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle each holds sufficient company shares to file a proposal under rule 14a-8. Also, please see the attached authorization letters from the Trillium Small/Mid Cap Fund and Plymouth Congregational Church of Seattle showing the beneficial holder of the shares intends to hold the shares through the date of the company's 2018 Annual Meeting.

Rule 14a-8(f) requires notice of specific deficiencies in our proof of eligibility to submit a proposal. Therefore we request that you notify us if you see any deficiencies in the enclosed documentation

Please direct any communications to me at (503) 953-8345; via mail at Trillium Asset Management, LLC; 721 NW Ninth Ave, Suite 250, Portland, OR 97209; or via e-mail at [apearce@trilliuminvest.com](mailto:apearce@trilliuminvest.com)

Sincerely,

A handwritten signature in black ink that reads "Allan C Pearce". The signature is written in a cursive style.

Allan Pearce  
Shareholder Advocate  
Trillium Asset Management, LLC



Advisor Services  
1858 Summit Park Dr  
Orlando, FL 32810

November 30, 2017

Re: PLYMOUTH CONGREGATIONAL CHURCH OF SEATTLE #2/Acct \*\*\*

This letter is to confirm that Charles Schwab & Co. holds as custodian for the above account 347 shares of MIDD common stock. These 347 shares have been held in this account continuously for at least one year prior to November 27, 2017.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab and Company.

This letter serves as confirmation that the shares are held by Charles Schwab & Co, Inc.

Sincerely,

A handwritten signature in cursive script that reads "Justin Creamer".

Justin Creamer  
Relationship Specialist

#1213-8191



December 4, 2017

Re: Trillium Small/Mid Cap Fund/Acct # \*\*\*

This letter is to confirm that US Bank holds as custodian for the above client 711 shares of common stock in Middleby Corporation (MIDD). These 711 shares have been held in this account continuously for at least one year prior to November 27, 2017.

These shares are held at Depository Trust Company under the nominee name US Bank

This letter serves as confirmation that the shares are held by US Bank

Sincerely,

Rhonda Campbell

Trust Officer

Allan Pearce  
Shareholder Advocate  
Trillium Asset Management, LLC  
721 NW Ninth Ave  
Suite 250  
Portland, OR  
97209

Fax: 617-482-6179

Dear Mr. Pearce:

I hereby authorize Trillium Asset Management, LLC to file a shareholder proposal on behalf of Plymouth Congregational Church of Seattle at The Middleby Corporation (MIDD) on the subject of corporate sustainability reporting.

Plymouth Congregational Church of Seattle is the beneficial owner of more than \$2,000 of MIDD common stock that it has held continuously for more than one year. Plymouth Congregational Church of Seattle intends to hold the aforementioned shares of stock continuously through the date of the company's annual meeting in 2018.

I specifically give Trillium Asset Management, LLC full authority to deal, on Plymouth Congregational Church of Seattle's behalf, with any and all aspects of the aforementioned shareholder proposal. Plymouth Congregational Church of Seattle intends for all communications from the company and its representatives to be directed to Trillium Asset Management, LLC. I understand that Plymouth Congregational Church of Seattle's name may appear on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,



Rev. Steven Davis  
Executive Minister  
Plymouth Congregational Church of Seattle

Date

11/7/2017

Allan Pearce  
Shareholder Advocate  
Trillium Asset Management, LLC  
721 NW Ninth Ave  
Suite 250  
Portland, OR  
97209

Fax: 617-482-6179

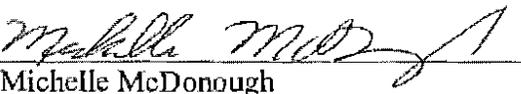
Dear Mr. Pearce:

I hereby request Trillium Asset Management, LLC file a shareholder proposal on behalf of The Trillium Small/Mid Cap Fund at The Middleby Corporation on the subject of Corporate Sustainability and Greenhouse Gas Emissions Reporting.

The Trillium Small/Mid Cap Fund is the beneficial owner of more than \$2,000 of Middleby common stock that it has held continuously for more than one year. The Trillium Small/Mid Cap Fund intends to hold the aforementioned shares of stock continuously through the date of the company's 2018 annual meeting.

The Trillium Small/Mid Cap Fund specifically gives Trillium Asset Management, LLC full authority to deal on its behalf, with any and all aspects of the aforementioned shareholder proposal. This authorization will terminate upon the conclusion of the Company's 2018 Annual Meeting. The Trillium Small/Mid Cap Fund intends for all communications from the company and its representatives to be directed to Trillium Asset Management, LLC. I understand that my name may appear on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,



Michelle McDonough

Partner

Trillium Asset Management, LLC, Investment Advisor to the Trillium Small/Mid Cap Fund

10/19/17  
Date