



DIVISION OF
CORPORATION FINANCE

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

February 28, 2018

Jessica L. Lennon
Latham & Watkins LLP
jessica.lennon@lw.com

Re: Host Hotels & Resorts, Inc.
Incoming letter dated January 12, 2018

Dear Ms. Lennon:

This letter is in response to your correspondence dated January 12, 2018 and February 12, 2018 concerning the shareholder proposal (the "Proposal") submitted to Host Hotels & Resorts, Inc. (the "Company") by UNITE HERE (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 24, 2018 and February 15, 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: Sarah Grossman-Swenson
McCracken, Stemerman & Holsberry, LLP
sgs@msh.law

February 28, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Host Hotels & Resorts, Inc.
Incoming letter dated January 12, 2018

The Proposal requests that the Company issue an annual sustainability report with due diligence about operations at the Company's properties, including the impact on investors of hotel operators' environmental, human rights and labor practices.

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

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(6). We are unable to conclude that the Company would lack the power or authority to implement the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(6).

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.

McCRACKEN, STEMERMAN & HOLSBERY, LLP

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February 15, 2018

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Re: Host No-Action Letter in Response to Shareholder Proposal by UNITE
HERE

Dear Ladies and Gentlemen:

On behalf of our client, UNITE HERE, we write to respond to the most recent February 12, 2018, correspondence related to the no action request dated January 12, 2018, from counsel for Host Hotels & Resorts (“Host” or “Company”), a Maryland-based hospitality REIT, arguing that it should be permitted to omit from its 2018 proxy materials the UNITE HERE shareholder proposal submitted on December 29, 2017 (“Proposal”). In accordance with Rule 14-a8(k), this letter is being provided concurrently to counsel for Host.

Despite Host’s strained reading—in an attempt to avoid producing an annual sustainability report and conducting due diligence about its properties—the Proposal is neither vague nor misleading, and the Company can readily implement the Proposal without any actions by any third parties.

A. The Proposal is not vague and misleading, and any questions Host has about the language used in the Proposal and supporting statement can be clarified with very minor revisions that do not alter the substance of the Proposal.

First, the proposal itself requests that the Company “issue an annual sustainability report with due diligence about operations...” and recommends that, in preparing these reports, Host “ask its hotel operators” to use the GRI framework. Just because Host is asking operators to use GRI reporting standards does not mean that the proposal suggests that the *operators* prepare Host’s due diligence report – rather, to prepare the report(s), the Proposal recommends that Host ask its hotel operators to use the GRI reporting standards. However, we have no objection to clarifying the language modifying the language to say:



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- “We recommend Host ask its hotel operators to use the Global Reporting Initiative’s (“GRI”) Sustainability Reporting Standards *to assist Host in preparing Host’s report(s).*”

See Staff Legal Bulletin No. 14B (Sept. 15, 2004), cited by Host, which clarifies that the SEC has “a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal.” *See id.*

Second, the final paragraph of the supporting statement was merely intended to recommend that Host ask its operators to use the GRI sustainability framework. It was not intended to require operators to use the GRI framework as a condition of producing the sustainability report, nor was it intended to require Host to use the GRI standards. This can be clarified by simply deleting the words “committing to” and replacing the word “requiring” with the word “asking”:

- ... by ... using, and *asking* its operators to use...”

These two minor changes should satisfy Host’s concerns. Although we believe the meaning was clear in the original wording of the proposal, we believe that the proposed substitutions clarify the proposal and leave no doubt that:

- It is Host, and not the third-party operators, who should prepare the annual sustainability report;
- The proposed report is a summary of Host’s own due diligence on its third-party operators, which the Company admits it can conduct; and
- The proposal recommends that Host ask its third-party managers for information consistent with the Global Reporting Initiative framework.

The Proposal is not vague and misleading, and Host’s request for a no-action determination should be rejected.

- B. The Proposal does not require use of GRI sustainability standards by Host, and so the decisions Host cites related to mandatory use of GRI standards are not applicable here.**

Host cites cases where proposals required preparation of a report *by the company* that *required* the company to use GRI guidelines, without specifying which guidelines should be used. The conclusion was that such proposals are vague because they *required* use of unspecified standards by the company. Here, the Proposal simply *requests* that the company

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produce a due diligence report. It recommends that the Company *ask* its operators to use applicable GRI guidelines, but it does not *require* use of GRI guidelines by the Company.

Moreover, Host misrepresents UNITE HERE's legal position. UNITE HERE did not argue that all proposals mentioning GRI standards are no longer excludable. Rather, UNITE HERE argued that where a proposal simply requests a sustainability report, it is not excludable. The cases cited by UNITE HERE in its prior letter all involve situations where, like here, the proposal requested a sustainability report, and did not require the Company to use certain undefined standards. Indeed, as Host admits in its most recent letter, both *SunTrust Banks* and *Kroger* recommended, but did not require, use of GRI standards by the Company. Just as in these cases, the UNITE HERE Proposal is not vague because it does not *require* use of unspecified GRI standards by the Company. Recommending that the Company conduct its diligence, in part, by *asking* operators to use the GRI factors relevant to those companies, does not *require* the Company to use unspecified GRI standards.

C. The Company does not lack the power and authority to implement the proposal under Rule 14a-8(i)(6).

UNITE HERE's prior letter does not mischaracterize the Proposal. Rather, the precatory Proposal simply recommends and requests that the Company prepare an annual sustainability report. It does not require operators to prepare a GRI report, nor does it require the Company to compel operators to use the GRI framework. Any confusion about what is requested by the Proposal can be cured by the minor clarifications suggested in Part A above.

D. Conclusion

The Company admits it "does have the ability to both conduct due diligence on its third-party managers and ask such managers to provide information regarding sustainability practices at their hotels." We are heartened by this admission, but it makes the Company's desire to omit the Proposal from its proxy materials all the more surprising. We urge the Staff to reject the Company's request to omit the Proposal from its 2018 proxy materials.

Very truly yours,



Sarah Grossman-Swenson

Cc: Jessica L. Lennon, Counsel for Host (jessica.lennon@lw.com)
Marty Leary, UNITE HERE



February 12, 2018

VIA ELECTRONIC MAIL

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Re: **Stockholder Proposal to Host Hotels & Resorts, Inc. from UNITE HERE**

Ladies and Gentlemen:

This letter is submitted on behalf of Host Hotels & Resorts, Inc. (the “**Company**”) regarding its January 12, 2018 request (the “**No-Action Request**”) for confirmation that the staff (the “**Staff**”) of the Division of Corporation Finance will not recommend enforcement action to the Securities and Exchange Commission if the Company excludes a stockholder proposal (the “**Proposal**”) and related supporting statement submitted by UNITE HERE (the “**Proponent**”) from the Company’s proxy statement (the “**Proxy Materials**”) for its 2018 annual meeting of stockholders pursuant to (i) Rule 14a-8(i)(6), as the Company lacks the power or authority to implement the Proposal, and (ii) Rule 14a-8(i)(3), as the Proposal is vague and indefinite so as to be inherently misleading.

On January 24, 2018, McCracken, Stemerman & Holsberry, LLP submitted a letter (the “**Proponent’s Letter**”) to the Staff on behalf of the Proponent responding to the No-Action Request. By copy of this letter, we are advising the Proponent of the Company’s response to the Proponent’s Letter and in accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, we are submitting this letter by electronic mail.

The Company believes that the Proposal may be excluded from the Proxy Materials for the reasons discussed in the No-Action Request. For the sake of brevity, those reasons are not repeated here.

I. The Proponent’s Letter highlights the vague and misleading nature of the Proposal.

The Proponent’s Letter only serves to emphasize the vague and misleading nature of the Proposal by highlighting its inherent contradictions, as well as the conflicting interpretations of what the Proposal requires of the Company and/or its third-party managers. This only serves to demonstrate that the Proposal may be properly excluded pursuant to Rule 14a-8(i)(3).

In particular, we note the following:

- The first paragraph requests that the Company “issue an annual sustainability report with due diligence about operations at Host’s properties. . . .”
- The second paragraph states, “We recommend Host *ask its hotel operators* to use the Global Reporting Initiative’s (“**GRI**”) Sustainability Reporting Standards *to prepare the report(s)*.” (Emphasis added).
- The final paragraph in the supporting statement states, “We urge shareholders to recommend Host provide comprehensive disclosure about its sustainability practices, including reporting *from* hotel operators...by *committing to using*, and *requiring its operators to use, the GRI sustainability framework*.” (Emphasis added).

As evidenced in the Proponent’s Letter, the Proponent itself cannot determine whether (i) the Company or its hotel operators should prepare the report(s); or (ii) the Company should (a) *ask* or (b) *require* its third-party managers to use the Global Reporting Initiative’s Sustainability Reporting Standards (the “**GRI Standards**”) to prepare the report(s). The Proponent’s Letter attempts to recast the Proposal by stating that it only “recommends that Host ask its operators to voluntarily use the GRI standards, in order that Host may prepare the report.” This interpretation of the Proposal is squarely contradicted by the text of the Proposal quoted above, which both asks the Company to issue a report and recommends that the Company ask its operators to prepare the report(s).

Further, from the plain text of the supporting statement, it is not apparent that the use of the GRI Standards by the Company and its third-party managers is optional, as the Proponent attempts to argue. The first paragraph does recommend that Host simply ask its operators to use the GRI standards in preparing their report(s). However, as noted above, the final paragraph of the Proposal clearly states that it seeks to have Host “provide comprehensive disclosure about its sustainability practices...by *committing to using*, and *requiring* its operators to use, the GRI sustainability framework.” (Emphasis added).

If even the Proponent cannot determine what the Proposal is asking, then neither the stockholders voting on the Proposal, nor the Company in implementing the Proposal (if adopted), can be expected to be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires. As the Staff noted in Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“**SLB 14B**”), “this objection also may be appropriate where the proposal and the supporting statement, when read together, have the same result.” That is clearly the case here, where the Proposal and supporting statement, when read together, present multiple different and conflicting courses of action.

For these reasons the Proposal is vague and misleading and may properly be excluded pursuant to Rule 14a-8(i)(3).

II. The Proposal is vague and indefinite because it is unclear which sustainability reporting standards it requires and it is internally inconsistent in describing whether the Company or its third-party managers should prepare the requested sustainability report.

The Proponent's Letter claims that the Proposal "does not require the Company to compel third-party managers to prepare a sustainability report." Rather, the Proponent attempts to argue that the Proposal "simply suggests that [the Company] ask its operators to use applicable GRI standards..." and states that the GRI Standards are "not a required part of the Proposal." As stated above, it is unclear from the text of the Proposal whether it is asking or requiring that the GRI Standards be used.

The Proposal may be excluded because the GRI Standards on which it relies are vague and indefinite, as evidenced by prior Staff determinations.

If, however, as written in the final paragraph of the supporting statement, the Proposal **requires** the use of the GRI Standards, then it may be excluded pursuant to Rule 14a-8(i)(3) because the reference to the more than 400-page "GRI Standards," without any additional guidance or description, is, by itself, indefinite.

In *Exxon Mobil Corp.* (avail. Mar. 21, 2011), the Staff concurred with exclusion under Rule 14a-8(i)(3) of a proposal requesting "a report ... on the community and environmental impact of [the company's] logistics decisions, using guidelines from the Global Reporting Initiative." In permitting the exclusion of that proposal, the Staff noted "that the proposal does not sufficiently explain the 'guidelines from the Global Reporting Initiative' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires."

In the Proponent's Letter, the Proponent cherry-pick's four no-action requests, each of which pre-dates *Exxon Mobil Corp.*, relating to sustainability reporting proposals where the Staff denied no-action under Rule 14a-8(i)(3), arguing that such denials are proof that the Staff has concluded that proposals referring to the GRI Standards are no longer excludable under Rule 14a-8(i)(3). *Chesapeake Energy Corp.* (avail. Apr. 2, 2010); *SunTrust Banks, Inc.* (avail. Jan 13, 2010); *Kroger Co.* (avail. Mar. 29, 2006); and *Texas Industries, Inc.* (avail. Jul. 27, 2007). Not only is this a misrepresentation of the Staff's position, but the proposal in each example cited by the Proponent is distinguishable from the Proposal at issue here.

In *Chesapeake Energy*, the proposal requests a sustainability report, but makes no reference at all to the GRI Standards, unlike the Proposal. In *SunTrust Banks*, the proposal recommends the use of the GRI Standards, but does not require them, and was highly prescriptive as to what the SunTrust Banks sustainability report should contain. By contrast, the Proposal focuses on the GRI Standards in four of its eight paragraphs and ends by urging stockholders to recommend that the Company **require** its operators to use the GRI Standards. In *Kroger*, the proposal does not actually require the use of the GRI Standards; rather, it simply includes a statement recommending that Kroger "join the over 700 companies who have issued sustainability reports based on the [GRI Standards]," without ever asking or requiring that

Kroger use such standards itself, a relevant and distinguishing fact. Finally, in *Texas Industries*, the proposal requests a public sustainability report, but never suggests or requires that the company use the GRI Standards in preparing the report. By contrast, the Proposal at a minimum requires that the Company ask its operators to use the GRI Standards or, in the alternative, would have the Company require its operators to use the GRI Standards.

The Proposal may be excluded because it is internally inconsistent in describing who should prepare the required report.

It should also be noted that the Proponent's Letter does not even attempt to refute the other inconsistency in the Proposal raised by the No-Action Request. From the plain text of the Proposal, it is unclear whether the Proponent is requesting that (i) the Company prepare an annual sustainability report (see paragraph 1, "Shareholders request Host Hotels & Resorts ("Host") issue an annual sustainability report...") or (ii) each of the Company's hotel operators prepare an annual sustainability report (see paragraph 2, "We recommend Host ask its hotel operators to use the Global Reporting Initiative's ("GRI") Sustainability Reporting Standards to prepare the report(s).") The two paragraphs comprising the Proposal are contradictory because one delegates authority for the preparation of a sustainability report to the Company, while the next paragraph requests that the hotel operators "prepare the report(s)." while recommending that its operators use the GRI Standards in doing so. This again creates a situation, as in *The Home Depot, Inc.* (avail. Mar. 12, 2014), where "neither the stockholders voting on the Proposal, nor the Company implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires." SLB 14B.

III. The Proponent's Letter improperly mischaracterizes by the Proposal by trying to re-frame it as only requiring the Company to ask its third-party managers to engage in sustainability reporting, which is contradicted by the plain text of the Proposal.

The Proponent's Letter improperly mischaracterized the Proposal and states that it:

does not require the Company to compel third-party managers to prepare a sustainability report. By the plain terms of the proposal, the proposal only requires due diligence and requests that Host ask its operators to provide information. It does not require the operators to provide information.

The Company will admit that it indeed does have the ability to both conduct due diligence on its third-party managers and ask such managers to provide information regarding sustainability practices at their hotels; but that is not what the Proposal requires. As discussed above, the Proposal and its supporting statement clearly state that the Company should "provide comprehensive disclosure about its sustainability practices, including reporting from hotel operators about environmental, human rights, and labor practices, by committing to using, and **requiring** its operators to use, the GRI sustainability framework." The only way that the Company would be able to provide the disclosure requested by the Proposal would be by **requiring** its hotel operators to report to the Company regarding their environmental, human rights, and labor practices, as explicitly requested by the Proposal. As a result, implementation

of the Proposal would require an intervening action by the third-party managers, who are not under the control of the Company, and thus the Proposal may properly be excluded under Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

The Proponent's attempt to re-cast the Proposal as requiring that the Company *ask* its third-party operators to engage in certain actions, rather than *require* its third-party operators to engage in such actions, is misleading and directly contradicts the plain text of the Proposal and supporting statement. Based on the Proponent's understanding of Rule 14a-8(i)(6), any proponent could avoid a "power or authority" issue by phrasing its proposal in such a way that it only *asks* a third party to take action, when in reality, the actions or outcomes requested by the proposal could not be accomplished unless such third party were compelled to take some action. This interpretation of Rule 14a-8(i)(6) is illogical and inappropriate. For instance, in *eBay Inc.* (avail. Mar. 26, 2008), the Staff permitted exclusion of a proposal under Rule 14a-8(i)(6) which requested that a Chinese joint venture 49% controlled by eBay adopt a policy prohibiting the sale of dogs and cats on its website because, as a minority member of the joint venture, eBay lacked the power and authority to cause the joint venture to adopt the policy. Based on the Proponent's interpretation of Rule 14a-8(i)(6), the proponent in *eBay* could have avoided exclusion by arguing, contrary to the text of the proposal, that its proposal only required that eBay *ask* its joint venture to prohibit the sale of dogs and cats on its website, without actually requiring any action by the joint venture. However, without requiring any action by the joint venture, eBay would have been unable to deliver on the intended goal of the proposal – to end the sale of dogs and cats on the website of eBay's joint venture.

The Proponent's attempt to re-frame the Proposal is simply an attempt to avoid exclusion pursuant to Rule 14a-8(i)(6). The Proposal clearly asks the Company to "require" its hotel operators to use the GRI Standards, which is an outcome that the Company cannot achieve without the intervening action of its third-party hotel operators. As discussed in the No-Action Request, the operators of the Company's properties are large, sophisticated and independent corporations that are not under the control of the Company. The Company has no power to "require" these hotel operators to use the GRI Standards. Without the cooperation and participation of the hotel operators, the Company cannot implement the Proposal. Because the Company cannot implement the Proposal without the intervening action of a third-party, it remains excludable under Rule 14a-8(i)(6).

IV. Conclusion.

Based upon the foregoing analysis, together with the analysis in the No-Action Request, we respectfully reiterate our request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned to discuss any questions you may have regarding this matter.

Very truly yours,



Jessica L. Lennon
of LATHAM & WATKINS LLP

Enclosures

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Marty Leary, Director, Financial Research, UNITE HERE
Sarah Grossman-Swenson, McCracken, Stemerman & Holsberry, LLP
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Re: Host No-Action Letter in Response to Shareholder Proposal by
UNITE HERE

Dear Ladies and Gentlemen:

On behalf of our client, UNITE HERE, we write to respond to the no action request dated January 12, 2018, from counsel for Host Hotels & Resorts ("Host" or "Company"), a Maryland-based hospitality REIT, arguing that it should be permitted to omit from its 2018 proxy materials the UNITE HERE shareholder proposal submitted on December 29, 2017 ("Proposal"). In accordance with Rule 14-a8(k), this letter is being provided concurrently to counsel for Host.

UNITE HERE's precatory proposal requests:

that Host issue an annual sustainability report with due diligence about operations at Host's properties, including the impact on investors of hotel operators' environmental, human rights and labor practices. The reports should be prepared at reasonable cost, omitting proprietary information, and the first report should be available to shareholders in advance of the 2019 annual meeting.

We recommend Host ask its hotel operators to use the Global Reporting Initiative Sustainability Reporting Standards to prepare the report(s). The Standards cover environmental impacts, human rights, and labor practices, and provide a



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flexible reporting system that allows omission of content irrelevant to company operators.

Host's arguments for why it should be able to omit this proposal from its proxy materials are based on two broad claims, both of which reveal an apparent lack of understanding of the norms of sustainability reporting and of the Global Reporting Initiative (GRI). GRI is a United Nations-backed protocol used by thousands of corporations around the world, including at least 250 SEC-registered companies¹, to disclose their environmental, social and governance ("ESG") risks, impacts and goals. Host does not lack the power and authority to implement the proposal, and the proposal is not impermissibly vague and indefinite, for the reasons explained below.

I. The Company does not lack the power and authority to implement the proposal under Rule 14a-8(i)(6).

UNITE HERE's proposal does not require the Company to compel third-party managers to prepare a sustainability report. By the plain terms of the proposal, the proposal only requires due diligence and requests that Host ask its operators to provide information. It does not require the operators to provide information.

1. The Company's claim that its inability to compel information from its third-party hotel operators prevents it from implementing the proposal depends on a distortion of the proposal's plain sense meaning and lack of familiarity with the norms of sustainability reporting under the GRI standards.

The Company asserts that its tax status as a REIT, as well as its status as an owner rather than an operator of hotels, means it cannot "contractually obtain" the information needed to prepare the report. This assertion is irrelevant. The proposal does not ask Host to contractually obtain information from its third-party hotel operators. The proposal requests that Host conduct and disclose its own non-proprietary *due diligence* on the environmental and social impacts and practices of its operators, and that it do so in part by requesting of its operators that they provide Host with relevant information in a manner consistent with the Global Reporting Initiative.

A company need not exercise authority over a business partner to conduct due diligence on that partner. Indeed, scores of companies include in their public sustainability reports information obtained via due diligence on business partners and suppliers over whom they have no authority to compel disclosure of information. For example, apparel company Guess, Inc., a U.S.-listed company, conducts ESG due diligence on the hundreds of third-party-owned factories

¹ "GRI's response to the U.S. Securities and Exchange Commission Concept Release regarding the Business and Financial Disclosure Required by Regulation S-K," Comments to the Securities and Exchange Commission, File Number S7-06-16, July 14, 2016.

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in 30 countries that supply its products. Guess has developed a Supplier Code of Conduct and engages independent auditors to conduct periodic audits of its suppliers' facilities.²

The decisions in *eBay* (March 26, 2008), *Harsco Corp.* (Feb. 16, 1988) and *Firestone Tire & Rubber Co.* (Dec. 31, 1987) cited by the Company are readily distinguishable from UNITE HERE's proposal because they all involved proposals *requiring* action by another entity, and here, no action is required on the part of Host's business partners. In *eBay*, for example, the respondent was able to show that it lacked power to ban a type of advertising on a joint venture's website because it was merely a minority member of the joint venture. UNITE HERE's proposal merely requests due diligence on Host's most important third-party partners; it does not *require* the operators to act.

Additionally, use of the GRI factors is not a required part of the proposal. The proposal simply suggests that Host ask its operators to use applicable GRI standards to report information to Host for use in the sustainability report. The GRI also provides guidance on how companies can demonstrate good faith in conducting due diligence on the business partners in their supply chains:

When reporting its management approach for supplier social assessment, the reporting organization can also disclose:

- the systems used to screen new suppliers using social criteria, and a list of the social criteria used to screen new suppliers;
- processes used, such as due diligence, to identify and assess significant actual and potential negative social impacts in the supply chain;
- how the organization identifies and prioritizes suppliers for assessment of social impacts;
- actions taken to address the significant actual and potential negative social impacts identified in the supply chain and whether the actions are intended to prevent, mitigate, or remediate the impacts;

These standards provide a non-required framework through which Host may conduct its due diligence to prepare the proposed sustainability report, even if it does not receive cooperation from its third-party hotel operators.

2. **Host acknowledges it is subject to risks associated with its third-party hotel operators – including risks that are topics of GRI reporting – undermining its claim that it has no duty to disclose to shareholders its efforts to investigate, evaluate or mitigate many of those risks.**

² "Our World and Brand: Guess Fiscal 2016-17 Sustainability Report," pp. 36-38.

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Division of Corporate Finance
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In its no action request, the Company says the UNITE HERE Proposal “should be addressed to the various operators themselves such as Marriott International” instead of to the Company. This misconstrues the clear intent of the Proposal, which is to allow shareholders to assess how thoroughly the Company has done its due diligence on the ESG risks that may arise from its reliance on third-party operators.³

In its 2016 10-K, Host acknowledged that it “is subject to many of the costs and risks associated with the hotel labor force” and that it faces risk when hotel operations are disrupted.⁴ Many of the labor force and operational risks that may arise from Host’s reliance on third-party operators are specifically addressed in the GRI reporting guidelines. Although UNITE HERE’s proposal does not mandate use of the GRI guidelines, many of them may be useful in preparing a sustainability report. For example, GRI 403 deals with occupational health and safety; GRI 405 addresses diversity and equal opportunity; and GRI 406 addresses non-discrimination. In each case, the reporting entity is expected to report social impacts, goals and mitigation efforts, not just as they relate to the employees under its direct control, but also “all workers whose workplace is controlled by the organization, whether or not their work is under the control of the organization.” The latter would seem to describe Host’s relationship to the employees at its hotels: Host does not employ them directly, but does control their workplace via Host’s ownership of the hotels, its management contracts with operators, its access to various types of hotel performance and operational information, and its active role in advancing labor-saving technologies and processes at the hotels.

And the GRI encompasses much more than employment impacts. It also deals with the risks that can arise from a company’s (or that company’s significant business partners’) practices with respect to a wide range of environmental, social and governance matters. Some of these potential risks could be material to Host. For example, GRI 418 addresses the issue of customer privacy and data security. In recent years, several hospitality operating companies have reported data breaches potentially affecting thousands of hotel guests. According to Host’s 2016 10-K:

We rely on the security systems of our managers to protect proprietary and customer information from these threats. Any compromise of our managers’ networks could result in a disruption to operations, such as disruptions in fulfilling guest reservations, delayed bookings or sales, or lost guest reservations. Any of these events could, in turn, result in disruption of the operations of the

³ Host elects not to negotiate sustainability programs in its agreements with operators, but that does not mean it is prohibited from doing so. The retail REIT DDR Corp. (NYSE:DDR), in its GRI-compliant Sustainability and Corporate Responsibility Report for 2016, reported: “In addition to environmental aspects, our operating agreements also include strict language around our expected code of conduct, fair hiring and labor practices and ethical interaction with DDR employees.” (DDR Corp., Corporate Responsibility and Sustainability Report, 2016, at p. 21, available at <http://www.ddr.com/sustainability>.)

⁴ Host Hotels and Resorts, 2016 10-K, filed on 2/24/2017, pp. 27-28.

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hotels we own that are managed by them, in increased costs and in potential litigation and liability.⁵

The 10-K further acknowledges:

In addition, public disclosure, or loss of customer or proprietary information, could result in damage to the manager's reputation and a loss of confidence among hotel guests and result in reputational harm for the hotels owned by us and managed by them, which may have a material adverse effect on our business, financial condition and results of operations.⁶

Since Host's third-party managers, over whom it says it has little control, are the stewards of customer data, shareholders may reasonably expect Host to conduct due diligence to assess its own potential exposure to data security risks, as well as to determine if any of its operators may be unduly vulnerable to data breaches. If Host were to implement the UNITE HERE proposal and conduct due diligence, it could reassure shareholders that it either had identified no specific data security vulnerabilities, or that it had taken appropriate steps to mitigate any exposure to identified data security risks.

3. Although Host claims in its no action request to have little or no control over the practices of its operators, it has elsewhere claimed to have considerable influence over those practices.

Although having authority over third-party partners is not a pre-requisite to due diligence, we believe Host has considerable influence with its operators that should make its due diligence reporting easier than some companies who use GRI reporting protocols, such as Nike or Guess, Inc. Unlike Host, which has a relatively small number of operators whose activities occur in Host-owned buildings, Nike and the Guess, Inc. must contend with dozens if not hundreds of remote suppliers with short-term contracts, many located in countries where independent monitoring is difficult.⁷

For example, in Nike's 2012-13 Sustainability Report, the company explains:

We estimate that more than 2.5 million people work at various stages throughout our supply chain, including more than 1 million

⁵ Host Hotels and Resorts, 2016 10-K, filed on 2/24/2017, p. 31.

⁶ *Id.* at 31-32.

⁷ See Guess, Inc., "Our World, Our Brand: Fiscal 2016/17 Sustainability Report" at, pp. 36-39; and Nike, Inc., "FY 12/13 Sustainability Business Performance Summary," p.19, available at https://www.unglobalcompact.org/system/attachments/81781/original/FY12-13_NIKE_Inc_CR_Report.pdf?1400276890.

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in the factories we contract with directly. This makes manufacturing our biggest area of impact on people. That's not a new insight, and we have been working for years to help raise the bar for working conditions, not only in our own supply base but across our industry. We have done this by developing and communicating our Code of Conduct and Code Leadership Standards, and by assessing suppliers' compliance with our requirements and legal standards. We have also worked with our suppliers to help them develop their human resources management capacity so they can proactively manage and engage their workforce.⁸

Host, too, is deeply involved with labor force matters at its properties. For example, in June 2016, Host CFO Greg Larson told analysts:

Over the last two years, we have focused on improving productivity at our hotels by initiating time and motion studies at our largest hotel. These studies resulted in hotel managers establishing tighter labor model standards and the use of improved and expanded forecasting tools allowing managers to effectively schedule to demand and minimize excess staffing. For example, many of our housekeeping departments are now using an automated system integrated with a property management system to prioritize housekeeping room assignments using a Wi-Fi enabled device. These systems save on time and labor expense while getting guests into rooms faster. Total hourly productivity at our hotels that have implemented the recommendations improved over 400 basis points more than those hotels that have not yet conducted a time and motion study.⁹

And in July 2017, Larson reported:

As we described on previous calls, a large portion of the productivity improvement is related to time and motion studies conducted by third party consultants at our hotels. We still have a portion of the portfolio where we have yet to complete such studies, so we anticipate continued benefits from this until at least next year. We are also pursuing other initiatives to drive productivity improvement. These include continued expansion of Marriott's Green Choice program, which allows customers to forego

⁸ Nike, Inc., "FY 12/13 Sustainability Business Performance Summary," at p.19.

⁹ Host Hotels & Resorts, 2nd Quarter 2016 Earnings Call Transcript, July 25, 2016 (posted August 1, 2016). Accessed on SeekingAlpha.com. See also Host 2017 Form 10-K (Feb. 24, 2017) at p. 43.

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housekeeping service in exchange for loyalty points. We have also implemented a room technology solution at many of our hotels, which facilitates more efficient deployment of housekeeping labor. Our operational initiatives are also delivering outperformance.¹⁰

Surely a company that can (1) hire consultants to conduct time-management studies at its properties, (2) influence the way hotel operators reward loyalty points to customers, and (3) introduce labor-saving technology and processes at its third-party-operated hotels, can also gather information about those third-parties that would be relevant to shareholders interested in assessing Host's exposure to labor and environmental risks, even if it does not have the contractual power to *compel* third-party managers to report on sustainability issues.

4. Given Host's dependence on a handful of third-party hotel operators, disruptions or operational problems arising from environmental, social or governance weaknesses at any one operator could be material to Host.

The Company acknowledges it faces possibly material risks that stem from its reliance on third-party operators, one of whom is the operator or brand manager of 78% of the Company's owned hotels. Host's properties are in the labor-intensive service industry. Its revenue is entirely dependent upon the profitability of its owned hotels. With a low-wage, mostly-immigrant workforce, hotel industry leaders must contend with a host of social problems including: uncertainty over the future of US immigration policy, reports of rampant sexual harassment of hotel housekeepers by guests, and alarmingly high worker injury rates, particularly among hotel housekeepers.

Similarly, the environmental practices of hotel brands are increasingly important to hotel guests. Given these challenges, we believe it is especially important for Host to assess its operators to identify material ESG risks so that it can take any remedial action deemed necessary. A sustainability report would help assure shareholders that the Company is conducting appropriate risk assessment and abatement.

II. The Proposal is not impermissibly vague and indefinite under Rule 14a-8(i)(3).

Host claims that the Proposal is impermissibly vague and indefinite such that it would be inherently misleading to shareholders. However, the proposal simply requests issuance of a sustainability report with due diligence about environmental, human rights, and labor practices. The proposal recommends that Host ask its operators to voluntarily use the GRI standards, in order that Host may prepare the report. It does not *require* Host to use the GRI standards.

¹⁰ Host Hotels & Resorts, 2nd Quarter 2017 Earnings Call Transcript, July 27, 2017. Accessed on SeekingAlpha.com.

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If the Company believes that the proposal is impermissibly vague because shareholders are unfamiliar with sustainability reports or the Global Reporting Initiative, they are mistaken.

Sustainability reporting has become the norm in many industries. Many institutional shareholders—including some of Host’s largest long-term shareholders—are mandated to conduct their own analyses of the ESG impacts and practices of their portfolio investments, and many undoubtedly rely on publicly-available GRI-compliant sustainability reports to do so. Most companies that prepare sustainability reports put those reports on their websites. Most using the GRI framework also upload their reports to the GRI database, which is routinely used by investors conducting ESG due diligence.

Shareholder proposals involving environmental and social issues are becoming increasingly common. A 2017 Conference Board study found that the number of these proposals has risen steadily over the last five years. According to the study, in the first six months of 2017, 43% of all shareholder proposals filed at Russell 3000 companies involved environmental and/or social sustainability issues or reporting. Ten companies in that six-month period included proposals calling for sustainability reporting.¹¹ A shareholder proposal requesting that a company provide non-proprietary due diligence on its primary business partners in its sustainability reports, which reasonably leaves the specific reporting determinations to management, cannot reasonably be construed as vague, indefinite or inherently misleading.

Host contends that since the GRI is a 400-page document with 36 different reporting standards, it follows that “stockholders would not understand exactly what the standards require from reading the Proposal or the accompanying supporting statement.” First, use of the GRI is not mandatory in UNITE HERE’s proposal. And we believe shareholders are sufficiently familiar with the GRI to understand that it is the responsibility of the reporting company to determine which sustainability issues are material to the company and its industry.¹² There are a few subjects that are universally applied – including an assessment of ESG risks that may arise from third-party partners and suppliers – but companies have a large degree of discretion to report only those areas they deem relevant. It is unnecessary for the proposal to list every area the proponent believes to be relevant, as this is simply a recommended framework, and not required by the proposal. Shareholders can judge for themselves if a reporting company selects the relevant areas on which to report.

The early Staff decisions cited by the Company (including *Smithfield Foods, Inc.* (July 18, 2003) and *Kroger* (March 19, 2004)) occurred during a time when the GRI framework was far less established than it is now. Smithfield has since embraced the GRI framework and has

¹¹ Thomas Singer, “Environmental and Social Proposals in the 2017 Proxy Season,” Harvard Law School Forum on Corporate Governance and Financial Regulation, October 26, 2017, available at <https://corpgov.law.harvard.edu/2017/10/26/environmental-and-social-proposals-in-the-2017-proxy-season/>.

¹² “GRI’s response to the U.S. Securities and Exchange Commission Concept Release regarding the Business and Financial Disclosure Required by Regulation S-K,” Comments to the Securities and Exchange Commission, File Number S7-06-16, July 14, 2016, available at <https://www.sec.gov/comments/s7-06-16/s70616-220.pdf>.

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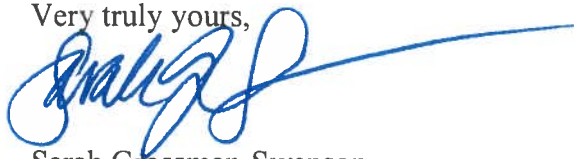
issued annual sustainability reports that, since 2010, acknowledge its responsibility to monitor its supply chain partners. Similarly, starting in 2007, Kroger has also produced an annual sustainability report describing its short and long-term responses to environmental, social and governance related issues. *See Kroger Co.* (February 22, 2017) (describing withdrawal of sustainability proposal based on substantial implementation).

As sustainability reports have become more prevalent, the Staff has found that proposals requesting sustainability reports related to environmental, social and governance issues are not excludable under Rule 14a-8(i)(3). *See, e.g., Chesapeake Energy Corp.* (April 2, 2010) (no basis to exclude proposal that requested a sustainability report “describing the company’s short and long term responses to environmental, social and governance-related issues”); *SunTrust Banks, Inc.* (Jan. 13, 2010) (no basis for exclusion of proposal requesting reporting on “long-term social and environmental sustainability”); *Texas Industries, Inc.* (July 27, 2007) (no basis to exclude proposal that requested a sustainability report); *Kroger Co.* (March 29, 2006) (no basis to exclude report that provided “review of current company policies and practices related to social, environmental, and economic sustainability”). UNITE HERE’s proposal requests preparation of a report on “environmental, human rights and labor practices.” The Company’s argument that the language of the Proposal is too vague because it does not specifically determine exactly what is reported has been rejected repeatedly by Staff in the years since the decisions cited by the Company.

III. Conclusion

For the foregoing reasons, we respectfully request that Staff reject the Company’s no action request with respect to the Proposal’s exclusion from its 2018 Proxy Materials.

Very truly yours,



Sarah Grossman-Swenson

CC: Jessica L. Lennon, counsel for Host Hotels & Resorts, Inc. (Jessica.Lennon@lw.com)
Marty Leary, Director, Financial Research, UNITE HERE (mleary@unitehere.org)



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January 12, 2018

VIA ELECTRONIC MAIL

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

Re: **Stockholder Proposal to Host Hotels & Resorts, Inc. from UNITE HERE**

Ladies and Gentlemen:

This letter is submitted on behalf of Host Hotels & Resorts, Inc. (the “**Company**”) pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. The Company has received a stockholder proposal, attached hereto as Exhibit A (the “**Proposal**”), from UNITE HERE (the “**Proponent**”) for inclusion in the Company’s proxy statement for its 2018 annual meeting of stockholders. The Company hereby advises the staff (the “**Staff**”) of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2018 annual meeting (the “**Proxy Materials**”). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the “**Commission**”) if the Company excludes the Proposal on the following grounds:

- (i) pursuant to Rule 14a-8(i)(6), as the Company lacks the power or authority to implement the Proposal; and
- (ii) pursuant to Rule 14a-8(i)(3), as the Proposal is vague and indefinite so as to be inherently misleading.

By copy of this letter, we are advising the Proponent of the Company’s intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal; and (ii) the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its Proxy Materials.

I. The Stockholder Proposal and the Company.

1. The Proposal

The Proposal submitted for inclusion in the Proxy Materials is a resolution proposed for adoption by the stockholders that the Company:

“issue an annual sustainability report with due diligence about operations at Host’s properties, including the impact on investors of hotel operators’ environmental, human rights, and labor practices....

We recommend Host ask its hotel operators to use the Global Reporting Initiative’s (“GRI”) Sustainability Reporting Standards to prepare the report(s).”

As discussed below, what differentiates this Proposal from most shareholder requests for sustainability reports is that the Proposal requests that the report cover the operations and labor practices of independent third parties, and not just the sustainability practices of the Company.

2. The Company

The Company is a real estate investment trust (“REIT”) that owns a diverse portfolio of hotels operating under brand systems owned by Marriott International, Hilton Worldwide Holdings, Hyatt Hotels Corporation, and similar companies. The U.S. tax code imposes strict limits on the types of gross income that can be earned and activities that can be undertaken by lodging REITs. A lodging REIT is not allowed to operate or manage its hotels pursuant to specific provisions of the U.S. tax code. It must hire an eligible independent contractor to do so.

Because of these restrictions, parties other than the Company handle the day-to-day operations and management at its hotels. The majority of the Company’s hotels are managed by brand owners pursuant to long-term management or operating agreements. A smaller portion of its hotels are operated pursuant to franchise agreements with brand owners coupled with management agreements with third-party management companies. Under its agreements with these managers, the managers have sole responsibility and exclusive authority for all activities necessary for the day-to-day operation and management of the hotels, including the human rights and labor practices. The employees that operate and manage the hotels are the employees of the unrelated third party managers, not the Company. The Company contractually cedes substantially all of the day-to-day operational control, including the ability to make decisions relating to human rights and labor practices, to the managers and it is the managers that employ the employees at the hotels. The Company does retain certain approval rights over budgets, capital expenditures, significant leases and contractual commitments, and various other matters, but these approval rights are very different from operational and management control.

Because of these contractual arrangements and the restrictions in the U.S. tax code applicable to REITs such as the Company, it is these managers and operators, therefore, that would be a major focus of any GRI sustainability report intended to cover “the impact on investors of hotel operators’ environmental, human rights, and labor practices” as is requested

under the Proposal. The Company does not have access to the information necessary to complete a sustainability report addressing the operator's practices, the information is not publicly available, and the Company does not have the contractual ability to compel the managers to share the data necessary for the Company to complete such a sustainability report under its management agreements, the majority of which are at least 10 years old and were entered into prior to sustainability reporting.

II. Grounds for Exclusion

The Company intends to exclude this Proposal from its Proxy Materials and respectfully requests that the Staff concur that the Company may exclude the Proposal on the following grounds.

A. Rule 14a-8(i)(6) – The Proposal May be Properly Omitted Because the Company Lacks the Power and Authority to Implement the Proposal.

Rule 14a-8(i)(6) permits a company to exclude a stockholder proposal from its proxy materials if the company would lack the power or authority to implement the proposal. The Staff has acknowledged that exclusion may be justified pursuant to Rule 14a-8(i)(6) where implementing the proposal would require intervening actions by independent third parties. Exchange Act Release No. 34-40018 (avail. May 21, 1998) at note 20. The Proposal which, if adopted, would require the Company and/or its hotel operators to prepare a sustainability report, is properly excluded from the Company's Proxy Materials under Rule 14a-8(i)(6) because the Company does not have the power to compel its various third-party managers to prepare the report requested by the Proposal or to provide the information to the Company necessary for the Company to prepare such a report.

- i. The Company does not have the power to compel third-party managers to prepare a sustainability report.

The Staff has allowed the exclusion of proposals pursuant to Rule 14a-8(i)(6) where the subject company did not have the power to effectuate a proposal because the proposal related to the business and operations of entities in which the companies were not majority investors and of which they did not control the board of directors. Third-party hotel managers are independent entities such as Marriott, Hilton and Hyatt, and are not controlled by the Company. In addition, the Company does not have the power under its contracts with these third-party managers to compel them to prepare the sustainability report, or to compel them to independently report on the requested sustainability issues to the Company and its stockholders. Nor does the Company have the power to compel its hotel managers to accept such provisions in future contract negotiations.

In *eBay Inc.* (March 26, 2008), the Staff permitted exclusion of a proposal under Rule 14a-8(i)(6) which requested that a Chinese joint venture 49% controlled by eBay adopt a policy prohibiting the sale of dogs and cats on its website. There, eBay asserted and the Staff agreed that it could properly exclude the proposal from its proxy materials because, as a minority member of the joint venture, eBay lacked the power and authority to cause the joint venture to

adopt the policy. See also *Harsco Corp.* (avail. Feb. 16, 1988) (concurring with exclusion of a proposal under Rule 14a-8(i)(6) where the proposal required action of an entity that was 50% owned by another company and in which the other company held the deciding vote in the event of a tie); *Firestone Tire & Rubber Co.* (avail. Dec. 31, 1987) (concurring with exclusion of a proposal under Rule 14a-8(i)(6) where the proposal required action of entity in which the company was a minority investor).

In each of *eBay*, *Harsco* and *Firestone*, the companies were asked to implement proposals relating to the business and operations of entities (i) controlled by independent third-parties, (ii) in which they were not majority investors, and (iii) of which they did not control the board of directors. In each case, the Staff concurred with the companies' views that the proposals could be properly omitted under Rule 14a-8(i)(6) because third parties, and not the companies, had the power to effectuate the proposals. Here, similar to *eBay*, *Harsco* and *Firestone*, the Company does not control the parties who have the power and authority to implement the Proposal. The various operators of the Company's hotel properties are large, sophisticated and independent corporations including Marriott, Hilton and Hyatt. It is these third-party managers that oversee all day-to-day operational control, including the ability to determine the human rights and labor practices for the employees of such hotels. The Company does not have the power to compel the third-party managers to report on sustainability practices as they relate to "the hotel operators' environmental, human rights and labor practices." Because the Company does not have these powers over the third-party managers, it does not have the power or the authority to implement the actions required by the Proposal. Therefore, the Company should be able to omit the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(6).

- ii. Even if the Proposal passed, it could not be implemented since the Company does not have access to the information necessary to prepare the report requested by the Proponent.

The Proposal calls for the Company to "issue an annual sustainability report with due diligence about operations at Host's properties, including the impact on investors of hotel operators' environmental, human rights, and labor practices." The information necessary for such a report would have to be collected and provided by the independent third-party managers that manage the day-to-day operations of the hotel properties and then reported back to the Company. The Company cannot implement the Proposal because of its inability to compel the operators to provide the requested information and because it does not have access to the information on its own.

While the Proposal itself does not make clear what standards are to be used, below are examples of information that could be required in a sustainability report in order to meet the GRI Sustainability Reporting Standards:

GRI Standard

Information Required

405-2 (Social Diversity and Equal Opportunity)

Ratio of basic salary and remuneration of women to men. The reporting organization shall report the following information: ratio of the basic salary and remuneration of women to men for each employee category, by significant locations of operation.

402-1 (Labor/Management Relations)

Minimum notice periods regarding operational changes. The reporting organization shall report the following information: (a.) Minimum number of weeks' notice typically provided to employees and their representatives prior to the implementation of significant operational changes that could substantially affect them. (b.) For organizations with collective bargaining agreements, report whether the notice period and provisions for consultation and negotiation are specified in collective agreements.

412-3 (Human Rights Assessment)

Significant investment agreements and contracts that include human rights clauses or that underwent human rights screening. The reporting organization shall report the following information: Total number and percentage of significant investment agreements and contracts that include human rights clauses or that underwent human rights screening.

202-1 (Market Presence)

Ratios of standard entry level wage by gender compared to local minimum wage

The above information is illustrative of the kind of information that would be necessary for a GRI compliant report intended to cover hotel operators' human rights and labor practices. This is simply not information available to the Company under its contracts with these operators.

The Staff has permitted the exclusion of proposals that sought to require companies to take actions that they do not have the contractual authority to take. For instance, in *Catellus Development Corp.* (avail. Mar. 2005), the Staff permitted exclusion of a proposal under Rule 14a-8(i)(6) which requested that the Catellus board adopt a resolution seeking to force Catellus to negotiate with federal representatives for the exchange of certain property for federal lands more suited to industrial development. Catellus argued that it did not have the authority or power to cause such actions to be taken because it has transferred the property at issue to an affiliate not controlled by Catellus.

In *SCEcorp* (avail. Dec. 20, 1995), the Staff allowed exclusion of a stockholder proposal where implementing the proposal would require intervening actions by independent third parties. There, implementation of the proposal would have required fiduciary trustees unaffiliated with SCEcorp to amend certain voting agreements with SCEcorp stockholders. Here, similar to SCEcorp, the Proposal implicates the third-party managers of the hotel properties, and would require those third-party managers to report on their environmental, human rights and labor practices. Because the Proposal is dependent upon the actions of the third-party managers who have the ability and power to implement the Proposal, and not the Company, here, as in SCEcorp, the Proposal is beyond the power of the Company to effectuate and should properly be excluded pursuant to Rule 14a-8(i)(6).

While acknowledging that there is a legitimate interest in hotel operators' environmental, human rights, and labor practices, the Proposal should be addressed to the various operators themselves such as Marriott International¹ rather than the Company. The Proponent seeks to enlist the Company to prepare and/or cause the operators to prepare the requested report when the Company does not have access to the required information and cannot compel its operators to prepare the sustainability report(s) requested by the Proponent under its contracts with these third-party managers.

B. Rule 14a-8(i)(3) – The Proposal May be Excluded Because it is Impermissibly Vague and Indefinite so as to be Inherently Misleading.

Rule 14a-8(i)(3) provides that a stockholder proposal may be omitted from a proxy statement “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy materials.” The Staff has explained that a stockholder proposal is excludable under Rule 14a-8(i)(3) if the proposal is “so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004), Item B.4. Discussing Rule 14a-8(i)(3), the Staff has emphasized that, “[i]n evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what

¹ In its supporting statement, the Proponent notes that: “Marriott International’s sustainability reporting, which ceased using the GRI sustainability framework after 2014, provides much less detail to investors than Starwood Hotels’ pre-merger reporting, which used the GRI framework.”

actions the proposal seeks.” Staff Legal Bulletin No. 14G (Oct. 16, 2012); *see also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with exclusion under Rule 14a-8(i)(3) where the company argued that its stockholders “would not know with any certainty what they are voting either for or against”); *Fuqua Industries, Inc.* (avail. Mar. 12, 1991) (concurring with exclusion under Rule 14a-8(i)(3) where a company and its stockholders might interpret the proposal differently, such that “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal”).

- i. If the Proposal were approved, serious questions would arise as to how it should be implemented because it is internally inconsistent.

From the plain text of the Proposal, it is unclear whether the Proponent is requesting that (i) the Company, Host Hotels & Resorts, prepare an annual sustainability report (see paragraph 1) or (ii) each of the Company’s hotel operators prepare an annual sustainability report (see paragraph 2). The two paragraphs comprising the Proposal are contradictory because they each delegate the authority for the preparation of a sustainability report addressing environmental, human rights and labor matters to a different company or companies.

In *The Home Depot, Inc.* (avail. Mar. 12, 2014), the Staff concurred in the exclusion of a similar proposal under rule 14a-8(i)(3) because the proposal contained material inconsistencies regarding who should prepare the requested sustainability report; a critical element of the proposal. There, in one paragraph the proponent requested that the board of directors of Home Depot prepare a sustainability report, but in another paragraph requested that the report be prepared by “an independent third-party organization with no financial or organizational ties to Home Depot.” The Staff granted no action relief, noting that “neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”

Here, as in *Home Depot*, the Proposal makes it impossible for stockholders to determine whether the Company or the hotel operators are responsible for producing the sustainability report(s). The first paragraph of the proposal requests that “Host Hotels & Resorts . . . issue an annual sustainability report,” and the second paragraph recommends that “Host ask its hotel operators to use the Global Reporting Initiative’s (“GRI”) Sustainability Reporting Standards to prepare the report(s).” Accordingly, if the Proposal were adopted, serious questions would arise as to how to implement the Proposal.

Further, requesting that the Company prepare a report in compliance with the GRI sustainability reporting standards while also covering “hotel operators’ environmental, human rights, and labor practices” is contradictory because any such report would not comply with GRI standards. The Company currently follows the GRI framework in its sustainability reporting with regards to reporting on employment matters - reporting data on individuals where the Company has employment relationships in place, namely the roughly 220 employees in its various

corporate offices. Including the labor practices/employees of its operators in the Company's reporting would not be in compliance with GRI standards. Similarly, while the Company reports on the initiatives of its employees (e.g., community service events), to take credit for the initiatives of its operators' employees would also not be compliant with GRI reporting standards.

The Proposal's vagueness about whether the Company or the hotel operators are responsible for preparing the sustainability report and inherent contradiction of requesting a report in compliance with GRI standards while at the same time also requesting that it cover topics that would not be in compliance with those standards makes the Proposal impermissibly vague and indefinite and excludable under 14a-8(i)(3).

- ii. Stockholders cannot determine with reasonable certainty what the Proposal requires because the Proposal relies on, but fails to describe, the external standards to which it refers.

Here, the Proposal is impermissibly vague and indefinite so as to be inherently misleading because, among other things, the Proposal relies on, but fails to describe, the reporting requirements contained in the GRI Standards. Thus, stockholders are being asked to vote to require the Company to prepare a report, but those stockholders are given no background information as to what the report would actually require or contain.

The Proposal requests that the Company and/or its hotel operators use the GRI Standards to prepare the requested sustainability report, noting that such guidelines "cover environmental impacts, human rights, and labor practices, and provide a flexible reporting system that allows omission of content irrelevant to company operations." However, the Proposal does not sufficiently explain the GRI's "Sustainability Reporting Standards" and, as a result, neither stockholders nor the Company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.

The GRI Standards are more than 400 pages long, and include over 36 individual reporting standards addressing a range of economic, environmental and social impacts.² As such, stockholders would not understand exactly what the GRI Standards require from reading the Proposal or the accompanying supporting statement, which merely provide a cursory description of the more than 400-page document that comprises the GRI Standards. Accordingly, the Proposal is impermissibly vague and indefinite under Rule 14a- (i)(3).

The Staff has concurred with the exclusion of a variety of stockholder proposals pursuant to Rule 14a-8(i)(3) that, like the Proposal, rely upon a reference to a particular set of external guidelines but fail to sufficiently describe or explain the substantive provisions of the external guidelines. For example, the Proposal is similar to the stockholder proposal in *Exxon Mobil Corp.* (avail. Mar. 21, 2011), where the Staff concurred with the exclusion under Rule 14a-8(i)(3) of a proposal requesting "a report ... on the community and environmental impact of [the company's] logistics decisions, using guidelines from the Global Reporting Initiative." There,

² A copy of the GRI Standards may be downloaded from the GRI website at <https://www.globalreporting.org/standards/>.

Exxon Mobil Corp. argued that the proposal was vague and indefinite because it did not adequately describe the “highly complex” guidelines or the “additional descriptive materials on the [Global Reporting Initiative] website” relating to the guidelines. The Staff agreed that the company could exclude the proposal, noting “in particular [the company’s] view that the proposal does not sufficiently explain the ‘guidelines from the Global Reporting Initiative’ and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”

GRI-based sustainability reporting proposals were first permitted to be excluded from proxy materials by the Staff in July 2003. *Smithfield Foods, Inc.* (avail. July 18, 2003). In *Smithfield Foods, Inc.*, the company argued that the proposal is “completely devoid of any description of the substantive provisions of the [GRI] Guidelines and provides no background information on the [GRI] Guidelines to the shareholders.” The proponents countered that the description of the [GRI] Guidelines was “sufficient to inform the shareholders that a sustainability report is being requested, and to define such a report as one describing the environmental, social and economic impacts of the company’s operations.” The proponents also contended that “if any shareholder wishes to know more about the GRI [Guidelines], the shareholder is referred...to the GRI website.” The proponents’ arguments, however, did not persuade the Staff. *See also The Kroger Co.* (avail. Mar. 19, 2004) (concurring with exclusion under Rule 14a-8(i)(3) of a proposal requesting a sustainability report based on the GRI Standards where the company argued that the proposal’s “extremely brief and basic description of the voluminous and highly complex Guidelines” did not adequately inform stockholders of what they would be voting on and did not adequately inform the company of what actions would be needed to implement the proposal); *ConAgra Foods, Inc.* (avail. Jul. 1, 2004) (concurring with exclusion under Rule 14a-8(i)(3) of a stockholder proposal requesting a report based on the “Global Reporting Initiative’s sustainability reporting guidelines” where the company argued that the GRI Standards were vague and fluid and could be implemented in multiple ways); *Albertson’s, Inc.* (avail. Mar. 5, 2004) (same); *Lowe’s Companies, Inc.* (avail. Mar. 3, 2004) (same); *The Home Depot, Inc.* (avail. Mar. 12, 2014) (same); *Terex Corp.* (avail. Mar. 1, 2004) (concurring with exclusion under Rule 14a-8(i)(3) of a stockholder proposal for a “GRI-based sustainability report” after the company argued that the GRI Standards were still a “work in progress”); *Dean Foods Co.* (avail. Feb. 25, 2004) (concurring with exclusion under Rule 14a-8(i)(3) of a stockholder proposal requesting a report based on the “Global Reporting Initiative’s sustainability reporting guidelines” after the company argued that the GRI Standards were vague and complex and that the proposal did not adequately inform the company of what actions would be needed to implement the proposal); *Smithfield Foods, Inc.* (avail. July 18, 2003) (concurring with exclusion under Rule 14a-8(i)(3) of a stockholder proposal requesting a report based upon the “Global Reporting Initiative” after the company made similar arguments about the vagueness of the mandated GRI Standards).

As with the proposals referenced above, the Proposal submitted to the Company lacks a meaningful description of the GRI Standards’ substantive provisions. The GRI Standards consist of more than 400 pages, many of which contain technical reporting requirements and elements. The Proposal does not convey to the Company’s stockholders the extent and complexity of these requirements. Furthermore, the Proposal does not describe the expense and other burdens of compliance. In short, the Proposal would not allow stockholders to determine with a reasonable

degree of certainty exactly what they are being asked to approve. Accordingly, the Proposal is vague and indefinite and may be excluded under Rule 14a-8(i)(3).

III. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned to discuss any questions you may have regarding this matter.

Very truly yours,



Jessica L. Lennon
of LATHAM & WATKINS LLP

Enclosures

cc: JJ Fueser, Deputy Director, Research, UNITE HERE
Marty Leary, Director, Financial Research, UNITE HERE
Elizabeth A. Abdoo, Host Hotels & Resorts, Inc.

Exhibit A

PROPOSAL FROM UNITE HERE

Proposal:

Shareholders request Host Hotels & Resorts (“Host”) issue an annual sustainability report with due diligence about operations at Host’s properties, including the impact on investors of hotel operators’ environmental, human rights, and labor practices. The reports should be prepared at reasonable cost, omitting proprietary information, and the first report should be available to shareholders in advance of the 2019 annual meeting.

We recommend Host ask its hotel operators to use the Global Reporting Initiative’s (“GRI”) Sustainability Reporting Standards to prepare the report(s). The Standards cover environmental impacts, human rights, and labor practices, and provide a flexible reporting system that allows omission of content irrelevant to company operations.

SUPPORTING STATEMENT:

The GRI provides the most [widely adopted](#) global standards for sustainability reporting. According to GRI, “[t]he practice of disclosing sustainability information inspires accountability, helps identify and manage risks, and enables organizations to seize new opportunities. Reporting with the [GRI Standards](#) supports companies, public and private, large and small, protect the environment and improve society, while at the same time thriving economically by improving governance and stakeholder relations, enhancing reputations and building trust.”

The UN Principals of Responsible Investment ([UNPRI](#)) has over 1750 signatories, with ~\$70 trillion in assets, including many of Host’s own investors, who publicly commit to “seek appropriate disclosure on ESG [environmental, social and governance] issues by the entities in which [they] invest” and to “incorporate ESG issues into investment analysis and decision making.” This type of diligence generates value for shareholders.

Hotel owners are reporting on the environmental footprint of hotel operations, but pay less attention to the human capital dimensions of these operations – the thousands of people providing hospitality services. Host does not presently require hotel operators to provide reporting on social or governance factors, a notable diligence gap given the centrality of guest services to Host’s business.

Host has acknowledged that, although it does not directly employ workers, it is “subject to many of the costs and risks generally associated with the hotel labor force,” and that it subject to risk when hotel operations are disrupted. (2016 Form 10-K at 27-28.) Through their taxable subsidiaries, real estate investment trusts like Host are able to collect income from operations within their properties, which go beyond income from lease payments (see 26 USC §§ 856-857).

After the Starwood merger, 78% of Host’s properties were managed or franchised by Marriott. As Host has acknowledged, “[a]ny adverse developments in Marriott’s business and affairs or financial condition... could have a material adverse effect on us.” (10-K at 27.) Marriott International’s [sustainability reporting](#), which ceased using the GRI sustainability

framework after 2014, provides much less detail to investors than Starwood Hotels' [pre-merger reporting](#), which used the GRI framework.

We urge shareholders to recommend Host provide comprehensive disclosure about its sustainability practices, including reporting from hotel operators about environmental, human rights, and labor practices, by committing to using, and requiring its operators to use, the GRI sustainability framework.