



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

DIVISION OF  
CORPORATION FINANCE

February 5, 2019

Kimberly A. deBeers  
Skadden, Arps, Slate, Meagher & Flom LLP  
kimberly.debeers@skadden.com

Re: O'Reilly Automotive, Inc.

Dear Ms. deBeers:

This letter is in regard to your correspondence dated February 4, 2019 concerning the shareholder proposal (the "Proposal") submitted to O'Reilly Automotive, Inc. (the "Company") by Michael Fox (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 20, 2018 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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,

Kasey L. Robinson  
Special Counsel

cc: Andrew Behar  
As You Sow  
abehar@asyousow.com

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

155 NORTH WACKER DRIVE  
CHICAGO, ILLINOIS 60606-1720

TEL: (312) 407-0700

FAX: (312) 407-0411

www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON  
HOUSTON  
LOS ANGELES  
NEW YORK  
PALO ALTO  
WASHINGTON, D.C.  
WILMINGTON

BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
MUNICH  
PARIS  
SÃO PAULO  
SEOUL  
SHANGHAI  
SINGAPORE  
SYDNEY  
TOKYO  
TORONTO

DIRECT DIAL  
312-407-0982  
DIRECT FAX  
312-407-8576  
EMAIL ADDRESS  
KIMBERLY.DEBEERS@SKADDEN.COM

February 4, 2019

**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: O'Reilly Automotive, Inc. – Withdrawal of No-Action Request, Dated December 20, 2018, Regarding the Shareholder Proposal of Michael Fox

Ladies and Gentlemen:

We refer to our letter, dated December 20, 2018 (the “No-Action Request”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission concur with O’Reilly Automotive, Inc.’s view that it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Michael Fox, with As You Sow authorized to act on behalf of Mr. Fox (collectively, the “Proponents”), from the proxy materials to be distributed by O’Reilly Automotive, Inc. in connection with its 2019 annual meeting of shareholders.

Attached hereto as Exhibit A is a letter, dated January 30, 2019 (the “Proponents’ Withdrawal Letter”), from the Proponents withdrawing the Proposal. In reliance on the Proponents’ Withdrawal Letter, we hereby withdraw the No-Action Request.

Office of Chief Counsel  
February 4, 2019  
Page 2

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,

*Kim deBeers*  
Kimberly A. deBeers *1/6/19*

Enclosures

cc: Andrew Behar  
CEO  
As You Sow

EXHIBIT A

(see attached)



**VIA ELECTRONIC MAIL**

January 30, 2019

Tricia Headley  
Corporate Secretary  
O'Reilly Automotive, Inc.  
233 South Patterson Avenue  
Springfield, Missouri 65802

Dear Ms. Headley:

*As You Sow* appreciates the opportunity to bring the issue of improved diversity reporting to the attention of the Company. While we had hoped to advance our resolution to the annual meeting, due to an illness in the family, the shareholder proponent has been unavailable to contact the custodian to confirm share ownership. We are therefore withdrawing our 2019 proposal and will consider re-filing this resolution next year.

We remain open to continued communication with the Company and are interested in discussing how the Company may improve its disclosures, which would allow shareholders to better assess the Company's progress in realizing "excellent" employee relations as well as other stated values.

To schedule a dialogue, please contact Andrew Behar, CEO at [abehar@asyousow.org](mailto:abehar@asyousow.org).

Sincerely,

Andrew Behar  
CEO

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

155 NORTH WACKER DRIVE  
CHICAGO, ILLINOIS 60606-1720

TEL: (312) 407-0700

FAX: (312) 407-0411

www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON  
HOUSTON  
LOS ANGELES  
NEW YORK  
PALO ALTO  
WASHINGTON, D.C.  
WILMINGTON

BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
MUNICH  
PARIS  
SÃO PAULO  
SEOUL  
SHANGHAI  
SINGAPORE  
SYDNEY  
TOKYO  
TORONTO

DIRECT DIAL  
312-407-0982  
DIRECT FAX  
312-407-8576  
EMAIL ADDRESS  
KIMBERLY.DEBEERS@SKADDEN.COM

December 20, 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: O'Reilly Automotive, Inc.  
Securities Exchange Act of 1934 – Rule 14a-8  
Exclusion of Shareholder Proposal of Michael Fox

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, O’Reilly Automotive, Inc., a Missouri corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Michael Fox, with As You Sow authorized to act on behalf of Mr. Fox (As You Sow and Mr. Fox are sometimes referred to collectively as the “Proponents”), from the proxy materials to be distributed by the Company in connection with its 2019 annual meeting of shareholders (the “2019 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents as notice of the Company’s intent to omit the Proposal from the 2019 proxy materials.

Rule 14a-8(k) and Section E of SLB 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 the Proponents submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

## **I. The Proposal**

The resolution contained in the Proposal is copied below:

**Therefore be it resolved:** Shareholders request that the Board of Directors issue a report to shareholders by 180 days after the 2019 Annual Meeting, at reasonable expense and excluding confidential information, assessing the diversity of our company's workforce.

## **II. Basis for Exclusion**

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2019 proxy materials pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because the Proponents failed to provide timely proof of the requisite stock ownership after receiving notice of such deficiency.

## **III. Background**

The Company received the Proposal, accompanied by a cover letter from As You Sow and a letter from Mr. Fox authorizing As You Sow to file the Proposal and to act on behalf of Mr. Fox, on November 20, 2018. On November 26, 2018, the Company sent a letter to As You Sow, via email, requesting a written statement verifying that Mr. Fox beneficially owned the requisite number of shares of Company common stock for at least one year as of November 20, 2018, the date the Proposal was submitted to the Company (the "Deficiency Letter"). On December 10, 2018, the Company received a letter from As You Sow, via email and fax, noting that Mr. Fox's broker was unable to provide a proof of ownership letter to the Company. Copies of the Proposal, cover letters, Deficiency Letter and related correspondence are attached hereto as Exhibit A.

## **IV. The Proposal May be Excluded Pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) Because the Proponents Failed to Provide Timely Proof of the Requisite Stock Ownership After Receiving Notice of Such Deficiency.**

Rule 14a-8(b)(1) provides that, in order to be eligible to submit a proposal, a shareholder must have continuously held at last \$2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal for at least one year by the date the proposal is submitted and must continue to hold those securities through the date of the meeting. If the proponent is not a

registered holder, he or she must provide proof of beneficial ownership of the securities. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets the eligibility requirements of Rule 14a-8(b), provided that the company notifies the proponent of the deficiency within 14 calendar days of receiving the proposal and the proponent fails to correct the deficiency within 14 days of receiving such notice.

The Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(f)(1) where a proponent has failed to provide timely evidence of eligibility to submit a shareholder proposal in response to a timely deficiency notice from the company. *See, e.g., Comcast Corp.* (Feb. 26, 2018) (permitting exclusion of a proposal under Rule 14a-8(f)(1) where the proponent failed to supply any evidence of eligibility to submit a shareholder proposal after receiving the company's timely deficiency notice); *Facebook, Inc.* (Feb. 26, 2018) (same); *Amazon.com, Inc.* (Feb. 6, 2018) (same); *see also, e.g., Exxon Mobil Corp.* (Feb. 14, 2018) (permitting exclusion of a proposal under Rule 14a-8(f)(1) where the proponent supplied evidence of eligibility to submit a shareholder proposal 39 days after receiving the company's timely deficiency notice); *Ambac Financial Group, Inc.* (Dec. 15, 2016) (permitting exclusion of a proposal under Rule 14a-8(f)(1) where the proponent supplied evidence of eligibility to submit a shareholder proposal 48 days after receiving the company's timely deficiency notice); *Prudential Financial, Inc.* (Dec. 28, 2015) (permitting exclusion of a proposal under Rule 14a-8(f)(1) where the proponent supplied evidence of eligibility to submit a shareholder proposal 23 days after receiving the company's timely deficiency notice).

In this instance, the Proponents have failed to provide timely evidence of eligibility to submit a shareholder proposal to the Company after a timely deficiency notice from the Company. Specifically, after receiving the Proposal on November 20, 2018, the Company sent the Deficiency Letter timely notifying the Proponents of the procedural defect under Rule 14a-8(b). The Deficiency Letter specifically confirmed that Mr. Fox "is not a registered holder of [the Company's] common stock" and requested "a written statement from the record holder of [Mr. Fox's] common shares . . . verifying that [Mr. Fox] had beneficially held the requisite number of [the Company's] common shares continuously for at least one year preceding and including . . . the date the Proposal was submitted to [the Company]." The Deficiency Letter also clearly explained the proof of ownership requirements of Rule 14a-8(b) and how to satisfy those requirements. Consistent with Rule 14a-8(f)(1), the Deficiency Letter requested that proof of Mr. Fox's ownership be provided within 14 days of As You Sow's receipt of the Deficiency Letter, which was November 26, 2018. On December 10, 2018, 14 days after As You Sow's receipt of the Deficiency Letter, the Company received a letter from As You Sow noting that "Mr. Fox's asset manager has been unable to acquire the necessary authorization signature from his client that would allow Mr. Fox's custodian to release a proof of ownership letter to the Company." The Company has not received any further correspondence from the Proponents, including any verification of Mr. Fox's ownership of the Company's common stock, since that time. Therefore, the Proponents failed to provide proof of Mr. Fox's stock ownership within the required timeframe after receiving notice of such deficiency.

Accordingly, consistent with the precedent described above, the Company believes that the Proposal may be excluded pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1).

**V. 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 2019 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. 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,

  
Kimberly A. deBeers

Enclosures

cc: Andrew Behar  
CEO  
As You Sow

EXHIBIT A

(see attached)



November 20, 2018

Tricia Headley  
Corporate Secretary  
O'Reilly Automotive, Inc.  
233 South Patterson Avenue  
Springfield, Missouri 65802

Dear Ms. Headley:

*As You Sow* is filing a shareholder proposal on behalf of Michael Fox ("Proponent"), a shareholder of O'Reilly Automotive Inc., for action at the next annual meeting of O'Reilly Automotive. Proponent submits the enclosed shareholder proposal for inclusion in O'Reilly Automotive's 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on his behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such discussion could result in resolution of the Proponent's concerns. To schedule a dialogue, please contact Andrew Behar, CEO at [abehar@asyousow.org](mailto:abehar@asyousow.org).

Sincerely,

Andrew Behar  
CEO

Enclosures

- Shareholder Proposal
- Shareholder Authorization

**Whereas:** our company's business success depends upon a customer-facing sales force;

Workforce diversity and inclusion, reflecting possible discrimination based upon gender, race and ethnicity is a significant policy issue;

Underrepresentation of women and minorities in management structures can result in allegations of discriminatory labor practices, including those related to promotions and wages. The resulting lawsuits can both eat into the thin margins of this industry, as well as cause reputational damage for the responsible companies;

The U.S. population is currently undergoing a massive demographic shift, with an increase in minority populations;

Retailers that respond to this demographic trend and employ staff who will be able to recognize the needs of these populations may be better able to capture demand from these segments, which can provide companies a competitive advantage;

Our company's financial filings highlight the importance of in-store personnel, stating that, "Our highly-motivated, technically-proficient Professional Parts People provide us with a significant competitive advantage" ... "we consider our relations with our Team Members to be excellent."

Yet our company's disclosures do not provide metrics enabling shareholders or other stakeholders to assess progress in meeting these values.

**Therefore be it resolved:** Shareholders request that the Board of Directors issue a report to shareholders by 180 days after the 2019 Annual Meeting, at reasonable expense and excluding confidential information, assessing the diversity of our company's workforce.

#### **Supporting Statement**

Proponents recommend that the assessment include:

- metrics on the percentage of gender categories for global operations, and the standard EEO-1 racial and ethnic group categories for U.S. operations, disaggregated, at a minimum, into management (Executive/Senior-Level, and First/Mid-Level Officials) and non-managerial employees (all other EEO-1 Standard Occupational Classifications);
- the amounts of any legal or regulatory fines and settlements associated with diversity issues; and
- a description of our policies and programs for fostering diversity of employees across our global operations.

20 November 2018

Andrew Behar  
CEO  
As You Sow  
1611 Telegraph Ave., Ste. 1450  
Oakland, CA 94612

**Re: Authorization to File Shareholder Resolution**

Dear Mr. Behar,

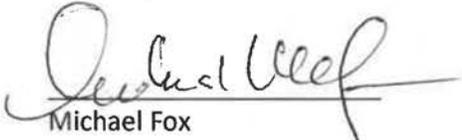
The undersigned (the "Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with O'Reilly Automotive, Inc. (the "Company") for inclusion in the Company's 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to report on diversity and inclusion including metrics on employee diversity, reporting of regulatory fines and settlements, and policies and programs for fostering diversity.

The Stockholder has continuously owned over \$2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives *As You Sow* the authority to address on Stockholder's behalf any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution and that the media may mention the Stockholder's name in relation to the resolution.

The shareholder further authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf concerning the resolution.

Sincerely,

  
Michael Fox



November 26, 2018

Andrew Behar  
CEO  
As You Sow  
1611 Telegraph Ave, Suite 1450  
Oakland, CA 94612

abehar@asyousow.org

**RE: Shareholder Proposal for 2019 Annual Meeting of Shareholders**

Dear Mr. Behar:

I am writing to acknowledge receipt on November 20, 2018, of the shareholder proposal (the "Proposal") submitted on behalf of Michael Fox (the "Proponent") to O'Reilly Automotive, Inc. ("O'Reilly") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, for inclusion in O'Reilly's proxy materials for the 2019 Annual Meeting of Shareholders (the "Annual Meeting") and to notify you of a deficiency with respect to the submission.

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 shares of O'Reilly's 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 shares through the date of the Annual Meeting. For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

Our records indicate that the Proponent is not a registered holder of O'Reilly's common stock. Please provide a written statement from the record holder of the Proponent's common shares (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 number of O'Reilly's common shares continuously for at least one year preceding and including November 20, 2018, which is the date the Proposal was submitted to O'Reilly.

In order to determine if the bank or broker holding the Proponent's shares is a DTC Participant, you can check the DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>. If the bank or broker holding the Proponent's shares is not a DTC participant or an affiliate of a DTC participant, you also will need to obtain proof of ownership from the DTC participant or affiliate of the DTC participant through which the shares are held. You should be able to identify the DTC participant or affiliate of the DTC participant by asking the Proponent's broker or bank. If the DTC participant or affiliate of the DTC participant knows the Proponent's broker or bank's holdings but does not know the Proponent's holdings, you can satisfy Rule 14a-8 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 the 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 the Proponent's ownership of the minimum number of shares of O'Reilly's common stock, please see Rule 14a-8(b)(2) in Exhibit A.

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

Very truly yours,

**O'REILLY AUTOMOTIVE, INC.**

A handwritten signature in black ink, appearing to read 'Jeffrey L. Groves', written over a horizontal line.

Jeffrey L. Groves  
Senior Vice President Legal and General Counsel  
Direct Line: (417) 829-5763  
Fax No.: (417) 874-7102

Enclosures

cc: Kimberly A. deBeers  
Skadden, Arps, Slate, Meagher & Flom LLP



December 10, 2018

Jeffrey L. Groves  
Senior Vice President  
Legal and General Counsel  
O'Reilly Automotive, Inc.  
233 South Patterson Avenue  
Springfield, Missouri 65802

Dear Mr. Groves:

We are receipt of your letter dated November 26, 2018, requesting proof of ownership of O'Reilly stock, in the requisite amount and time, by Michael Fox, the Proponent of the resolution filed by *As You Sow* on November 20, 2018. We have been in communication with Mr. Fox's asset manager, who has confirmed with the DTC participating custodian of Mr. Fox that the shareholder is in possession of at least \$2,000 worth of O'Reilly stock for at least one year from the date of filing.

While we would normally be able to collect and furnish to the Company a letter from the custodian in a timely manner, we are saddened to report that Mr. Fox has been made unavailable by a life threatening, medical emergency in his family. As such, Mr. Fox's asset manager has been unable to acquire the necessary authorization signature from his client that would allow Mr. Fox's custodian to release a proof of ownership letter to the Company.

While we are respectfully attempting to make contact with Mr. Fox, we would like to ask the Company to give us additional time to collect this proof of ownership from the DTC participating custodian of Michael Fox, given the extenuating circumstances.

Sincerely,

Danielle Fugere  
President