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

DIVISION OF
CORPORATION FINANCE

March 6, 2019

John P. Daly
Yum! Brands, Inc.
john.daly@yum.com

Re: Yum! Brands, Inc.
Incoming letter dated January 14, 2019

Dear Mr. Daly:

This letter is in response to your correspondence dated January 14, 2019 concerning the shareholder proposal (the "Proposal") submitted to Yum! Brands, Inc. (the "Company") by CtW Investment Group (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated February 12, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Richard Clayton
CtW Investment Group
richard.clayton@ctwinvestmentgroup.com

March 6, 2019

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

Re: Yum! Brands, Inc.
Incoming letter dated January 14, 2019

The Proposal urges the board to adopt a policy that the Company will not engage in any "Inequitable Employment Practice," which the Proposal defines as mandatory arbitration of employment-related claims; non-compete agreements with employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any Company employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the employee.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates generally to the Company's policies concerning its employees, and does not focus on an issue that transcends ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Michael Killoy
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

CtW Investment Group

February 12, 2019

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by Yum! Brands Inc. to omit proposal submitted by CtW Investment Group

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, CtW Investment Group ("CtW") submitted a shareholder proposal (the "Proposal") to Yum! Brands Inc. ("Yum" or the "Company"). The Proposal asks Yum's board "to adopt a policy that Yum will not engage in any Inequitable Employment Practice, as that term is defined in the Proposal.

In a letter to the Division dated January 14, 2019 (the "No-Action Request"), Yum stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2019 annual meeting of shareholders. Yum argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with Yum's ordinary business operations. As discussed more fully below, Yum has not met its burden of proving its entitlement to exclude the Proposal on that basis, and we respectfully request that Yum's request for relief be denied.

## The Proposal

The Proposal states:

> RESOLVED that shareholders of YUM! Brands Inc. ("YUM") urge the Board of Directors to adopt a policy that YUM will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any YUM employee

engaged in unlawful discrimination or harassment, unless such an NDS is requested by the employee.

**Ordinary Business**

Rule 14a-8(i)(7) allows exclusion of proposals related to a company's ordinary business operations. Yum argues that the Proposal relates to the Company's ordinary business operations because it addresses management of the workforce, without implicating a significant policy issue, and would micromanage the Company.

*Background*

Inequitable Employment Practices—mandatory arbitration, non-compete provisions and non-disclosure agreements entered into in connection with discrimination or harassment claims--construct a private contractual regime that supplants existing legal protections and institutions. This regime is created when employees waive, in advance, their right to sue in court, work for another employer or disclose information about misconduct. By depriving employees of avenues to redress grievances and reducing worker mobility, Inequitable Employment Practices bolster employer leverage over wages and working conditions, increasing inequality. Employees have little or no ability to bargain over Inequitable Employment Practices and many aren't even aware they have agreed to them until an employer enforces them or threatens to do so.

Inequitable Employment Practices not only give employers more power; they also reflect a labor market in which employers have power to hold down wages and dictate terms of employment, even when unemployment rates are low. Economists refer to this situation--which can occur when there is one or a small number of employers, or where frictions prevent worker mobility--as monopsony.[1] Inequitable Employment Practices are intertwined with monopsony power, whose deleterious effects on the economy are increasingly clear to economists and policy makers.

*Inequitable Employment Practices and Their Impact on Workers, the Labor Market and the Broader Economy Are a Significant Policy Issue*

[1] "Labor Market Monopsony: Trends, Consequences and Policy Responses," Council of Economic Advisers Issue Brief, Oct. 2016, at 2 (https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf).

Companies are generally not allowed to rely on the ordinary business exclusion to omit proposals addressing "management of the workforce" if they "focus[] on sufficiently significant social policy issues."[2] To determine whether a topic qualifies as a significant social policy issue, the Division analyzes whether it is a "consistent topic of widespread public debate."[3] Inequitable Employment Practices and their broader impacts have generated significant debate among the public and policy makers and are therefore a significant policy issue.

Contrary to Yum's claim, Inequitable Employment Practices are not "tenuously related."[4] The ways in which Inequitable Employment Practices work together to undermine legal protections for workers and reinforce employer power are well-recognized:

- The National Employment Law Project recently declared that the increasing use of non-compete, mandatory arbitration and non-disclosure provisions is "a backdoor repeal of the basic labor and employment laws that so many have fought to implement and protect."[5]
- In February 2018, the Brookings Institution's Hamilton Project released a study by economists Alan Krueger and Eric Posner that identified non-compete and no-poaching provisions as key supports for monopsony power.[6]
- The Economic Policy Institute's ("EPI's") "First Day Fairness" reform agenda unveiled in August 2018 counts among its core principles opposition to mandatory arbitration and non-compete provisions.[7] According to EPI, "[t[]he proliferating employer practice of requiring workers to waive their rights as a condition of employment shifts even more economic leverage from workers to employers."[8]
- The Economist, criticizing the widespread use of non-compete provisions in the U.S., made the connection to mandatory arbitration and increasing employer power: "Non-competes are also more worrying when the balance of power between companies and employees is already skewed. The spread of

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[2] Exchange Act Release No. 40018 (May 21, 1998).
[3] See, e.g., Duke Energy Corp. (Mar. 1, 2002); AT&T Inc. (Feb. 2, 2011).
[4] No-Action Request, at 2.
[5] https://www.nelp.org/blog/non-compete-provisions-context-nelp-supports-calls-reform/#_edn9
[6] Alan B. Krueger & Eric Posner, "A Proposal for Protecting Low-Income Workers from Monopsony and Collusion," The Hamilton Project, Policy Proposal 2018-05, Feb. 2018 (https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_protecting_low_income_workers_from_monopsony_collusion_krueger_posner_pp.pdf).
[7] https://www.epi.org/publication/first-day-fairness-an-agenda-to-build-worker-power-and-ensure-job-quality/
[8] https://www.epi.org/publication/first-day-fairness-an-agenda-to-build-worker-power-and-ensure-job-quality/

mandatory-arbitration clauses in employment contracts and the decline of trade unions are both signs of that imbalance."[9]

- An article in the University of Pennsylvania Law Review characterized non-compete and mandatory arbitration provisions as the "most controversial contractual instruments" and the "hottest topics" in employment law, arguing that they represent a "hybrid form of employment regulation" between rights and contract. The conflict between these provisions and the rights society has deemed so important as to be non-waivable, such as the right to be free from employment discrimination, has produced "parallel doctrinal problems" in the law involving the conditions under which waiver by an employee should be considered valid.[10]
- Practitioners advocate bundling the Inequitable Employment Practices due to their synergistic effects:
    - Requiring an employee to arbitrate the validity of a non-compete agreement prevents him from suing in a judicial forum that construes such agreements narrowly.[11]
    - An arbitration clause in an NDA reduces the expense associated with enforcement.[12]
    - A template employment agreement provided by the Society for Industrial and Organizational Psychology includes mandatory arbitration, non-compete, non-disclosure and no-poaching provisions.[13]

Monopsony has garnered increased academic, policymaker and public attention in recent years due to its impact on inequality and the economy. The Council of Economic Advisers (the "CEA") issued a report on labor market monopsony in October 2016. The CEA described the problems it believed monopsony causes for the U.S. economy:

> Over the past several decades, only the highest earners have seen steady wage gains; for most workers, wage growth has been sluggish and has failed to keep pace with gains in productivity (CEA 2015, Ch. 3). . . At the same time, labor income itself has become increasingly unequally divided. . . . [I]nstead of promoting growth, forces that undermine competition tend to

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[9] "The Case Against Non-Compete Clauses," The Economist, May 19, 2018 (https://www.economist.com/leaders/2018/05/19/the-case-against-non-compete-clauses).

[10] Cynthia Estlund, "Between Rights and Contract: Arbitration Agreements and Non-Compete Covenants as a Hybrid Form of Employment Law," U. Penn. L. Rev. Vol. 155 (2006).

[11] See Stephen P. Safranski & Heather M. McElroy, "Use Arbitration to Protect Non-Competes," Today's General Counsel, June/July 2013 (https://www.robinskaplan.com/~/media/pdfs/use%20arbitration%20to%20protect%20non-competes.pdf?la=en); Neal F. Weinrich, Esq., "Arbitration Clause in Non-Compete Agreements: the United States Supreme Court Chimes In," Nov. 2015 (https://www.bfvlaw.com/wp-content/uploads/2015/11/Weinrich-Arb-Clauses-in-Non-Compete.pdf).

[12] Ben Oliveri, "The Essential Guide to NDAs (Non Disclosure Agreement Templates Included)," Nov. 15, 2017 (https://www.codementor.io/blog/guide-to-ndas-2j1yrvq40g).

[13] https://www.siop.org/EEI_Conf%20and%20Noncomp.pdf

reduce efficiency, and can lead to lower output, employment, and social welfare.[14]

Employer collusion and the use of non-compete agreements were identified by the CEA as factors contributing to labor market monopsony. According to the CEA, "the evidence shows several signs that [non-compete] agreements are often used to create or exercise market power."[15]

Monopsony has been the subject of significant academic interest. Research by economist Marshall Steinbaum found that the average labor market is "highly concentrated" and that the degree of concentration is associated with lower wages.[16] He opined that "[t]he monopsony story is consistent with a wide range of observed labor market phenomena: wage stagnation, declining geographic and job-to-job mobility, deterioration of the job ladder, especially for low-wage and young workers, and declines in entrepreneurship and 'business dynamism'" and that "the findings in this paper lend further support to the idea that monopsony power in the labor market is a practical economic problem that the antitrust status quo is not doing enough to solve."[17] The New York Times reported on Steinbaum's paper in an article exploring the relationship between the lack of growth in wages and employer concentration.[18]

A 2017 study by Simcha Barkai concluded that "the declines in the shares of labor and capital are due to a decline in competition [resulting from increased concentration] and they call into question the conclusion that the decline in the labor share is an efficient outcome."[19] Barkai's study was widely covered in mainstream media articles, including pieces in the Los Angeles Times,[20] The

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[14] "Labor Market Monopsony: Trends, Consequences and Policy Responses," Council of Economic Advisers Issue Brief, Oct. 2016, at 1 (https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf).

[15] "Labor Market Monopsony: Trends, Consequences and Policy Responses," Council of Economic Advisers Issue Brief, Oct. 2016, at 8 (https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf).

[16] http://rooseveltinstitute.org/how-widespread-labor-monopsony-some-new-results-suggest-its-pervasive/

[17] http://rooseveltinstitute.org/how-widespread-labor-monopsony-some-new-results-suggest-its-pervasive/

[18] Noam Scheiber & Ben Casselman, "Why is Pay Lagging? Maybe Too Many Mergers in the Heartland," The New York Times, Jan. 25, 2018 (https://www.nytimes.com/2018/01/25/business/economy/mergers-worker-pay.html)

[19] Simcha Barkai, "Declining Labor and Capital Shares," working paper 2017, at 4 (http://home.uchicago.edu/~barkai/doc/BarkaiDecliningLaborCapital.pdf)

[20] Harold Meyerson, "Like Frogs in a Slowly Boiling Pot, Americans are Finally Realizing How Dire Their Labor Situation Is," Los Angeles Times, Sept. 3, 2018 (https://www.latimes.com/opinion/op-ed/la-oe-meyerson-labor-question-20180903-story.html)

Washington Post,[21] Bloomberg,[22] and The New York Times,[23] on employer concentration and its impact on wages and inequality. It was also cited by Senator Cory Booker in a letter to the Federal Trade Commission and Department of Justice arguing that "your Agencies have not prioritized the responsibility to ensure that workers have meaningful choices that allow them to fairly bargain among potential employers."[24]

The Inequitable Employment Practices have also been controversial individually, for many of the same reasons.

*Mandatory Arbitration*

Eliminating mandatory arbitration provisions has been a major focus of the fight against workplace sexual harassment, with proponents arguing that arbitration lacks transparency, shields harassers from accountability and allows misconduct to continue, damaging employee morale and productivity. High-profile incidents of sexual harassment and assault at Uber, Google and Fox News generated abundant media coverage and highlighted the role arbitration plays in depriving employees of remedies and protecting wrongdoers.

Thousands of Google employees staged a walkout to protest the company's handling of sexual misconduct, with ending forced arbitration the first in a list of those employees' demands. They are now calling on the tech industry to eliminate the practice with the "endforcedarbitration social media campaign.[25] According to former Fox anchor Gretchen Carlson, who was prevented by a mandatory arbitration clause from suing Fox for sexual harassment by Roger Ailes, arbitration is "the harasser's best friend."[26] She is campaigning for a federal law barring such

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[21] James Downie, "Beyond United: How Oligopolies Hurt Americans' Pocketbooks," The Washington Post, Apr. 12, 2017 (https://www.washingtonpost.com/blogs/post-partisan/wp/2017/04/12/beyond-united-how-oligopolies-hurt-americans-pocketbooks/?utm_term=.565b9d453122).

[22] Noah Smith, "Cracking the Mystery of Labor's Falling Share of the GDP," Bloomberg, Apr. 24, 2017 (https://www.bloomberg.com/opinion/articles/2017-04-24/cracking-the-mystery-of-labor-s-falling-share-of-gdp).

[23] Noam Scheiber & Ben Casselman, "Why is Pay Lagging? Maybe Too Many Mergers in the Heartland," The New York Times, Jan. 25, 2018 (https://www.nytimes.com/2018/01/25/business/economy/mergers-worker-pay.html)

[24] Matthew Yglesias, "Booker Calls on Antitrust Regulators to Start Paying Attention to Workers," Vox, Nov. 1, 2017 (https://www.vox.com/policy-and-politics/2017/11/1/16571992/booker-antitrust-letter)

[25] Olivia Carville & Nico Grant, "Google Workers Stage Mass Walkout to Protest Handling of Sexual Misconduct," Bloomberg, Nov. 1, 2018 (https://www.bloomberg.com/news/articles/2018-11-01/google-workers-stage-mass-walkout-to-protest-handling-of-sexual-misconduct); Meira Gebel, "The Organizers of the Google Walkout Are Calling on the Tech Industry to End Forced Arbitration Employment Agreements Completely," Business Insider, Jan. 19, 2019 (https://www.businessinsider.com/google-walkout-call-for-end-to-forced-arbitration-2019-1)

[26] "When You Cannot Sue Your Employer," The Economist, Jan. 25, 2018 (https://www.economist.com/business/2018/01/25/when-you-cannot-sue-your-employer)

provisions.[27] A group of 12 law school women's associations recently condemned mandatory arbitration agreements.[28] As well, 47 groups, including the ACLU and NAACP, wrote to large tech companies in September 2018, urging that they stop requiring employees to agree to arbitrate employment-related disputes.[29]

It is not practicable to identify and cite all media coverage of the controversy over mandatory arbitration of sexual harassment claims; however, the coverage in Appendix A illustrates the extent of public attention to the issue.

Focus on mandatory arbitration for employment-related claims hasn't been limited to the sexual harassment context. Mandatory arbitration has remained in the spotlight due to Supreme Court cases affirming the validity of mandatory arbitration provisions and class action waivers, a study finding that 56% of private-sector non-unionized workers are subject to mandatory arbitration agreements, and stories of meritorious claims for which employees could not seek effective redress. Some examples of this coverage are included in Appendix A.

The public debate has spurred many responses by policy makers. In the past several years, bills have been introduced in Congress on the subject of mandatory arbitration:

- Arbitration Fairness Act (115th Congress H.R.1374, S.537 and S.2591): would invalidate a predispute agreement to arbitrate various kinds of claims, including employment and civil rights[30]
- Restoring Statutory Rights and Interests of the States Act (115th Congress H.R.1396, S.550): would provide that a written agreement to arbitrate a violation of federal or state law must is not valid if entered into before the claim has arisen[31]
- Ending Forced Arbitration of Sexual Harassment Act (115th Congress H.R.4570, S.2203): would invalidate a predispute written agreement to arbitrate a claim arising out of conduct that would form the basis for a

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[27] Hope Reese, "Gretchen Carlson on How Forced Arbitration Allows Companies to Protect Harassers," Vox, May 21, 2018 (https://www.vox.com/conversations/2018/4/30/17292482/gretchen-carlson-me-too-sexual-harassment-supreme-court).

[28] Asha Prihar, "Yale Law School Women's Groups Oppose Mandatory Arbitration," Yale Daily News, Dec. 5, 2018 (https://yaledailynews.com/blog/2018/12/05/yale-law-school-womens-groups-oppose-mandatory-arbitration/).

[29] https://insights.dice.com/2018/09/26/tech-employees-forced-arbitration-end-good/; https://www.citizen.org/sites/default/files/employment_arb_signon_letter.2nd_letter.amazon.pdf

[30] https://www.congress.gov/bill/115th-congress/house-bill/1374; https://www.congress.gov/bill/115th-congress/senate-bill/537; https://www.govtrack.us/congress/bills/115/s2591/text; https://www.govtrack.us/congress/bills/115/s550?utm_campaign=govtrack_feed&utm_source=govtrack/feed&utm_medium=rss

[31] https://www.congress.gov/bill/115th-congress/house-bill/1396/text?format=txt&r=46

violation of the Civil Rights Act of 1964 based on sex, regardless of whether such a violation is alleged.[32]

- Mandatory Arbitration Transparency Act (115th Congress H.R.4130, S.647): would prohibit a predispute arbitration agreement from including a confidentiality provision regarding various kinds of claims, including employment, if that provision would violate a whistleblower statute or prevent disclosure of tortious or unlawful conduct, or issues of public policy or concern[33]

Fifty-six attorneys general of all 50 states, the District of Columbia and U.S. territories sent a letter to Congressional leadership in 2018 urging them to "free [victims of sexual harassment] from the injustice of forced arbitration and secrecy when it comes to seeking redress for egregious misconduct condemned by all concerned Americans."[34]

State legislatures have also taken action on mandatory arbitration of employment-related claims. As of August 2018, four states had bills pending to bar employers from requiring employees to agree to arbitrate sexual harassment claims.[35] New York enacted a law in fall 2018 barring predispute arbitration agreements for sexual harassment claims.[36] Last year, the state of Washington passed a law invalidating any provision of an employment agreement that (a) requires the employee to waive her right to "publicly pursue" a discrimination claim or file a complaint with the "appropriate state or federal agencies" or (b) requires an employee to resolve a discrimination claim in a "dispute resolution process that is confidential."[37] A California bill prohibiting predispute agreements to arbitrate sexual harassment claims passed both houses of the legislature, though it was vetoed by Governor Brown.[38] A bill was introduced in New York City to require

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[32] https://www.congress.gov/bill/115th-congress/house-bill/4570; https://www.congress.gov/bill/115th-congress/senate-bill/2203/text?format=txt

[33] https://www.congress.gov/bill/115th-congress/house-bill/4130/text; https://www.congress.gov/bill/115th-congress/senate-bill/647

[34] http://myfloridalegal.com/webfiles.nsf/WF/HFIS-AVWMYN/$file/NAAG+letter+to+Congress+Sexual+Harassment+Mandatory+Arbitration.pdf

[35] Susan Kay Leader & Jenna Nalchajian, "Insight: The Brightening Spotlight on Mandatory Arbitration Clauses," Bloomberg Law, Aug. 24, 2018 (https://www.bna.com/insight-brightening-spotlight-n73014481979/).

[36] https://www.seyfarth.com/publications/MA102518-LE?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original

[37] http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6313-S.SL.pdf#page=1

[38] Edward Lozowicki, "Governor Brown Vetoes California Bill Prohibiting Arbitration of Employment Claims," American Bar Association, Jan. 15, 2019 (https://www.americanbar.org/groups/litigation/committees/alternative-dispute-resolution/practice/2016/gvr-brown-vetoes-ca-bill-prohibiting-arbitration-employment-claims/)

employers to disclose in job ads if they require employees to agree to arbitrate claims.[39]

The secrecy afforded by arbitration[40] allows management to conceal patterns of misbehavior from the board, which can prevent timely corrective action. According to Professor Robert Bruno, of the School of Labor & Employment Relations at the University of Illinois at Urbana-Champaign, "mandatory arbitration could allow companies to hide systemic bad behavior at a time when the #MeToo and other movements are showing the need for more corporate transparency . . . I can't imagine how it's good for the long-term shareholder value of those companies."[41]

*Non-Disclosure Agreements*

Non-disclosure agreements in connection with the settlement of sexual harassment claims, which (like arbitration) hide wrongdoing from other employees, the board and regulators, have also generated substantial public debate. As with mandatory arbitration, media coverage of non-disclosure agreements has been driven by the substantial increase in attention being paid to sexual harassment and assault. In high-profile cases involving Bill Cosby, Harvey Weinstein, Bill O'Reilly and Les Moonves, nondisclosure agreements were used to suppress information about sexual misconduct. Examples of media coverage include:

- Alexia Fernandez Campbell, "A New House Bill Would Bar Companies From Using Nondisclosure Agreements to Hide Harassment," Vox, July 18, 2018 (https://www.vox.com/2018/7/18/17586532/sexual-harassment-bill-ban-nondisclosure-agreements-ndas-congress-metoo)
- Stacy Perman,"#MeToo Law Restricts Use of Nondisclosure Agreements in Sexual Misconduct Cases," Los Angeles Times, Dec. 31, 2018 (https://www.latimes.com/business/hollywood/la-fi-ct-nda-hollywood-20181231-story.html) ("The flood of revelations about nondisclosure agreements has also laid bare the power imbalance between claimants and the accused.")

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[39] Erin Durkin, "Letitia James Pushes for Law to Shine Light on Mandatory-Arbitration Employers," Daily News, May 23, 2018 (https://www.nydailynews.com/new-york/letitia-james-employers-disclose-mandatory-arbitration-article-1.4004658).

[40] See Kimberly Kalmanson & Randi M. Cohen, "The Real Cost of Mandatory Arbitration," New York Law Journal, Nov. 23, 2018 (https://www.law.com/newyorklawjournal/2018/11/23/the-real-cost-of-mandatory-arbitration/?slreturn=20190029112740) (arbitration "is often shrouded in secrecy")

[41] Laurent Belsie & Mark Trumbull, "Setback for Workers: What Fallout as Supreme Court Oks Forced Arbitration?" Christian Science Monitor, May 21, 2018 (https://www.csmonitor.com/Business/2018/0521/Setback-for-workers-What-fallout-as-Supreme-Court-OKs-forced-arbitration)

- "States Move to Limit Workplace Confidentiality Agreements," CBS News, Aug. 27, 2018 (https://www.cbsnews.com/news/states-move-to-limit-workplace-confidentiality-agreements/)
- Jessica Levinson, "Non-disclosure Agreements Can Enable Abusers. Should We Get Rid of NDAs for Sexual Harassment?" NBC News, Jan. 24, 2019 (https://www.nbcnews.com/think/opinion/non-disclosure-agreements-can-enable-abusers-should-we-get-rid-ncna840371)
- Casey Quinlan, "This Bill Won't Let Employers Force People to Sign on-disclosure Agreements Related to Harassment," June 6, 2018 (https://thinkprogress.org/bill-prohibits-non-disclosure-agreements-harassment-workplace-f469f50eb132/)
- Andrea Gonzalez-Ramirez, "New Bipartisan Bill Would Fight Sexual Harassment at the Workplace," Refinery 29, July 18, 2018 (https://www.refinery29.com/en-us/2018/07/204641/sexual-harassment-workplace-legislation-bipartisan-empower-act)
- Cara Buckley, "Powerful Hollywood Women Unveil Anti-Harassment Action Plan," The New York Times, Jan. 1, 2018 (https://www.nytimes.com/2018/01/01/movies/times-up-hollywood-women-sexual-harassment.html)
- Claudia Koerner, "California is on the Verge of Banning Nondisclosure Agreements for Sexual Harassment Victims," BuzzfeedNews, Aug. 24, 2018 (https://www.buzzfeednews.com/article/claudiakoerner/california-lawmakers-have-voted-to-ban-secret-settlements)
- Areva Martin, "How NDAs Help Some Victims Come Forward Against Abuse," Time, Nov. 28, 2017 (http://time.com/5039246/sexual-harassment-nda/)
- Michelle Kaminsky, "The Harvey Weinstein Effect: The End of Nondisclosure Agreements in Sexual Assault Cases?" Forbes, Oct. 26, 2017 (https://www.forbes.com/sites/michellefabio/2017/10/26/the-harvey-weinstein-effect-the-end-of-nondisclosure-agreements-in-sexual-assault-cases/#201914362c11)
- Hiba Hafiz, "How Legal Agreements Can Silence Victims of Workplace Sexual Assault," The Atlantic, Oct. 18, 2017 (https://www.theatlantic.com/business/archive/2017/10/legal-agreements-sexual-assault-ndas/543252/)
- Sara Ganem & Sunlen Serfaty, "Why Some Victims of Sexual Harassment Can't Speak Out," CNN, Nov. 24, 2017 (https://www.cnn.com/2017/11/24/politics/non-disclosure-agreements-sexual-harassment/index.html)

In 2018, the EMPOWER Act, which would ban employers from requiring employees to sign non-disclosure agreements covering workplace harassment, was introduced in the House and Senate.[42]

According to the National Conference on State Legislatures, bills on NDAs in the context of sexual harassment or assault were introduced in 20 state legislatures in 2018.[43] In 16 states, bills have been introduced to ban the use of NDAs in connection with sexual harassment claims. Last year, the state of Washington banned predispute NDAs that would prevent an employee from disclosing sexual harassment or assault related to employment.[44] A California law that took effect on January 1 bars agreements that prohibit the disclosure of factual information in sexual harassment, discrimination and retaliation claims."[45] New York banned non-disclosure agreements related to sexual harassment claims unless the NDA was the employee's preference.[46] Vermont passed a law barring employers from requiring employees to sign agreements not to disclose or report sexual harassment.[47]

In January 2018, 300 actresses and female Hollywood players, including Reese Witherspoon, Shonda Rhimes and America Ferrara, formed Time's Up to fight sexual harassment and promote gender parity. Among the group's efforts is legislation to discourage the use of NDAs in sexual harassment cases.[48]

*Non-Compete Provisions*

Evidence shows that non-compete provisions not only disadvantage individual workers but also exacerbate inequality and discourage entrepreneurship. According to The Economist, "[t]he evidence shows wages in states that enforce noncompetes are 10 percent lower than in states that restrict their use."[49] "States with strict enforcement," an article in The New York Times states, "end up suffering

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[42] https://www.congress.gov/bill/115th-congress/house-bill/6406/text; https://www.harris.senate.gov/news/press-releases/harris-murkowski-introduce-legislation-to-curb-workplace-harassment-and-increase-transparency-and-accountability

[43] http://www.ncsl.org/research/labor-and-employment/addressing-sexual-harassment-in-the-workplace.aspx

[44] http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5996-S.SL.pdf#page=1

[45] Stacy Perman,"#MeToo Law Restricts Use of Nondisclosure Agreements in Sexual Misconduct Cases," Los Angeles Times, Dec. 31, 2018 (https://www.latimes.com/business/hollywood/la-fi-ct-nda-hollywood-20181231-story.html)

[46] https://legislation.nysenate.gov/pdf/bills/2017/s7507c

[47] "States Move to Limit Workplace Confidentiality Agreements," CBS News, Aug. 27, 2018 (https://www.cbsnews.com/news/states-move-to-limit-workplace-confidentiality-agreements/)

[48] Cara Buckley, "Powerful Hollywood Women Unveil Anti-Harassment Action Plan," The New York Times, Jan. 1, 2018 (https://www.nytimes.com/2018/01/01/movies/times-up-hollywood-women-sexual-harassment.html)

[49] "The Case Against Non-Compete Clauses," The Economist, May 19, 2018 (https://www.economist.com/leaders/2018/05/19/the-case-against-non-compete-clauses).

a brain drain, by encouraging their best and smartest workers to move elsewhere for better pay."[50] Professor Orly Lobel, who studies non-compete agreements, has asserted, "There is strong data showing that [non-competes] reduce employee motivation, entrepreneurship and sharing of knowledge, the fundamental building blocks of innovation and economic growth."[51]

The Brookings Institution's Hamilton Project issued a report last year reviewing the empirical evidence about non-compete agreements. It found that non-competes reduce worker mobility and make it more likely that workers will shift to other industries or occupations, squandering valuable human capital.[52] The study also concluded that states with strict enforcement of non-compete provisions lose skilled employees to states with less strict enforcement, impede the flow of information and have fewer (and less successful) start-ups.[53]

Over the last few years, the use of non-compete provisions, especially for low-wage workers, has attracted public attention and prompted public debate. The debate has focused not only on the effect non-compete provisions have on individual employees but also on the broader effects of the provisions' widespread use discussed above. Some examples of media coverage are:

- Sophie Quinton, "These Days, Even Janitors Are Being Required to Sign Non-Compete Clauses," USA Today, May 27, 2017 (https://www.usatoday.com/story/money/2017/05/27/noncompete-clauses-jobs-workplace/348384001/)
- Stephen Mihm, "Send Noncompete Agreements Back to the Middle Ages," Bloomberg, Dec. 5, 2018 (https://www.bloomberg.com/opinion/articles/2018-12-05/noncompete-agreements-are-bad-for-employees-and-the-economy)
- Sabri Ben-Achour, "For American Workers, Noncompete Agreements Are Pervasive—and Might Hold Down Their Wages," Marketplace, July 5, 2018 (https://www.marketplace.org/2018/07/05/business/american-workers-non-compete-agreements-are-pervasive-and-might-hold-down-wages)
- Conor Dougherty, "How Noncompete Clauses Keep Workers Locked In," The New York Times, May 13, 2017

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[50] Conor Dougherty, "How Noncompete Clauses Keep Workers Locked In," The New York Times, May 13, 2017 (https://www.nytimes.com/2017/05/13/business/noncompete-clauses.html)

[51] Orly Lobel, "Companies Compete But Won't Let Their Workers Do the Same," The New York Times, May 4, 2017 (https://www.nytimes.com/2017/05/04/opinion/noncompete-agreements-workers.html)

[52] Matt Marx, "Reforming Non-Competes to Support Workers," Policy Proposal 2018-04, Feb. 2018, at 8-9 (https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_reforming_noncompetes_support_workers_marx_policy_proposal.pdf).

[53] Matt Marx, "Reforming Non-Competes to Support Workers," Policy Proposal 2018-04, Feb. 2018, at 9-10 (https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_reforming_noncompetes_support_workers_marx_policy_proposal.pdf).

(https://www.nytimes.com/2017/05/13/business/noncompete-clauses.html) ("But the move to tie workers down with noncompete agreements falls in line with the decades-long trend in which their mobility and bargaining power has steadily declined, and with it their share of company earnings.")

- Duarte Geraldino, "What You Should Know About Noncompete Agreements," PBS Newshour, July 14, 2016 (https://www.pbs.org/newshour/economy/know-non-compete-agreements)
- Spencer Woodman, "Amazon Makes Even Temporary Warehouse Workers Sign 18-Month Non-Competes," The Verge, Mar. 26, 2015 (https://www.theverge.com/2015/3/26/8280309/amazon-warehouse-jobs-exclusive-noncompete-contracts)
- Yuki Noguchi, "Under Pressure, WeWork Backs Down on Employee Noncompete Requirements," NPR (heard on "All Things Considered"), Sept. 18, 2018 (https://www.npr.org/2018/09/18/648881004/wework-backs-down-on-employee-noncompete-requirements)
- Orly Lobel, "Companies Compete But Won't Let Their Workers Do the Same," The New York Times, May 4, 2017 (https://www.nytimes.com/2017/05/04/opinion/noncompete-agreements-workers.html)
- Matt O'Brien, "Even Janitors Have Noncompetes Now. Nobody is Ssfe," The Washington Post, Oct. 18, 2018 (https://www.washingtonpost.com/business/2018/10/18/even-janitors-have-noncompetes-now-nobody-is-safe/?utm_term=.a4e35f5e9f4d)
- Nancy Collamer, "Could a Noncompete Keep You From Getting Work?" Forbes, Nov. 13, 2017 (https://www.forbes.com/sites/nextavenue/2017/11/13/could-a-noncompete-keep-you-from-getting-work/#2ebf79d467c1)
- Steve Sbraccia, "Several States Are Investigating Non-Compete Clauses in Fast Food Jobs," July 12, 2018 (https://www.cbs17.com/news/investigators/several-states-investigating-non-complete-clauses-in-fast-food-jobs/1298896501)

Non-competes have come in for scrutiny at the federal level. The LADDER and MOVE Acts would have prohibited non-compete agreements for low-wage employees.[54]

The Treasury Department also undertook an initiative on non-compete provisions. Its Office of Economic Policy analyzed the prevalence and impact of these provisions, releasing a report in 2016 pegging the proportion of U.S. workers

[54] Limiting the Ability to Demand Detrimental Employment Restrictions Act (114th Congress, H.R.2873) (https://www.congress.gov/bill/114th-congress/house-bill/2873); Mobility and Opportunity for Vulnerable Employees Act (114th Cong. S.1504) (https://www.congress.gov/bill/114th-congress/senate-bill/1504)

who have ever been subject to them at 37%.[55] The report discussed the broader economic impact of non-compete agreements, concluding that stricter non-compete enforcement is "associated with both lower wage growth and lower initial wages."[56] As well, the reduced worker mobility caused by non-compete provisions "is itself a concern for the U.S. economy," according to the report, because job "churn" leads to better employer-employee fit and "may facilitate the development of industrial clusters like Silicon Valley." The report also warned that "[n]on-competes are often used by employers in non-transparent ways."[57]

Citing rising inequality, "stagnant wage growth," and the stifling of entrepreneurship, the Obama White House put out a "call to action" in 2016 urging state policymakers to ban non-compete agreements for workers in certain categories, allow non-competes only if the employee is told about it before she accepts an offer of employment, and/or provide that a non-compete agreement is unenforceable in its entirety if any part is unenforceable.[58] The White House also highlighted an issue brief prepared by the Council of Economic Advisers reviewing the evidence of employer monopsony power and discussing the policy implications of that power.[59]

Vice President Joe Biden solicited accounts regarding the impact of non-compete provisions and related some of the stories he received. They included a teacher whose previous summer job precluded taking a summer job selling pet food and a 56-year-old salesman whose loss of income for two years after a layoff cost him almost all his retirement savings.[60]

Measures to limit or ban the use of non-compete agreements have been introduced in state legislatures. Hawaii banned non-compete agreements for tech workers, and bills seeking to ban non-competes or limit their use were introduced

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[55] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 6 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf).

[56] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 19 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf).

[57] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 4 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf).

[58] https://obamawhitehouse.archives.gov/sites/default/files/competition/noncompetes-calltoaction-final.pdf

[59] https://obamawhitehouse.archives.gov/the-press-office/2016/10/25/fact-sheet-obama-administration-announces-new-steps-spur-competition

[60] Joe Biden, "We Heard Your Stories. It's Time to #LetUsCompete," Medium, Oct. 25, 2016 (https://medium.com/@VPOTUS44/we-heard-your-stories-its-time-to-letuscompete-1b440782a8ae).

in nine other states.[61] New Mexico and Utah enacted laws limiting the use of non-compete agreements for certain kinds of employees.[62]

State attorneys general have focused closely on non-compete agreements. Last year, the attorneys general of 11 states, including California, New Jersey, New York and Massachusetts, unveiled an investigation of fast-food franchisors for using non-compete or no-poaching provisions to prevent competition for employees among franchisees.[63] In September 2018, New York's Attorney General Barbara Underwood announced the settlement of a case against WeWork for using overly broad non-compete provisions for its employees nationwide. She also issued guidance on non-compete agreements in New York.[64] The WeWork case followed several other enforcement actions,[65] including a 2016 settlement with Jimmy John's.[66] Illinois' attorney general had also sued Jimmy John's for using "highly restrictive non-compete agreements" in 2016.[67]

Inequitable Employment Practices are a significant policy issue because they deprive employees of legal rights and remedies, leading to lower wages, decreased productivity, greater inequality and more sluggish economic growth. They are imposed in non-transparent ways, when employees have the least bargaining power. All of these factors have contributed to consistent widespread public debate, including numerous legislative and regulatory initiatives and substantial media coverage. Accordingly, exclusion on ordinary business grounds is inappropriate.

*The Proposal Has a Sufficient Nexus to Yum*

In the No-Action request, Yum described a cursory analysis performed by the Executive Committee of Yum's board (the "Committee") to support its view that the the Inequitable Employment Practices are not sufficiently significant to Yum's business. Because the description in the No-Action Request fails to show that the

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[61] Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," Mar. 2016, at 17 (https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf); https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

[62] https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

[63] https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

[64] https://ag.ny.gov/press-release/ag-underwood-announces-settlement-wework-end-use-overly-broad-non-competes-restricted

[65] https://www.employmentlawspotlight.com/2018/09/new-york-attorney-generals-office-reaches-another-settlement-over-non-competes/

[66] https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-jimmy-johns-stop-including-non-compete-agreements

[67] https://www.tradesecretsandemployeemobility.com/2018/07/articles/non-compete-agreements/state-attorneys-general-investigating-use-of-non-competes-by-fast-food-franchisors/

Committee's conclusion was well-informed or well-reasoned, it should not be accorded any weight.

The Committee emphasizes an irrelevant measure of how frequently Yum arbitrates—the number of employee claims "subject to arbitration in each year"[68]—and glosses over the extent to which Yum includes mandatory arbitration provisions in employee policies, agreements or handbooks. The latter is far more important to the Proposal than the former; indeed, the low number of claims may show that claims are being suppressed, which is one of the concerns behind the Proposal.

There is evidence that employees are much less likely to submit a claim to arbitration than pursue it in court—one researcher has estimated that if employees were filing arbitration claims at the same rate as claims filed in court, the number of arbitration claims would be 35 to 80 times the current rate.[69] Attorneys are less likely to take such cases because both the chances of prevailing and the average damage award are lower than with claims in court.[70] Yum's failure to specify the "jurisdictions within which the Company requires employees to submit employment related claims to arbitration" considered by the Committee in the No-Action Request or to indicate whether the Committee considered the actual number of employees covered by mandatory arbitration provisions[71] undermine the value of the Committee's conclusions.

Many of Yum's arguments concern the purported benefits of Inequitable Employment Practices:

- "[A]rbitration is a widely accepted and frequently used contract provision that benefits both the Company and the employee by reducing litigation expenses while at the same time ensuring that employees individually retain an opportunity for timely and fair consideration of their claims."[72]

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[68] "Subject to arbitration" is ambiguous; it could mean the number of arbitration claims brought by employees or the number of hypothetical claims that would have to go to arbitration if an employee chose to assert them. We believe that the former interpretation is more reasonable, since it makes little sense to refer to the number of hypothetical "claims" rather than the number of employees who are required to submit claims to arbitration.

[69] Alexander J.S. Colvin, "The Growing Use of Mandatory Arbitration," Economic Policy Institute, Apr. 6, 2018 (https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/) (citing research by NYU Professor Cynthia Estlund).

[70] Alexander J.S. Colvin, "The Growing Use of Mandatory Arbitration," Economic Policy Institute, Apr. 6, 2018 (https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/)

[71] Mandatory arbitration is most common among low-wage workers, with 64.5% of employees who earn less than $13.00 per hour subject to the provision. (https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/)

[72] No-Action Request, at 5.

- "The Committee considered the circumstances in which a non-disclosure agreement may be sought by the Company, recognizing that such an agreement may be the best option to protect the Company and its employees from reputational harm, including in instances where a claim is unfounded or without merit."[73]
- "The Committee noted that [non-compete] agreements are intended to protect the Company's legitimate interest in safeguarding its proprietary information and are utilized in a narrowly tailored fashion as part of the day-to-day management of the business."[74]

Those arguments, which go to the merits of the Proposal, have no bearing on whether the Proposal implicates a significant policy issue. Instead, they are appropriate for inclusion in Yum's statement in opposition to the Proposal in the proxy statement, where they can be considered by shareholders voting on the Proposal.

Finally, Yum mischaracterizes the purpose of the Proposal in order to claim that the Company's existing policies and practices leave little room for improvement. Yum asserts that the "objective of the Proposal" is the prevention of a toxic culture in the workplace" and that Yum already addresses unlawful discrimination and harassment through training. But the Proposal does not aim to prevent misconduct but rather to counter efforts to strip employees of legal protections. Yum points to no existing policies meeting that objective.

The information provided in the No-Action Request does not show that the Committee's analysis was well-informed or well-reasoned. The Committee took into account arguments about the merits of the Proposal that are not relevant to whether the Proposal addresses a significant policy issue, and appears not to have considered the true prevalence of mandatory arbitration provisions. Accordingly, the conclusions reached by the Committee are not persuasive on the question whether the Proposal addresses a significant policy issue for Yum.

*The Proposal Would Not Micromanage Yum Because It Requests a Board-Level Policy and Would Not Seek to Control Day-to-Day Management*

Yum urges that the Proposal would micromanage it because "[t]he decision to enter into any of [the] three type of agreements [implicated by the Proposal]" as well as decisions about where to include such agreements, "require[] management to assess and weigh a number of factors."[75] The Proposal does not, however, address considerations weighing in favor of or against the Inequitable Employment

[73] No-Action Request, at 5.
[74] No-Action Request, at 5.
[75] No-Action Request, at 6.

Practices. Instead, it requests a single board-level policy that would not micromanage the Company.

In its 1998 release,[76] the Commission described why and when micromanagement justifies exclusion on ordinary business grounds:

> The second consideration [underlying the ordinary business exclusion] relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies. (footnotes omitted)

The Proposal does not implicate any of the concerns articulated by the Commission in the 1998 release. The Proposal does not ask for a report, so by definition it doesn't seek intricate detail. Nor does it request that Yum implement a complex policy: the policy sought in the Proposal is simple and straightforward. The Proposal therefore does not "seek[] to impose specific timeframes or methods" for implementing complex policies.

More fundamentally, the Proposal does not "prob[e] too deeply ito matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Shareholders are accustomed to evaluating company policies in connection with votes on shareholder proposals addressing a variety of subjects, including human rights, executive compensation and drug pricing. Shareholders thus have experience assessing the arguments in favor of and against policies like the one suggested in the Proposal.

* * *

For the reasons set forth above, Yum has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(7). We thus respectfully request that Yum's request for relief be denied.

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[76] Exchange Act Release No. 40018 (May 21, 1998).

CtW appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact Richard Clayton, our Research Director, at (202) 721-6038.

Sincerely,

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## Appendix A

Coverage of mandatory arbitration of sexual harassment or assault claims:

- Kerri Anne Renzulli, "Workers at Google, Facebook, eBay and Airbnb Can Now Sue Over Sexual Harassment—Here's What That Means for Employees," CNBC.com, Nov. 19, 2018 (https://www.cnbc.com/2018/11/19/google-facebook-airbnb-employees-can-now-sue-over-sexual-harassment.html)(reporting four tech firms "ending the controversial legal practice" of requiring employees to take claims to arbitration)
- Daisuke Wakabayashi & Jessica Silver-Greenberg, "Facebook to Drop Forced Arbitration in Harassment Cases," The New York Times, Nov. 9, 2018 (https://www.nytimes.com/2018/11/09/technology/facebook-arbitration-harassment.html)
- Terri Gerstein, "End Forced Arbitration for Sexual Harassment. Then Do More," The New York Times, Nov. 14, 2018 (https://www.nytimes.com/2018/11/14/opinion/arbitration-google-facebook-employment.html)
- Gerrit De Vynck et al., "Google Curbs Forced Arbitration After Protest on Harassment," Bloomberg, Nov. 8, 2018 (https://www.bloomberg.com/news/articles/2018-11-08/google-changes-policies-on-sexual-misconduct-after-staff-walkout)
- Susan Antilla, "Google and Facebook Ended Mandatory Arbitration for Sexual Harassment Claims. Will Workers Outside the Tech Industry Benefit?" The Intercept, Nov. 21, 2018 (https://theintercept.com/2018/11/21/google-sexual-harassment-arbitration/)
- Jing Cao, "Microsoft Eliminates Arbitration in Sexual Harassment Cases," Bloomberg, Dec. 19, 2017 (https://www.bloomberg.com/news/articles/2017-12-19/microsoft-eliminates-arbitration-in-sexual-harassment-cases)
- Rachel Gillette, "More Than Half of American Workers Wouldn't be Able to Take Their Sexual Harassment Claims to Court," Business Insider, Nov. 30, 2017 (https://www.businessinsider.com/mandatory-arbitration-clause-sexual-harassment-claims-2017-11)
- Madison Malone Kircher, "Airbnb and Ebay Follow Google's Example, Change Sexual-Harassment Policies," New York, Nov. 13, 2018 (https://nymag.com/intelligencer/2018/11/tech-companies-end-forced-arbitration-after-google-does.html)
- Emily Stewart, "Uber and Lyft Are Getting Rid of Tactics That Keep Sexual Assault Victims Silent," Vox, May 15, 2018

(https://www.vox.com/technology/2018/5/15/17355702/uber-driver-arbitration-nondisclosure-sexual-harassment-assault)

- Nitasha Tiku, "Big Tech Eyes Supreme Court's Employee-Arbitration Case," Wired, Oct. 2, 2017 (https://www.wired.com/story/big-tech-eyes-supreme-courts-employee-arbitration-case/)
- Nitasha Tiku, "Tech Workers Unite to Fight Forced Arbitration," Wired, Jan. 14, 2019 (https://www.wired.com/story/tech-workers-unite-fight-forced-arbitration/)
- Sam Levin, "Susan Fowler's Plan After Uber? Tear Down the System That Protects Harassers," The Guardian, Apr. 11, 2018 (https://www.theguardian.com/technology/2018/apr/11/susan-fowler-uber-interview-forced-arbitration-law)
- Gretchen Carlson, "How Arbitration Clauses Allow Sexual Harassment to Continue," Time, Mar. 10, 2017 (http://time.com/4698538/gretchen-carlson-sexual-harassment-arbitration-clauses/)
- Jena McGregor, "Google and Facebook ended Forced Arbitration for Sexual Harassment Claims. Why More Companies Could Follow," The Washington Post, Nov. 12, 2018 (https://www.washingtonpost.com/business/2018/11/12/google-facebook-ended-forced-arbitration-sex-harassment-claims-why-more-companies-could-follow/?utm_term=.1a3502b08fa6)
- Kate Clark, "Airbnb Ends Forced Arbitration Days After Google, Facebook Did the Same," TechCrunch, Nov. 12, 2018 (https://techcrunch.com/2018/11/12/airbnb-ends-forced-arbitration-days-after-google-facebook-did-the-same/)
- Michelle Cheng, "Google Workers Launch Social Media Campaign to Pressure Employers to Drop Forced Arbitration," Inc., Jan. 24, 2019 (https://www.inc.com/michelle-cheng/google-employees-social-media-campaign-protest-forced-arbitration.html)

Coverage of mandatory arbitration of employment-related claims other than sexual harassment or assault:

- Jessica Silver-Greenberg, "Arbitration Everywhere: Stacking the Deck of Justice," The New York Times, Oct. 31, 2015 (https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html) ("By inserting individual arbitration clauses into a soaring number of consumer and employment contracts, companies like American Express devised a way to circumvent the courts and bar people from joining together in class-action lawsuits, realistically the only tool citizens have to fight illegal or deceitful business practices.")

- Megan Leonhardt, "What Everyone Needs to Know About the Heated Battle to Take Away Your Right to Sue Big Companies," Money.com, Oct. 2, 2017 (http://money.com/money/4965024/supreme-court-new-york-mandatory-arbitration/)
- Rebecca Koenig, "What You Need to Know About Mandatory Arbitration," U.S. News & World Report, July 9, 2018 (https://money.usnews.com/careers/company-culture/articles/2018-07-09/what-you-need-to-know-about-mandatory-arbitration)
- Alexander J.S. Colvin, "The Growing Use of Mandatory Arbitration," Economic Policy Institute, Sept. 27, 2017 (https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration/) (study finding that 56% of private-sector, non-unionized U.S. workers are subject to mandatory arbitration, including of discrimination and wage and hour claims, and that arbitration "has a tendency to suppress claims")
- Megan Leonhardt, "Getting Screwed at Work? The Sneaky Way You May Have Given Up Your Right to Sue," Money.com, Sept. 27, 2017 (reporting on EPI and Outsourcing Justice studies regarding mandatory arbitration)
- "When You Cannot Sue Your Employer," The Economist, Jan. 25, 2018 (https://www.economist.com/business/2018/01/25/when-you-cannot-sue-your-employer)
- Preeti Varathan, "More Than Half of American Workers Can't Sue Their Employer," Quartz, Sept. 28, 2017 (https://qz.com/1088643/a-new-study-finds-that-more-than-half-of-american-workers-cant-sue-their-employer/).
- Laurent Belsie & Mark Trumbull, "Setback for Workers: What Fallout as Supreme Court Oks Forced Arbitration?" Christian Science Monitor, May 21, 2018 (https://www.csmonitor.com/Business/2018/0521/Setback-for-workers-What-fallout-as-Supreme-Court-OKs-forced-arbitration)
- Andrew Tilghman, "A New Federal Court Ruling Has Huge Significance for Military Reservists," Military Times, Oct. 15, 2016 (https://www.militarytimes.com/news/your-military/2016/10/15/a-new-federal-court-ruling-has-huge-significance-for-military-reservists/)
- "The Problem With the Craze for Mandatory Arbitration," The Economist, Jan. 27, 2018 (https://www.economist.com/leaders/2018/01/27/the-problem-with-the-craze-for-mandatory-arbitration)
- Michael Selby-Green, "Morgan Stanley is Fighting to Stop a Race Discrimination Suit From Going to Trial by Using a Controversial Tactic That Keeps Employee Complaints Secret," Business Insider, Oct. 6, 2018 (https://www.businessinsider.com/lockette-lawsuit-morgan-stanley-mandatory-arbitration-2018-9)

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January 14, 2019

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By Email: shareholderproposals@sec.gov

Re: Yum! Brands, Inc. – Exclusion of Shareholder Proposal
by CtW Investment Group

Dear Sir or Madam:

Yum! Brands, Inc. (the "**Company**") respectfully submits this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), to notify the Securities and Exchange Commission (the "**Commission**") of the Company's intention to exclude from the Company's proxy materials for its 2019 annual meeting of shareholders (the "**2019 Proxy Materials**") the shareholder proposal submitted to the Company by CtW Investment Group (the "**Proponent**") in a letter dated December 5, 2018 (the "**Proposal**").

The Company requests confirmation that the Commission's staff (the "**Staff**") will not recommend to the Commission that enforcement action be taken against the Company if the Company excludes the Proposal from its 2019 Proxy Materials pursuant to Exchange Act Rule 14a-8(i)(7) on the basis that the Proposal deals with matters relating to the Company's ordinary business operations.

Pursuant to Exchange Act Rule 14a-8(j), the Company is submitting electronically to the Commission this letter, and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008) ("**SLB 14D**") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

**Background**

On December 5, 2018, the Company received the following Proposal from the Proponent, for inclusion in the 2019 Proxy Materials.

> RESOLVED that shareholders of YUM! Brands Inc. ("YUM") urge the Board of Directors to adopt a policy that YUM will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any YUM employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the employee.

A copy of the Proposal and the supporting statements, as well as related correspondence from the Proponent, is attached hereto as **Exhibit A**.

**Basis for Exclusion**

We respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

**1. The Proposal is excludable under 14a-8(i)(7) because it deals with matters related to the Company's ordinary business operations.**

Shareholder proposals may be excluded under Rule 14a-8(i)(7) if they relate to a company's ordinary business operations. The SEC has stated that two central considerations underlie this exclusion. *See* Staff Legal Bulletin No. 14I (CF) (November 1, 2017). The first covers the proposal's subject matter, stating that "proposals that raise matters that are 'so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight' may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote." *Id.* The second central consideration relates to the degree to which the proposal micromanages the business. *Id.*

This Proposal is excludable because it interferes with management's ability to run the business without implicating a significant policy issue and because it micromanages the business.

**a. The Proposal is excludable because it relates to the Company's management of its workforce.**

The Proposal encompasses three distinct (and tenuously related) employment practices: (1) non-compete agreements; (2) mandatory arbitration arrangements; and (3) non-disclosure agreements entered into in connection with specified types of employment related claims. The only element common to each practice is that it in some way involves the manner in which the Company manages its workforce.

The Staff has previously stated that the "management of the workforce, such as the hiring, promotion and termination of employees" is a task that is so fundamental to management's ability to run a company on a day-to-day basis that it "could not, as a practical matter, be subject to direct shareholder oversight." Exchange Act Release No. 34-40018 (May 21, 1998) ("**The 1998 Release**"). The Staff has consistently concurred with exclusion of proposals relating to management of the workforce, including those related to

hiring and terminating employees. *See, e.g., Apple, Inc.* (Nov. 16, 2015) (allowing the exclusion of a proposal asking Apple's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour[s] and wage inequality"); *Merck & Co. Inc.* (Mar. 6, 2015) (proposal to fill entry level positions only with outside candidates excludable under Rule 14a-8(i)(7) where the Staff noted that "the proposal relates to procedures for hiring and promoting employees." Proposals concerning a company's management of its workforce are generally excludable under Rule 14a-8(i)(7)"); *Starwood Hotels & Resorts Worldwide, Inc.* (Feb. 14, 2012) (proposal that, by a certain date, management verify United States citizenship for certain workers excludable under Rule 14a-8(i)(7), noting that "[p]roposals concerning a company's management of its workforce are generally excludable under Rule 14a -8(i)(7)"); *Wilshire Enterprises, Inc.* (Mar. 27, 2008) (proposal to replace the current chief executive officer is excludable); *Wells Fargo & Company* (Feb. 22, 2008) (proposal not to employ individuals who had been employed by a credit rating agency during the previous year excludable); *Donaldson Company, Inc.* (Sept. 13, 2006) (concurring that a proposal requesting the establishment of "appropriate ethical standards related to employee relations" could be excluded); *Consolidated Edison, Inc.* (Feb. 24, 2005) (concurring that a proposal requesting the termination of certain supervisors could be excluded as it related to "the termination, hiring, or promotion of employees"); and *Intel Corp.* (Mar. 18, 1999) (proposal to establish an employee bill of rights is excludable).

More generally, the Staff has long recognized that proposals that attempt to govern business conduct involving internal operating policies and practices (ranging from benefit plans to ethics, conflict of interest and other policies concerning employees) may be excluded pursuant to Rule 14a-8(i)(7) because they infringe on management's core functions. *See, e.g., FedEx Corp.* (Jul. 7, 2016) (concurring in the exclusion of a proposal relating to the terms of the company's employee retirement plans); *Costco Wholesale Corp.* (Nov. 14, 2014) (concurring in the exclusion of a proposal relating to the company's policies concerning its employees, specifically, a revised Code of Conduct that includes an anti-discrimination policy); *Willis Group Holdings Public Limited Co.* (Jan. 18, 2011) (concurring in the exclusion of a proposal relating to the terms of the company's ethics policy under Rule 14a-8(i)(7)); and *Honeywell International Inc.* (Feb. 1, 2008) (concurring in the exclusion of a proposal relating to the company's terms of its conflicts of interest policy).

The Company is a global business that owns the KFC, Pizza Hut and Taco Bell restaurant brands and it has employees located around the world. The relationship between the Company and the Company's employees constitutes a critical component of the Company's day-to-day management. The workplace environment is fundamentally related to the Company's ordinary business operations. The determination whether to use certain lawful employment practices related to employee hiring and termination, conditions of employment and labor relations, is a fundamental business issue for the Company's management and requires an understanding of the business implications that could result from changes made to employee policies. The Proposal seeks a general policy without exception for the many situations where the Company must balance various needs and requirements that would apply to the Company's entire workforce in and outside of the United States The types of arrangements outlined in the Proposal are inextricably linked to the Company's policies for hiring and terminating employees, and, more generally, the way the Company manages its workforce. The matters previously considered by the Staff, as set forth above, are no different than the matters that would be impacted by the policy set forth in the Proposal. If implemented, the Proposal would prevent management at various levels in the Company and in various jurisdictions around the world from making fact-specific employment-related decisions that are a fundamental part of day-to-day business, without any allowance for how the Company and specific employees in specific locations may be best served by certain of the practices the Proposal seeks to wholesale ban. The Proposal attempts to replace management's fundamental tasks with shareholder votes.

**b. There is no SEC Staff recognized significant policy issue implicated.**

A proposal that touches upon management's ability to run the company can be overcome by a significant policy issue, but none are present in this case. The Staff has not previously recognized non-compete agreements, non-disclosure agreements or mandatory arbitration with employees as practices that raise significant policy issues. In other situations where a proposal has sought policies applying to a large swath of employees, the Staff has not found that such proposals relate to a significant policy issue. See *CVS Health Corp.* (Mar. 1, 2017) (permitting exclusion of the proponent's proposal advocating for minimum wage reform); *CVS Health Corp.* (Feb. 27, 2015) (concurring in the exclusion of a proposal requesting the company "to amend its equal employment opportunity policy (or equivalent policy) to explicitly prohibit discrimination based on political ideology, affiliation or activity," finding that the proposal related to the company's policies "concerning its employees" notwithstanding the proponent's assertion that the proposal raised a significant policy issue); see also *The Walt Disney Co.* (Nov. 24, 2014); *Deere & Co.* (Nov. 14, 2014); *Costco Wholesale Corp.* (Nov. 14, 2014). The Staff has consistently determined that changes to employee policies are excludable under Rule 14a-8(i)(7) because the company's relationships with its employees are part of the general operations of the company.

Even assuming that one of the three employment practices that are the subject of the Proposal are found to touch upon a significant policy issue that may be of such significance that it would be appropriate for a shareholder vote, if the Proposal does not focus solely on a significant policy issue or if it addresses, even in part, matters of ordinary business in addition to a significant policy issue, the Staff has consistently concurred with the exclusion of the proposal. For example, in *PetSmart* (March 24, 2011), the Staff concurred with the exclusion of a shareholder proposal asking company suppliers to certify that they did not violate humane treatment of animal laws, even though the Staff concluded that humane treatment of animals is a significant policy issue. In granting relief under Rule 14a-8(i)(7), the Staff concurred with the company that the laws encompassed by the proposal were "fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping." *See also CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion where a proposal asked the company to report on the ordinary business matter of expense management, even though it also addressed the potential significant policy issue of access to affordable healthcare); *Apache* (March 5, 2008) (excluding a proposal that touched upon ordinary business matters, including advertising policies, the sale of products and charitable giving, despite the policy issue of equal employment and non-discrimination); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion of a proposal asking a company to disclose information about the ordinary business matter of how it managed its workforce, even though the proposal also involved the significant policy issue of outsourcing; and *Wal-Mart* (March 9, 2001) (permitting exclusion of a proposal asking for a ban on the sale of handguns and ammunitions because of the ordinary business matter of determining which products to sell, despite the significant policy issue of guns).

The Proposal identifies the practices it targets as "Inequitable Employment Practices," and the supporting statement seeks to characterize these practices as part of a "suite of contractual arrangements" used by the Company that "burden the economy, impede labor mobility, and prevent the discovery and redress of misconduct," in what appears to be an effort to group a hodgepodge of employment practices together and characterize them as a "significant social policy issue." Despite this framing, the employment practices that are the subject of the Proposal are unrelated to one another, and the cited policy issues—burdening the economy, impeding labor mobility and preventing the discovery and redress of misconduct—are also unrelated. By lumping together, in a single proposal, three distinct employment practices whose only connection is that each involves the management of the Company's workforce, the proposal itself demonstrates the lack of any overriding policy that transcends ordinary business.

**c. Board analysis.**

In Staff Legal Bulletin No. 14I (Nov. 1 2017), the Staff explained that the evaluation of whether a policy issue was sufficiently significant in the context of a particular company involved "difficult judgment calls" which, in the first instance, a company's board of directors was "generally in a better position to determine." The Staff further noted that a well-informed board, in terms of knowledge of the company's business and the implications of a particular proposal on that business, acting consistent with its fiduciary duties, is "well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." *Id.* As there were no meetings of the Company's Board of Directors scheduled between the date the Proposal was received and the deadline for submission of this letter, the Proposal was referred to the Executive Committee of the Company's Board of Directors (the "**Committee**") for its consideration. As part of its deliberations, the Committee focused on the prevalence of the employment practices referred to in the Proposal as well as the Company's existing policies and procedures in relation the stated objectives of the Proposal.

With respect to non-compete agreements, the Committee received information from management indicating that the Company enters into such agreements sparingly, confining their use to those high-level employees whose positions with the Company warrant such agreements in order to protect the Company's proprietary information. Contrary to the implication of the Proposal's supporting statement, the Company has entered into non-compete agreements with only approximately 0.2% of its workforce. Not only are these arrangements uncommon, but, except for those individually negotiated with executive officers, they are not broad prohibitions on employment by competitors, but instead constitute provisions contained in the Company's equity award agreements providing for forfeitures of such awards in specified circumstances. The Committee noted that these agreements are intended to protect the Company's legitimate interest in safeguarding its proprietary information and are utilized in a narrowly tailored fashion as part of the day-to-day management of the business.

With respect to mandatory arbitration arrangements, the Committee received information regarding the jurisdictions in which the Company requires employees to submit employment related claims to arbitration and management's rationale for relying on arbitration as a mechanism to resolve such claims. The Committee received information indicating that only a small number of claims by its employees are subject to arbitration in each year. The Committee took into consideration the fact that arbitration is a widely accepted and frequently used contract provision that benefits both the Company and the employee by reducing litigation expenses while at the same time ensuring that employees individually retain an opportunity for timely and fair consideration of their claims.

With respect to non-disclosure agreements entered into as part of the settlement of discrimination or harassment claims, the Committee received information indicating that the Company has not settled a significant number of such claims, irrespective of whether or not a non-disclosure agreement was executed in connection with the settlement. The Committee considered the circumstances in which a non-disclosure agreement may be sought by the Company, recognizing that such an agreement may be the best option to protect the Company and its employees from reputational harm, including in instances where a claim is unfounded or without merit. The Committee also evaluated the objective of the Proposal—the prevention of a toxic culture in the workplace — against the Company's existing policies and practices. In this regard, the Committee concluded that the policy espoused by the Proposal would add little to the robust program already in the place to address unlawful discrimination and harassment. The Company provides employees throughout the organization—from restaurant employees to senior management—with regular training on these topics. At the core of this training is an opportunity to raise any concerns to appropriate governmental authorities or to management, either directly or anonymously, without fear of retaliation.

Finally, the Committee considered the interest of its shareholders in the issues raised by the Proposal. The Company maintains an active engagement program with its institutional shareholders, including annual conversations with a number of its largest shareholders. No shareholder besides the Proponent has raised an issue with any of the three employment practices identified in the Proposal.

Based on the foregoing analysis, the Committee concurred with management's view that, after taking into account the relevance of the employment practices described in the Proposal to the Company, and comparing the particular prescriptive measures called for by the Proposal against the Company's existing policies, the Proposal does not raise a significant policy issue that transcends the Company's ordinary business.

**2. The Proposal is excludable under Rule 14a-8(i)(7) because it micromanages the business.**

The Staff has stated a proposal may also be excluded under Rule 14a-8(i)(7) based on the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *The 1998 Release*. Recently the Staff restated this view and clarified that a proposal that is not excludable based on subject matter may be excludable if that proposal micromanages the company in Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("**SLB No. 14J**"). A proposal may micromanage a company when it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *SLB No. 14J.* The Proposal seeks to impose specific methods for addressing what the Proponent has framed as public policy issues and the consideration of these methods require an understanding of intricate facts and circumstances that would be lengthy, complicated and difficult for a shareholder to easily grasp in order to make a fully informed decision.

The Company's decisions with respect to its employment practices are complex and nuanced and any attempt to introduce policies such as those sought in the Proposal will need to be analyzed on a country by country, and in some cases, a state by state basis. The Company employs approximately 60,000 individuals (as of the Company's most recent Form 10-K, filed February 22, 2018) in at least 17 countries. The terms of employment and ways in which the Company responds to employment-related claims are highly fact-specific and vary based on the local needs and customs. Each of the three distinct employment practices described in the Proposal – non-compete agreements, mandatory arbitration arrangements and non-disclosure agreements entered into in connection with specified types of employment related claims –involve the day-to-day management of the Company's workforce. The decision to enter into any of these three types of agreements necessarily requires management to assess and weigh a number of factors. For example, from time to time the Company will enter into a non-compete agreement with a departing employee as part of a severance agreement. In the course of negotiating the terms of the non-compete (or in deciding to seek a non-compete agreement at all) the Company will consider such factors as the type and relative value of the proprietary information that the employee possesses, the employee's exposure to the Company's product development, marketing and other strategies, the consideration that the employee may seek in exchange for the agreement not to compete, the duration of the non-compete agreement in light of the type of information that the employee may possess and the time period over which that information may diminish in value, the enforceability of the agreement in the applicable jurisdiction, the geographic scope of the non-compete agreement (e.g. local, national or global), the definition of competitor for purposes of the agreement and the penalty for breach of the non-compete agreement. Similar considerations are relevant when the Company determines it is prudent to include a non-compete agreement in the Company's equity awards, rather than in a severance agreement. Shareholders are ill-equipped to make these complex, highly fact-specific determinations.

As part of its hiring process in certain jurisdictions the Company obtains an agreement whereby the employee agrees to submit claims with the Company to binding arbitration. The Company has employees in at least 17 countries, each with its own unique legal system and employment laws. The decision to require that employee claims arising in some jurisdictions be settled through binding arbitration similarly involves a complex assessment of factors such as the legal structures and frameworks available in each jurisdiction, the cost of litigating in that particular jurisdiction's court system as compared to the cost of alternative dispute resolution methods, such as binding arbitration, the length of time it takes for a claim to be heard and decided in arbitration compared to the local court system, the likelihood of a fair outcome in each case and the type of claim and ability of the jurisdiction to decide the claim.

With regard to the use of non-disclosure agreements in connection with the settlement of the types of claims specified in the Proposal, the Company's decision process is even more particularized and includes privacy considerations of various parties including innocent parties, the Company's assessment of the merits of the claim, mitigating circumstances, avoidance of copycat behavior by wrongdoers, or inspiring meritless claims. The Company has no policy requiring the inclusion of non-disclosure agreements in its settlements, and each such settlement is specifically negotiated based on the circumstances of the claim, the jurisdiction, and the parties.

Furthermore, the Proposal fails to specify whether the requested policy should be implemented on a prospective basis only or whether it should also apply to existing agreements. If the Proposal is meant to cover existing agreements, the Company would need to evaluate how to address agreements or arrangements that are already in place through negotiated contracts. The Company would need to evaluate all existing employment-related agreements, across at least 17 countries (including agreements with former employees) and potentially renegotiate, terminate or worse, breach the terms of such agreements in order to comply with the Proposal if the policy is to be followed as written.

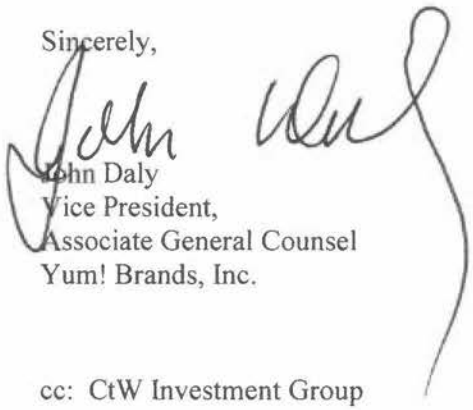
The management of a global workforce is complex and it is too much to ask shareholders to balance the myriad of needs throughout the Company that encompasses the details and circumstances of employees and varies depending on current and future state, federal and international law in a manner that can maintain profitability for the Company. This level of micromanagement compels exclusion of the Proposal under Rule 14a-8(i)(7).

**Conclusion**

Based on the foregoing, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations. Should the Staff disagree with the Company's conclusions regarding the omission of the Proposal, or should any additional information be desired in support of the Company's position, I would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of your response.

If the Staff has any questions regarding this request or requires additional information, please contact the undersigned by phone at 502-874-2490 or by email at john.daly@yum.com.

Sincerely,



John Daly
Vice President,
Associate General Counsel
Yum! Brands, Inc.

cc: CtW Investment Group

**Exhibit A**

**Proponent Proposal**

***See attached***

# CtW Investment Group

December 5, 2018

Scott Catlett
1441 Gardiner Lane
Louisville, Kentucky 40213
(502) 874-8258

Dear Mr. Catlett,

We hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in McDonald's Corporation's ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

CtW is the beneficial owner of approximately 30 shares of the Company's common stock, which been held continuously for more than a year prior to this date of submission. The Proposal requests that the Board adopt a policy that in will not engage in any inequitable employment practices, which are:

- Mandatory arbitration of employment-related claims,
- Non-compete agreements with employees,
- Non-disclosure agreements entered into in connection with arbitration or settlement of claims that any Citigroup employee engaged in unlawful discrimination or harassment.

CtW intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Richard Clayton, Director of Research, at (202) 721-6038 or richard.clayton@ctwinvestmentgroup.com. Copies of correspondence or a request for a "no-action" letter should be forwarded to Mr. Clayton in care of the CtW Investment Group, 1900 L St. NW, Suite 900, Washington, DC 20036.

Sincerely,

Dieter Waizenegger
Executive Director, CtW Investment Group

RESOLVED that shareholders of YUM! Brands Inc. ("YUM") urge the Board of Directors to adopt a policy that YUM will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any YUM employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the employee.

SUPPORTING STATEMENT

In recent years, companies have increasingly relied on a suite of contractual arrangements involving their employees, Inequitable Employment Practices, that burden the economy, impede labor mobility and prevent the discovery and redress of misconduct. As a result, there is a robust public debate over their use, including responses by legislators, regulators and state attorneys general.

Companies increasingly seek to impose non-compete restrictions, originally designed for higher-level knowledge workers, on entry-level workers. The Obama Administration opposed this expansion, and measures to curb it have been introduced in Congress and many states. Non-compete provisions stifle innovation and entrepreneurship, harming the broader economy. Sandwich chain Jimmy John's came under fire for requiring entry-level hires to sign a non-compete agreeing not to work for a competing sandwich maker for two years.

Mandatory arbitration and NDAs undermine public policy by limiting remedies for wrongdoing and keeping misconduct secret. Mandatory arbitration precludes employees from suing in court for wrongs like wage theft, discrimination and harassment, and requires them to submit to private arbitration, which has been found to favor companies and discourage claims. Recent high-profile sexual harassment cases involving Fox News and Uber highlighted the impact of arbitration clauses. In December 2017, a bill to end mandatory arbitration of sexual harassment claims bill was introduced in Congress. All 56 state and territorial attorneys general urged Congressional leaders to support it.

The secrecy NDAs provide can allow a toxic culture to flourish, increasing the severity of eventual consequences and harming employee morale. NDAs were allegedly used to keep sexual harassment by Harvey Weinstein and Bill O'Reilly secret. Press reports indicate that YUM division KFC has been sued for sexual harassment and assault of underage employees by store managers, and a 2016 study found that 40% of female fast-food employees had been sexually harassed.

Washington state recently banned the use of NDAs in sexual harassment cases and similar legislation has been proposed in New York, California and

Pennsylvania. Federal legislation has been introduced to limit employers' ability to secure NDAs upfront and require employers to disclose information about sexual harassment claims.

Our Proposal asks YUM to commit not to use any of the Inequitable Employment Practices, which we believe will encourage focus on human capital management and improve accountability. We urge shareholders to vote for this Proposal.