



DIVISION OF
CORPORATION FINANCE

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

February 21, 2019

A. Jane Kamenz
The Coca-Cola Company
jkamenz@coca-cola.com

Re: The Coca-Cola Company
Incoming letter dated December 14, 2018

Dear Ms. Kamenz:

This letter is in response to your correspondence dated December 14, 2018 and February 7, 2019 concerning the shareholder proposal (the "Proposal") submitted to The Coca-Cola Company (the "Company") by John C. Harrington (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 30, 2019 and February 11, 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: Sanford J. Lewis
sanfordlewis@strategiccounsel.net

February 21, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Coca-Cola Company
Incoming letter dated December 14, 2018

The Proposal requests that the board issue a report on sugar and public health, with support from a group of independent and nationally recognized scientists and scholars providing critical feedback on the Company's sugar products marketed to consumers, especially those Coke products targeted to children and young consumers. The Proposal also specifies that the report should include an assessment of risks to the Company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal does not seek to micromanage the Company to such a degree that exclusion of the Proposal would be appropriate. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it does not appear that the Company's public disclosures compare favorably with the guidelines of the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Frank Pigott
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.

SANFORD J. LEWIS, ATTORNEY

February 11, 2019
via electronic mail

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

Re: Supplemental Response Regarding Shareholder Proposal to The Coca-Cola Company
Regarding Public Health and Sugar on Behalf of John C. Harrington

Ladies and Gentlemen:

John C. Harrington (the “Proponent”) is beneficial owner of common stock of The Coca-Cola Company (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the supplemental letter dated February 7, 2019, submitted to the Staff by A. Jane Kamenz (“Rebuttal Letter”), and provided in response to the Proponent’s January 30, 2019 response letter (“Response Letter”).

Third-party report inadequate to fulfill proposal requesting Board report

The Company, in its Rebuttal Letter, restates its belief that third-party reports by the Access to Nutrition Foundation (“ATNF”) are sufficient to demonstrate substantial implementation of the Proposal,¹ which requests that the board of directors issue a report on sugar and public health. However, the board has not issued the report requested in the Proposal, nor has it substantially implemented it. The Proposal, as described in the Response Letter, purposefully focuses on the issuance of a report by the Company Board of Directors — the Company’s own fiduciaries. Regardless of the credibility of a certain third party, or whether the Company “traditionally and routinely” relies on third parties to “assure, verify and monitor the Company’s progress against various programs and initiatives,” this reliance is misplaced when the Company is claiming it is substantially implementing a Proposal that calls on the *board* to issue a report.² As demonstrated in the Staff precedents we previously cited, a third-party report, by its nature, could not substitute for one requested of the board.

A third party can inform the board’s perspective, as requested in the proposal itself, but it cannot replace an articulation of the issues as understood by the board. The board is subject to the accountability and accuracy requirements of the securities laws. Communications directed toward shareholders by the board and management come with assurances of veracity and material completeness, as they are subjected to the prohibition on making “any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” Rule 10(b)(5) and

¹ See page 3 of Rebuttal Letter.

² A *management* report might suffice for substantial implementation, but no combination of information and analysis has been issued by the management that comes close to meeting the guidelines of the proposal.

Rule 14a-9.

New publications add evidence regarding potential material omissions and vulnerabilities

Since we submitted our Response Letter, a new surge of public discussion has emerged, highlighting the company's vulnerabilities on sugar and public health. Of particular note is the new analysis of private email exchanges between representatives of Coca-Cola and staff at the Centers for Disease Control and Prevention ("CDC"), analyzed in "*Public Meets Private: Conversations Between Coca-Cola and the CDC*" in the health policy journal *Milbank Quarterly*. (See Full Report in Appendix A). The study highlighted the efforts of Coca-Cola *to cultivate CDC staff to aid the Company in shifting attention away from sugar-sweetened beverages.*³ A second article showed that in India as well as the US the Company is being scrutinized for its efforts to shift attention from diet towards exercise. (See: Appendix A). Our prior argument regarding the potential for material omissions in the company's limited disclosures is strengthened by these new publications, further evidencing that the Proposal is not excludable under Rule 14a-8(i)(10).

As such, we respectfully request that the Staff deny the no-action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

Sanford Lewis

cc: A. Jane Kamenz

³ The study was further publicized in an article on Salon.com, February 1, 2019.
<https://www.salon.com/2019/02/01/new-emails-reveal-how-cdc-employees-were-doing-the-bidding-of-coca-cola/>

Appendix A: Recent publications

New Emails Reveal CDC Employees Were Doing the Bidding of Coca-Cola Instead of Protecting Americans' Health, Insiders at the CDC Were Dutifully Helping Coke Sell Sugar Water

Salon.com

<https://www.salon.com/2019/02/01/new-emails-reveal-how-cdc-employees-were-doing-the-bidding-of-coca-cola/>

NICOLE KARLIS

FEBRUARY 1, 2019 11:00PM (UTC)

A paper published this week, which analyzed private emails exchanged between the Centers for Disease Control and Prevention (CDC) and Coca-Cola, revealed how the sugary drink corporation has tried to influence the public health policy decisions of a U.S. federal agency that is supposed to protect Americans' health.

The paper was published in the health policy journal *Milbank Quarterly*, and analyzed 295 pages from 86 emails obtained by the public health group U.S. Right To Know under the Freedom of Information Act. Of the non-profit's 10 Freedom of Information Act requests, three were still pending at the time of publication and five were rejected "as too broad or because no records were found," according to the study's authors. Only three were returned.

"The returned emails demonstrate three main themes in Coca-Cola's contact with CDC employees: to gain and expand access, to lobby, and to shift attention and blame away from sugar-sweetened beverages," the study states.

While plenty of scientific studies have shown that sugar is a leading cause of obesity, diabetes, and heart disease, these emails reveal Coca Cola's ongoing mission to shift the blame for obesity away from sugar-sweetened beverages, and pin the world's obesity problem on a lack of physical activity.

Coca Cola's effort to gain and expand access within the CDC indicate there were efforts to strengthen institutional ties, in addition to building on relationships that already had a history from previous work experience. The former director of the CDC's Division for Heart Disease and Stroke Prevention, Barbara Bowman, and Alex Malaspina, a former Coca-Cola senior vice president of external affairs and the founding president of International Life Science Institute (ILSI), were once colleagues: Bowman worked with Malaspina at Coca-Cola, and in 2016 Bowman retired after emails were made public that revealed she had been offering advice on how to influence world health authorities' minds on sugar taxes and beverage policy matters. Meanwhile, ILSI, far from being a nonpartisan nonprofit, was recently discovered to be an astroturf organization funded by junk food companies; indeed, its funding roster includes Coke, Nestlé, McDonalds, and PepsiCo. Previous investigations revealed how ILSI influenced public

health policy regarding obesity in China.

In an eyebrow-raising moment, the Milbank Quarterly paper reveals how in June 2015, Malaspina forwarded a report to Coca Cola staff wherein Margaret Chan, former World Health Organization (WHO) director-general, cast blame on sugar sweetened beverages (SSB) producers as responsible for global obesity.

Malaspina writes in the email: “Please see report on WHO. This is getting a lot of publicity. We must find a way of some one [sic] such as a famous scientist [to] arrange to pay her a visit. Maybe Jim Hill or someone of similar stature or a US government scientist.”

“In summary I am suggesting that collectively we must find a way to start a dialogue with Dr. Chen [sic]. If not, she will continue to blast us with significant negative consequences on a global basis. This threat to our business is serious. Warmest Regards, Alex.”

It is also worth noting that Hill, as reported in 2015 by the Denver Post, accepted a \$550,000 gift from Coca Cola for an obesity campaign, and tried to attain a job for his son at Coca-Cola.

Though this example of corporate lobbying at the CDC seems especially egregious, the authors of the paper say the emails as a whole “provide a rare example of the ways in which corporate interests attempt to influence public health practitioners ‘in their own words’ and they demonstrate a need for clearer policies on avoiding partnerships with manufacturers of harmful products.”

Gary Ruskin, co-director of U.S. Right To Know, told Salon in an email this paper should grab the attention of Congress, who should further investigate the relationship between the CDC and Coca Cola.

“Congress should investigate what has really happened between the CDC and Coca-Cola, and whether CDC complied with relevant ethics standards,” Ruskin said. “And Congress should figure out what can be done to ensure that CDC is not improperly influenced by corporations that manufacture harmful products.”

In response to Salon’s inquiry about the paper and emails, agency spokesperson Kathy Harben told Salon “The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) work 24/7 to protect Americans.”

Harben added: “CDC’s ethical framework provides the checks and balances needed to keep the agency on track scientifically and ethically, and CDC provides employees with resources to maintain ethical and scientific integrity.

Yet as the authors of the paper explained, the emails were reviewed with CDC’s ethics in mind:

“We further compare these documents to the 2014 CDC ethics guidelines, which state that interactions between the CDC and private entities must be based on ‘mutual, explicit and transparent benefits for all partners.’ The guidelines also state that staff considering a partnership must ask whether ‘partnering with the private entity presents a conflict of interest (real or perceived).’”

NICOLE KARLIS

Nicole Karlis is a news writer at Salon. She covers health, science, tech and gender politics. Tweet her @nicolekarlis.

Coca-Cola, Junk Food Companies Influencing Public Health & Safety Policies in India

For Immediate Release
February 7, 2019

San Francisco: India's top regulatory agency for ensuring food safety and setting standards has included representatives in key areas who are closely associated with a front group for global food and beverage companies.

The Food Safety and Standards Authority of India (FSSAI) has included two representatives who also sit on the boards of the International Life Sciences Institute (ILSI), a non-profit organization founded by Alex Malaspina, former senior vice president at Coca-Cola, and until December 31, 2015, led by Rhona Applebaum, Coca-Cola's chief health and science officer at the time.

Last month, a Harvard study published in *The BMJ* and the *Journal of Public Health Policy* found that Coca-Cola and other companies worked through the China branch of ILSI to influence China's public health policies, including a "shift aligned with Coca-Cola's message that it is activity, not diet, that matters a claim few public health scholars accept."

Among the board members of ILSI-India are Dr. Debabrata Kanungo, who is also on the Scientific Panel on Pesticides Residues at the Food Safety and Standards Authority of India (FSSAI).

Another ILSI-India board member, Dr. B Sesikaran, is also a member of FSSAI's Scientific Panel on Functional foods, Nutraceuticals, Dietetic Products and Other similar products.

Sesikaran is also on the Board of Trustees of the global ILSI based in Washington, DC, and serves on the board of ILSI alongside representatives of PepsiCo, Danone, Ajinomoto, Monsanto, Cargill, Dupont, and others. He is the only board member listed with a government affiliation.

Not surprisingly, ILSI has organized conferences in India downplaying the role of sugar and diet, and promoting increased physical activity as the solution to obesity.

Influencing Food Labeling Laws?

Quite alarmingly, ILSI could have significant say on what labels on packaged foods in India reveal.

India is in the midst of revising its labeling laws and in April 2018, FSSAI released the draft Food Safety and Standards (Labelling and Display) Regulations 2018, which included a rule that the label on packaged foods should state in the color RED if the product contained high levels of fat, sugar or salt (generally considered as junk food).

The draft rules were put on hold after some stakeholders raised concerns, and the FSSAI has

constituted a 3-member committee to “look into the issue of labelling once again.”

The 3-member expert committee is headed by B. Sesikaran, board member at both ILSI global and ILSI-India.

“Individuals who play a significant part in protecting and regulating India’s food safety should not be allowed to also occupy central roles with ILSI, a front organization for companies that essentially peddle junk food and use front organizations to muddle science. Such dual roles constitute a serious conflict of interest, and if left unattended, can have the very real consequence of the food industry defining India’s policies on nutrition, food safety and obesity – as has been the case in China,” said Amit Srivastava of the India Resource Center, an international campaigning organization.

Coca-Cola is not new to trying to obfuscate the facts to suit its needs. In 2006, when Coca-Cola was under pressure for causing water shortages in India, it hired a lobbyist, Deepak Talwar, whose “lobbying approach was to ensure, among other things, that every government or private study accusing the company of environmental harm was challenged by another study”, according to a report in the New York Times.

The India Resource Center has written to the FSSAI and the Ministry of Health & Family Welfare asking that the two regulators with conflicts of interest be replaced with independent experts with no conflicts of interest between private corporations and public health and safety.

For more information, visit “Opinion: Coca-Cola, Junk Food Companies Influencing Public Health Policies in India” at the India Resource Center website.

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Original Scholarship

Public Meets Private: Conversations Between Coca-Cola and the CDC

NASON MAANI HESSARI,* GARY RUSKIN,[†]
MARTIN McKEE,* and DAVID STUCKLER[‡]

**London School of Hygiene and Tropical Medicine*; [†]*U.S. Right to Know*;
[‡]*Dondena Research Center, Bocconi University*

Policy Points:

There is growing understanding of how manufacturers of harmful products influence health policy. The strategies, approaches, and influences from such manufacturers that are detrimental to health have been termed the “corporate” or “commercial” determinants of health. However, while partnerships with the tobacco industry are clearly unacceptable for public health organizations, ties to other industries continue to be pursued.

Such partnerships may influence health organizations in a number of ways detrimental to population health. However, with the exception of tobacco industry tactics as revealed by internal documents, we know relatively little about how this influence operates.

This article uses emails between the Coca-Cola Company and the Centers for Disease Control and Prevention, which we obtained through Freedom of Information Act requests, to explore the nature of corporate influence, conflicts of interest, and lobbying “in their own words,” and highlights the need for greater transparency and clearer policies on engaging with such industries.

Context: There is a continuing debate about the appropriateness of contacts between manufacturers of some harmful products and health researchers, as well as practitioners and policymakers. Some argue that such contacts may be a means of exerting undue influence, while others present them as an opportunity

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to pursue shared health goals. This article examines interactions between the Centers for Disease Control and Prevention (CDC) and the Coca-Cola Company (Coca-Cola) as revealed by communications obtained through Freedom of Information Act (FOIA) requests.

Methods: We sent 10 US FOIA requests in 2016/2017 for communications between employees at the CDC and Coca-Cola. We then performed a thematic content analysis of the documents provided.

Findings: Of our 10 FOIA requests, 3 requests are still pending (at the time of this publication); 5 were rejected as too broad or because no records were found; and 3 returned 295 pages from 86 emails. The CDC withheld 102 pages to “protect commercial or financial information which is privileged or confidential.” The returned emails demonstrate three main themes in Coca-Cola’s contact with CDC employees: to gain and expand access, to lobby, and to shift attention and blame away from sugar-sweetened beverages.

Conclusions: The emails we obtained using FOIA requests reveal efforts by Coca-Cola to lobby the CDC to advance corporate objectives rather than health, including to influence the World Health Organization. Our findings provide a rare example of the ways in which corporate interests attempt to influence public health practitioners “in their own words,” and they demonstrate a need for clearer policies on avoiding partnerships with manufacturers of harmful products.

Keywords: commercial determinants of health, Centers for Disease Control and Prevention, government transparency, public health.

ALTHOUGH THERE IS WIDESPREAD AGREEMENT ABOUT THE importance of not engaging with the tobacco industry, interactions between health researchers, practitioners, and policy-makers and the manufacturers of other potentially harmful products are controversial. While some see such interactions as a means to promote dialogue and reduce harm, others draw attention to the influence that these manufacturers exert, for example, through their funding of academic research.¹⁻⁵ There is also growing concern that nonfinancial influence is perhaps just as important, even though it may be harder to detect. Corporations may seek to reframe policy debates, build opposing constituencies, and lobby politicians to avert public health policies that could undermine their profits.⁶ An Australian study showed how the Coca-Cola Company (Coca-Cola) and other companies frame obesity debates as being predominantly about individuals and exercise.⁷

The now-defunct Global Energy Balance Network (GEBN), a US-based group that focused on lack of exercise as the primary driver of obesity, was disbanded after the media revealed Coca-Cola's involvement.^{8,9} Such strategies may complement traditional lobbying activities, such as blocking taxes on sugar-sweetened beverages (SSBs).¹⁰

Concerns regarding the breadth and potency of such corporate strategies have contributed to an increase in research on what are termed the "corporate determinants of health,"¹¹ including describing how manufacturers of harmful products and activities—such as tobacco, alcohol, and gambling—use similar language and tactics when faced with policies that threaten their profits.^{12,13} This research calls for caution in all interactions with these industries, highlighting the risks of corporate access to and influence on public health organizations. As we noted, however, this is not a universal view, and achieving consensus is made more difficult by the relative lack of knowledge of the nonfinancial influence of these corporate actors, with the exception of the tobacco industry, for which we now have a greater evidence base.

Ideally, information on interactions between public bodies and industry should be transparent, with legislators signaling their commitment to this principle by passing freedom-of-information laws. Yet in practice, it can be difficult to discover what is happening behind closed doors. We illustrate these challenges by means of a case study, in which we describe the challenges in obtaining information about interactions between two leading players on different sides of the obesity debate in the United States, the Centers for Disease Control and Prevention (CDC) and Coca-Cola.

This case study is of particular relevance because the CDC has recently faced criticism for its links to manufacturers of unhealthy products, especially those of SSBs.¹⁴⁻¹⁶ In 2016, Barbara Bowman, director of the CDC's Division for Heart Disease and Stroke Prevention, resigned after emails between her and a former Coca-Cola executive were disclosed.¹⁵ The emails, obtained from a Colorado Open Records Act request to the University of Colorado, showed that Bowman had advised the former Coca-Cola and industry association executive on how to influence the director-general of the World Health Organization (WHO) to stop promoting taxes on sugar.¹⁴⁻¹⁶ Brenda Fitzgerald, who was appointed in July 2017 to head the CDC, had previously been commissioner of the Georgia Department of Public Health from 2011 to 2017, during

which time she accepted a US \$1 million donation from Coca-Cola for Georgia Shape, a childhood obesity initiative.¹⁵

Corporations and individuals may contribute to the CDC either directly or indirectly, via the National Foundation for the Centers for Disease Control and Prevention (CDC Foundation), a nonprofit organization established by Congress in 1992 “to support and carry out activities for the prevention and control of diseases . . . and for promotion of public health.”¹⁷ Coca Cola’s transparency website reports that between 2010 and 2015, the company donated more than US \$1 million to the CDC Foundation, primarily to “build global capacity for NCD prevention.”¹⁸ The foundation’s own records report additional gifts from Coca-Cola in 2016¹⁹ and 2017,²⁰ although they do not appear on Coca-Cola’s transparency website.¹⁸ The potential challenges in operating such a foundation were made clear in the bill establishing the CDC Foundation, in which Congress instructed it to prepare by-laws to ensure that its activities would not “compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in such program.”¹⁷ While the CDC Foundation website refers to processes that “safeguard against potential conflicts of interest,”²¹ concerns remain that such funding may affect research and policy. Indeed, studies reporting funding by the SSB industry are significantly more likely to find no association between the consumption of SSBs and obesity.²² Moreover, even when researchers have received funding from Coca-Cola, not all their papers report this conflict of interest.¹

In this article, we examine interactions between the CDC and Coca-Cola using Freedom of Information Act (FOIA) requests. We used these requests to reveal exchanges between the CDC and Coca-Cola “in their own words,” enabling us to examine the attempts by Coca-Cola-affiliated individuals to influence the CDC and the CDC Foundation on this controversial subject.

Methods

U.S. Right to Know (USRTK), a nongovernmental organization that investigates the food and agricultural industries, made a series of FOIA requests for correspondence between employees at the CDC and the CDC Foundation and current or former employees of Coca-Cola or the

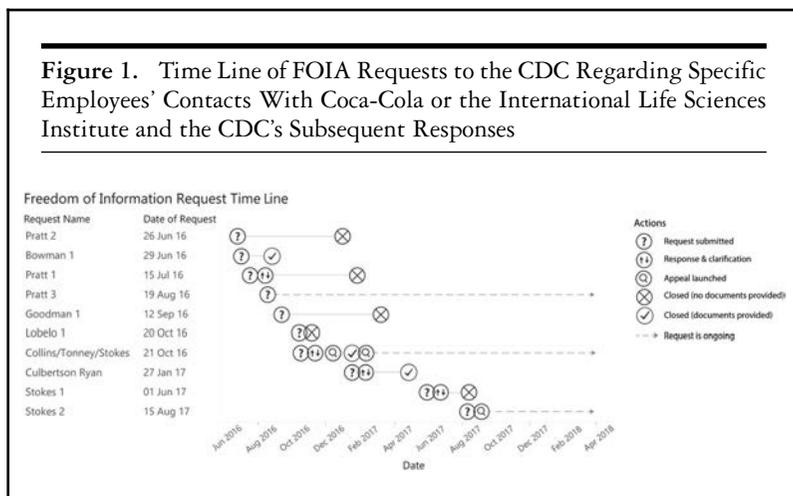
International Life Sciences Institute (ILSI). Both individuals and organizations can obtain records from federal agencies unless one of nine exemptions applies, relating to issues such as national security, breach of other federal laws, trade secrets, and invasion of privacy. We made 10 requests between June 26, 2016, and August 15, 2017, for communications between January 1, 2011, and the time of the request between named staff at the CDC and the CDC Foundation and Coca-Cola or the ILSI. ILSI is an organization that receives funding from Coca-Cola, was founded by a Coca-Cola executive, and was involved in the CDC media coverage mentioned earlier. Some of the responses led to follow-up requests.

We read the documents received in the order of their date, and a qualitative researcher interpreted and thematically coded them. Our choice of themes was inductive, based on a framework developed to examine the political activities of the food industry⁶ and informed by research on the tobacco industry's documentation.²³⁻²⁶ The coding was iterative, allowing us to adapt the framework to reflect emerging corporate strategies. We present here illustrative quotations relating to each activity identified; the online supplementary material includes all the documents we obtained. We further compare these documents to the 2014 CDC ethics guidelines, which state that interactions between the CDC and private entities must be based on "mutual, explicit and transparent benefits for all partners."²⁷ The guidelines also state that staff considering a partnership must ask whether "partnering with the private entity presents a conflict of interest (real or perceived)."²⁷

Results

FOIA Response Rate

Figure 1 shows the time line of our FOIA requests. As shown, response times varied significantly, from less than two weeks to several months. Three of our requests were initially rejected as being too broad (although the scope of all our requests was similar), and two returned no records. At the time of writing (two years later), three of our requests are still pending. Three of our requests returned 295 pages of communications from 86 emails. The CDC further withheld 105 pages of communications, including 102 pages on the grounds of 5 USC §552(b)(4) (which protects privileged or confidential commercial or financial information).



Thematic Analysis of Email Documents

The emails offer examples of Coca-Cola's successful efforts to gain access, lobby policymakers, and frame the debate on diet and obesity. Given the small number of FOIA requests generating material, we report findings by activity, using illustrative quotations.

Theme 1: Gaining Access and Influence. The emails we obtained indicate that former Coca-Cola staff attempted to meet with CDC staff members in order to build relationships with them. Accordingly, on April 3, 2013, Rhona Applebaum, then Coca-Cola's chief science and health officer and an architect of the Global Energy Balance Network,⁸ contacted the CDC's Janet Collins:

Heartfelt congratulations on being named Director of The Division of Nutr [sic], Physical Activity and Obesity at CDC. Once settled would welcome the opportunity to come by and discuss current activities and what more can be done.

Collins replied:

Thanks Rhona. I am delighted to have joined the Division. I have some international travel coming up through mid-April but would be happy to meet after that. (Supplementary file 1)

Such contacts also enabled the strengthening of institutional ties. On October 27, 2014, Collins asked Applebaum:

I hope you don't mind if I share the fact that a CDC colleague of mine (Maureen Culbertson) is very interested in working at Coca-Cola . . . she would be great for external and governmental relations especially on food, beverage and physical activity policy as well as corporate philanthropy.

Applebaum replied:

Many thanks for the CV. I will share internally. (Supplementary file 1)

Emails between Barbara Bowman, then director of the CDC's Division for Heart Disease and Stroke Prevention, and Alex Malaspina, a former Coca-Cola senior vice president of external affairs and the founding president of ILSI, show their efforts to expand access to and influence at the CDC. On September 22, 2014, Malaspina wrote:

I was very impressed with all you have accomplished and your new responsibilities. I always had such faith in your abilities and your great knowledge in nutrition. I would very much like to see you again and also introduce you to a very delightful and intelligent young lady from Kenya [Wamwari Waichungo, Coca-Cola vice president for global scientific and regulatory affairs], who for the last year has had my old job at Coke, as Head of SRA. . . . How is your schedule? If you agree, give me some dates and I will arrange for a nice dinner for the three of us.

Bowman responded:

I'd love to see you and to meet Wamwari [*sic*] Waichungo! . . . looking forward to getting together. (Supplementary file 2)

This networking subsequently expanded, as following up to arrange the suggested meeting. Malaspina wrote on November 21, 2014, asking to include more Coca-Cola executives in the meeting:

Is it OK with you, if I also invite two close friends, who would like to meet you. One is Clyde Tuggle, Senior VP in charge of Public Affairs. The other is Ed Hays, who is in charge of Science. (Supplementary file 2)

Later Bowman wrote:

What a lovely time we had on Saturday nights [*sic*], many thanks, Alex, for your hospitality. (Supplementary file 2)

Theme 2: Framing Debates on Nutrition, Artificial Sweeteners, and Obesity. We found evidence that meetings between the staffs of the two

organizations enabled their sharing of information, although the emails cannot capture the full scope of such meetings. At least one visit was arranged for CDC staff to visit Coca-Cola's headquarters to "provide an overview of OMMHE's [Office of Minority Health and Health Equity's] priorities, and share other collaborations between the CDC Foundation and Coca Cola" (Supplementary file 3).

Coca-Cola staff sent follow-up messages suggesting that the meeting was

helpful to understand your areas of focus and where we may have mutual interests. There are clearly areas where we can work collaboratively and share insights to advance the work in prevention of obesity and inform of [*sic*] the consumer of choices. We valued getting to know you and your team better and enjoyed the rich discussion relating to your main initiatives. Susan [Roberts, then Coca-Cola's director of Nutrition in Global Scientific and Regulatory Affairs] will be sharing with you further the work on the low and no calorie beverage research and will follow-up as more of the data become publically available. We can also forward the papers on the scientific method and interpretation of the epidemiological studies as per our discussion and impact of heterogeneity. It would be helpful to have another meeting in the future to follow-up on the key discussions on methods and interventions, especially with regards to the fortification programs and grocery channels. (Supplementary file 3)

Subsequent emails from Coca-Cola regarding this meeting make clear that evidence supportive of Coca-Cola products was being shared. An example is the focus on low-calorie sweeteners, with Coca-Cola's staff claiming in correspondence that "associations between diet beverages and weight in the epidemiological studies is likely the result of reverse causality." Coca-Cola's staff also shared a then-advance copy of a Coca-Cola-funded publication on heterogeneity in research methods as a reason for the overestimation of SSB-related diabetes risk in pooled estimates, suggesting that "in many studies adjustment for covariates explained half to all of the association between SSB and T2D."²⁸ This is an instance of Coca-Cola's using research it funded to influence the CDC staff's perceptions of obesity challenges and likely solutions. Subsequent emails show that these publications were also disseminated among other CDC staff (Supplementary file 3).

Theme 3: Helping Coca-Cola Lobby WHO. Emails exchanged between June 25 and 27, 2015, between Bowman and Malaspina reveal how Coca-Cola used its contacts inside both the CDC and academia to avert

potential business threats, through an exchange previously reported in the print media. On June 25, 2015, Malaspina referred to a news report from an internal Coca-Cola mailing list regarding Margaret Chan, then the WHO's director-general, in which she invokes SSB producers as contributors to global obesity and backs restrictions on the consumption of full-sugar soft drinks. Malaspina forwarded this report to Coca-Cola staff, academics, and former ILSI officials, stating: "Please see report on WHO. This is getting a lot of publicity. We must find a way of some one [*sic*] such as a famous scientist [to] arrange to pay her a visit. Maybe Jim Hill or someone of similar stature or a US government scientist." James Hill, a prominent researcher formerly at the University of Colorado Denver, now at the University of Alabama at Birmingham, and a member of the National Academy of Sciences, was among the recipients of this message (Supplementary file 2).

Malaspina described his successful experiences as president of ILSI with lobbying former WHO directors-general, including alongside the future president of Coca-Cola, E. Neville Isdell, before concluding: "In summary I am suggesting that collectively we must find a way to start a dialogue with Dr. Chen [*sic*]. If not, she will continue to blast us with significant negative consequences on a global basis. This threat to our business is serious. Warmest Regards, Alex" (Supplementary file 2).

Malaspina then forwarded this message to the CDC's Bowman:

Dear Barbara: How are you? Are you having a nice summer? Any ideas on how to have a conversation with WHO? Now, they do not want to work with industry. Who finds all the new drugs? Not WHO, but industry. She is influenced by the Chinese Govt [*sic*] and is against US. Something must be done. (Supplementary file 2)

Bowman responded the same day:

Am wondering wether [*sic*] anyone with ILSI China, perhaps Madame Chen, might have ideas. Another thought, perhaps someone with connections to the PEPFAR [US President's Emergency Plan for AIDS Relief] program. Or Gates and Bloomberg people, many have close connections with the WHO regional offices. Perhaps an issue of defining legacy. (Supplementary file 2)

After exchanging emails about the nature of PEPFAR and ILSI China, Malaspina wrote:

Dear Barbara, you gave some very good leads. I like the one especially about having Mr. Bill Gates help. Our Chairman knows him well.

I will explore this idea with Clyde [Coca-Cola Senior Vice President Clyde Tuggle]. We would want WHO to start working with ILSI again, with the GEBN and with the food industry in general to resolve issues of food safety and nutrition and for the WHO to not only consider sugary foods as the only cause of obesity but to consider also the life style changes that have been occurring throughout the universe. Since WHO, as you stated has been helped by the pharmaceutical industry to combat HIV/AIDs, why not work closely with the food industry to combat obesity. The Food industry is very willing to come to the table. Let us have dinner soon. (Supplementary file 2)

Discussion

Records provided by the CDC demonstrate efforts by current and former Coca-Cola staff to influence the CDC by building relationships, attempting to frame the debate on the role of SSBs in obesity, and using existing contacts to lobby decision makers. These activities are consistent with those observed in previous interactions of SSB companies with policymakers, academia, and the public. Furthermore, these activities may contravene ethics guidelines for CDC staff, which ask staff to consider potential conflicts of interest before engaging with potential partners.²⁷ These guidelines state that the CDC should not engage in partnerships in which the “potential partner represents any product that exacerbates morbidity or mortality when used as directed.” In addition, the CDC’s ethics guidelines on gifts, including those given via the CDC Foundation, state that the CDC should not accept gifts “if acceptance of the gift could compromise the integrity of a government program or any official involved in that program.”²⁹

Yet even though the evidence we obtained does raise important questions, the process of obtaining it was not straightforward. Several of our FOIA requests to the CDC were denied as being too broad, even though the scope of all our FOIA requests was similar, consisting of communications among named CDC employees, CDC Foundation employees with CDC email addresses, and staff or email domains from Coca-Cola or ILSI (some of these outstanding requests are currently the subject of legal action by U.S. Right to Know). Furthermore, it appears that in at least some instances, the CDC did not supply records, even though their existence was confirmed through FOIA requests to other institutions that were part of the same communication trails. This finding raises questions regarding the CDC’s transparency with regard

to connections between CDC staff and Coca-Cola. For example, on March 29, 2012, Applebaum forwarded research to the CDC's Michael Pratt, among others, regarding the health effects of prolonged sitting and the need to "amplify these messages" (Supplementary file 4).

There also appear to have been ongoing research collaborations involving Pratt and Coca-Cola. On April 4, 2012, Pratt wrote to Applebaum and others to express his concern that Mexico was being dropped from the International Study of Childhood Obesity, Lifestyle and the Environment (ISCOLE), to which Applebaum replied:

Mike—from what was explained to me and during the BtD Symposium—They don't appear to understand the importance of routine and discipline as it relates to the data. It's not a "manana" [*sic*] exercise—it's a "today" requirement. They didn't seem to get it despite outreach from the PI's. (Supplementary file 5)

These examples, obtained from a Louisiana Public Records Act request to Louisiana State University, suggest that there were indeed emails between Pratt and Coca-Cola that should have been available via FOIA to the CDC but were not provided. The reasons for this are unclear. Despite the importance of transparency in interactions between a leading public health agency and a manufacturer of SSBs, several of our FOIA requests elicited no documents (in some cases, not even a response), even after appeals and timely responses for additional information. Our experience raises questions about how effective the legislation designed to ensure transparency actually is.

One particular email exchange sheds light on the seriousness with which the industry takes the threat of taxing SSBs and the possibility that ongoing relationships between the CDC and SSB companies could alleviate this threat. Alex Malaspina described Margaret Chan's support of a sugar tax as a "global threat to our business." This statement, while striking, is consistent with Coca-Cola's communications to shareholders in its annual reports, which make clear that "possible new or increased taxes on sugar-sweetened beverages to reduce consumption or to raise revenue . . . could adversely affect our profitability."³⁰ Malaspina then asked for and received advice from a senior CDC contact on how to arrange a meeting with Margaret Chan in order to influence her. This interaction is a troubling example of the core conflict of interest between these two parties, in that the CDC exists to promote public health, while Coca-Cola exists to maximize profits. In the United States, taxation

targeting diet could substantially reduce the burden of cardiovascular disease and diabetes,^{31,32} a conclusion supported by a growing body of evidence that has led the WHO to recommend implementing a “sugar tax” as part of a comprehensive obesity strategy, with a goal of increasing SSB prices by 20%.³³

As a content analysis of FOIA-sourced documentation, our research has several important limitations. In order to ensure the validity of our findings,³⁴ we have attempted to account for personal biases by reporting all the emails in the online supplementary material so that our interpretations are accessible to all readers and by quoting as much as possible directly from the emails, along with providing information about dates. We have acknowledged potential biases in sampling due to the nature of the data collection methods (FOIA), including the information that the CDC has not yet provided a full response to some of our FOIA requests. We structured our analysis into the main emerging themes in an open process. To ensure reproducibility, we engaged in regular discussions with colleagues working on the corporate determinants of health. Although respondent validation can be an important way of confirming findings, this would not be feasible in our case because of the possible incentives for those involved to conceal their activities.

Our analysis is, by nature, not comprehensive, relying only on FOIA requests that have resulted in returned emails. This is therefore not necessarily indicative of any broader activity between CDC staff and Coca-Cola, but it is sufficient to reveal the CDC staff's allowing conflicted corporate actors to engage in well-established tactics to further commercial goals, something that should not occur in an organization established to protect public health. Taken together with the recent resignation of the head of the CDC over purchases of tobacco stock and conflicting financial interests,³⁵ such findings should be cause for a re-evaluation of the CDC's approach, as well as of the nature and purpose of the CDC Foundation, so that it cannot be a vehicle for corporate influence, particularly considering that unhealthy diets are major risk factors for noncommunicable diseases,³⁶ with SSB producers identified among the major drivers of these diseases globally.¹²

It is unacceptable for public health organizations to engage in partnerships with companies that have such a clear conflict of interest. The obvious parallel would be to consider the CDC's working with cigarette companies and the dangers that such a partnership would pose. Our analysis has highlighted the need for organizations like the CDC to ensure

that they refrain from engaging in partnerships with harmful product manufacturers,³ lest they undermine the health of the public they serve.

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Supplementary Material

Additional supporting information may be found in the online version of this article at <http://onlinelibrary.wiley.com/journal/10.1111/ISSN1468-0009>:

Supplementary file 1: Responses from the CDC to our FOIA request dated October 21, 2016, for communications between Dr. Janet Collins, Chloe Tonney, and/or Charles Stokes and (1) the Coca-Cola Co., (2) Rhona Applebaum, (3) Alex Malaspina, and/or (4) the International Life Sciences Institute (January 1, 2011-present).

Supplementary file 2: Responses from the CDC to our FOIA request dated June 29, 2016, for all emails (including attachments) and written correspondence between Dr. Barbara A. Bowman and Alex Malaspina (January 1, 2011-present).

Supplementary file 3: Responses from the CDC to our FOIA request dated January 27, 2017, regarding communications between CDC employees Maureen Culbertson, Kevin Ryan, Leandro Liburd, and Deborah Galuska and (1) the Coca-Cola Company, (2) Rhona Applebaum, (3) Alex Malaspina, and (4) the International Life Sciences Institute (January 1, 2011-present).

Supplementary file 4: Email response (subject: Dangers of sitting) from a Louisiana Public Records Act request to Louisiana State University dated September 19, 2016, regarding communications to or from (or Cc or Bcc) Professor Katzmarzyk or Professor Church with any

staff or employees of the Coca-Cola Company or the American Beverage Association, including any contract related to the International Study of Childhood Obesity, Lifestyle and the Environment (ISCOLE) study.

Supplementary file 5: Email response (subject: RE: ISCOLE news: Confidential) from a Louisiana Public Records Act request to Louisiana State University dated September 19, 2016, regarding communications to or from (or Cc or Bcc) Professor Katzmarzyk or Professor Church with any staff or employees of the Coca-Cola Company or the American Beverage Association, including any contract related to the International Study of Childhood Obesity, Lifestyle and the Environment (ISCOLE) study.

The Coca-Cola Company

A. Jane Kamenz
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Office of the Secretary
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Rule 14a-8(i)(3)
Rule 14a-8(i)(7)
Rule 14a-8(i)(10)

February 7, 2019

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: The Coca-Cola Company - Shareowner Proposal Submitted by John C. Harrington

Dear Ladies and Gentlemen:

This letter is in response to the letter dated January 30, 2019 submitted to the Staff of the Division of Corporation Finance (the “*Staff*”) by Sanford J. Lewis (the “*Response Letter*”), objecting to the Company’s intention to omit from its proxy materials for its 2019 annual meeting of shareowners (the “*2019 Proxy Materials*”) a shareowner proposal and statement in support thereof (the “*Proposal*”) submitted by John C. Harrington (the “*Proponent*”). The bases on which the Company intends to omit the Proposal are set forth in our letter to the Staff dated December 14, 2018 (the “*No-Action Request*”). This letter also supplements the Company’s No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The Proposal requests that the board of directors issue a report focusing broadly on the topics of sugar and public health. In his Response Letter, Mr. Lewis made the following statements regarding the Company’s responsiveness to this issue:

- “The proponent believes that the long-term value of Coca-Cola may be undermined by the Company’s lack of responsiveness to this emerging science on sugar as a health hazard – and in particular by emulating the misdirected approach

of tobacco and asbestos companies in downplaying the risks and diverting attention from the issue.”¹

- The “Company’s own limited disclosures omit important information regarding the Company’s efforts that have the implicit impact of redirecting public attention from the new science on sugar and disease causation. We believe these activities jeopardize the Company’s reputation, and the existing disclosures by the Company are incomplete and may even raise concerns of materiality under Rule 14-9.”²
- The Company has “backdoor strategies of downplaying legitimate scientific warnings about the role of sugar in disease causation. (...) Because these activities subject the Company to a fairly severe reputational risk regarding sugar and public health, the proponent believes that the long-term value of Coca-Cola may be undermined by the Company’s lack of responsiveness to emerging science on sugar as a health hazard – and in particular, by emulating the misdirected approach of tobacco and asbestos companies in downplaying the risks and diverting attention.”³

Based on these statements, the Proponent argues that the Company has not substantially implemented the Proposal.

In contrast, as noted in the No-Action letter, the Company, with oversight from the Public Issues and Diversity Review Committee, along with the full Board of Directors, has fully and publicly disclosed its approach to the issue of sugar and public health. Examples of these types of disclosures are numerous and can be found on the Company’s website at <https://www.coca-colacompany.com/stories/our-way-forward> under its Sustainability page (<https://www.coca-colacompany.com/sustainability>). Further, as stated in the No-Action Letter, the Company has acknowledged in the risk factors included in the Company’s Form 10-K filed for the year ended December 31, 2017, that obesity and other health-related public concerns may reduce demand for some of its products and that if the Company does not address evolving consumer preferences, its business could suffer.

Consistent with the Company’s commitment to transparency, the Company has disclosed and intends to continue to disclose its ongoing efforts regarding sugar and public health on the Company’s website. As stated at <https://www.coca-colacompany.com/transparency>:

“At The Coca-Cola Company, we’ve continued our journey to be a more helpful and effective partner in efforts to address the serious problem of obesity around the world.

¹ See page 1 of Response Letter.

² See pages 1-2 of Response Letter.

³ See page 2 of Analysis and Response to Exclusion Claims in Response Letter.

Over the past three years, we've listened and learned from the public health community, our customers, associates and our consumers to understand the most appropriate role we can play to support the fight against obesity in a way that is credible, transparent, and beneficial for everyone. We plan to continue this effort as we endeavor to meet the changing needs of our consumers and the communities we serve.

We have made the decisive shift to become a total beverage company and we are giving people around the world more of the drinks they want and how they want them – whether that means less sugar, more natural sources, or organic. Because we agree that people should not eat or drink too much sugar, we are taking specific, meaningful actions, including introducing more low- and no-sugar brands globally, investing in sugar alternatives and continuing to expand the availability of smaller packages like mini-cans across our markets.

In 2017, we reduced sugar in more than 300 of our drinks globally, while introducing more than 500 new products across a total beverage portfolio. And this year, the company is on track to reduce sugar in more than 500 drinks around the world – adding to its more than 1,100 existing low- or no-sugar drinks.”

In his Response Letter, Mr. Lewis asserts that an external report produced by a third party cannot implement the Proponent's request for a report on sugar and public health issued by the Company's board of directors.⁴ There is no basis for this assertion.

The Company, and the Board its oversight role, traditionally and routinely rely on third parties to assure, verify and monitor the Company's progress against various programs and initiatives. The Board, including its committees, in their business judgement, recognize that such an approach may, in some cases, be more useful than internally generated reports and analyses. For example, the Board relies on the analyses, review, and other assurances from third parties regarding the Company's efforts in numerous social initiatives including diversity, water stewardship and women's empowerment. Similarly, the Company provides information to, and relies upon the information provided by, the Access to Nutrition Foundation, an independent, non-profit organization (“ATNF”), which is recognized as a credible third party regarding nutrition. The Company believes that through the ATNF and its published reports, it has demonstrated its role in the matters raised by the Proposal, namely the request for a report on sugar and public health. As stated in the No-Action Letter, it is unclear, considering the Proponent's vague and broad request for a report on sugar and public health, how adopting the Proposal would require the Company to do anything other what has already been covered by ANTF in its Global and Spotlight Indexes.

Notwithstanding the Proponent's assertion in the No-Action Response letter that the Company has made misleading statements regarding the promotion of products to children, the

⁴ See page 1 of Response Letter.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
February 7, 2019
Page 4

Company does not advertise to children under 12, which is a core principle of the Company's global Responsible Marketing Policy. The Company does not purchase advertising directly targeted at audiences that are more than 35% children under 12. This includes television, radio, print and, where data is available, the Internet and mobile phones. The Company is sensitive to the fact that children may also be watching other programs with their family, and it makes every attempt to ensure that its advertising is appropriate for a general audience.

As stated in the No-Action Letter, the Company's approach to marketing is consistent with the guiding principles of the International Chamber of Commerce Marketing & Advertising Code and its Framework for Responsible Food and Beverage Marketing Communication. As also stated in the No-Action Letter, the Company monitors compliance with its global Responsible Marketing Policy by making use of the regular analysis conducted by Accenture on behalf of International Food & Beverage Alliance (IFBA), which measures how companies in the food and beverage industry comply with IFBA's responsible marketing commitment. The Proponent's assertion that the use of characters whose primary appeal is to children under the age of 12, with the exception of brand equity characters already in use, such as the Coca-Cola polar bear, does not obviate from the fact that the Company does not market directly to children under 12.

As described in our No-Action Request, the Company believes that the Proposal is excludable under Rules 14a-8(i)(7) as relating to the Company's ordinary business operations and 14a-8(i)(10) as substantially implemented.

For the reasons stated above and in our No-Action Request, we respectfully request that the Staff concur with the Company's view and confirm that it will not recommend enforcement action to the Commission if the Company omits the Proposal and supporting statement from its 2019 Proxy Materials.

If you have any questions or need additional information, please feel free to contact me at (404) 676-2187 or by email at jkamenz@coca-cola.com.

Sincerely,


A. Jane Kamenz
Securities Counsel

Enclosures

cc: John C. Harrington
Sanford J. Lewis
Jennifer Manning (The Coca-Cola Company)
Mark E. Preisinger (The Coca-Cola Company)

SANFORD J. LEWIS, ATTORNEY

Via electronic mail

January 30, 2019

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

Re: Shareholder Proposal to The Coca-Cola Company Regarding Public Health and Sugar on Behalf of John C. Harrington

Ladies and Gentlemen:

John C. Harrington (the "Proponent") is beneficial owner of common stock of The Coca-Cola Company (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated December 14, 2018 ("Company Letter") sent to the Securities and Exchange Commission by A. Jane Kamenz of The Coca-Cola Company. In that letter, the Company contends that the Proposal may be excluded from the Company's 2019 proxy statement.

I have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company's 2019 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to A. Jane Kamenz of The Coca-Cola Company.

Our response includes a Summary, indexed with page references to the detailed Analysis and Response that follows.

Based on the enclosed materials, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no-action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,



Sanford Lewis

cc: A. Jane Kamenz

**Response to No Action Request
2019 Proxy Season**

**Coca-Cola, Inc.
*Proposal for Report
on Sugar and Public Health***

SUMMARY

*References in this Summary are to pages of
attached ANALYSIS AND RESPONSE*

The Proponent, John C. Harrington, submitted a Proposal relating to the rapidly advancing scientific understanding that a national health crisis is being caused by sugar consumption in our national diet.

A tidal wave of new science is emerging on the role of sugar, and especially sugary beverages, in disease causation. The proponent believes that the long-term value of Coca-Cola may be undermined by the Company's lack of responsiveness to this emerging science on sugar as a health hazard — and in particular by emulating the misdirected approach of tobacco and asbestos companies in downplaying the risks and diverting attention from the issue.

The Proposal asks the Board of Directors to issue a report on Sugar and Public Health with the support of a group of scientists and scholars providing critical feedback. Of special concern to the proponent is the marketing of Coke products to children and young consumers, and risks to the Company associated with changing scientific understanding of the role of sugar and disease causation. *Background section, pages 1-4.*

Rule 14a-8(i)(10)

The Company Letter claims that the Company has substantially implemented the Proposal and can therefore exclude it from its proxy materials. However, the materials discussed in the Company's response, including materials produced by third parties, as well as the very limited materials the Company itself has published, do not substantially implement the Proposal. The Proposal requests a report by the Company Board of Directors, which by definition means a report produced in its fiduciary oversight capacity. As such, an external report by a third party cannot implement the Proposal. Further, the Company's own limited disclosures omit important information regarding the Company's efforts that have the implicit impact of redirecting public attention from the new science on sugar and disease causation. We believe these activities jeopardize the Company's reputation, and the existing disclosures by the Company are incomplete and

may even raise concerns of materiality under Rule 14a-9. Therefore, the Company's existing disclosures and actions cannot substantially implement the proposal. *Substantial implementation discussion*, pages 4-13.

Rule 14a-8(i)(7)

The Company claims the Proposal should be excluded because it relates to the Company's ordinary business operations and seeks to micromanage the Company. The Proposal addresses a significant policy issue of public health risks, has a clear nexus to the Company, and does not micromanage by probing too deeply into the Company's management, and therefore is not excludable under Rule 14a-8(i)(7).

The Company asserts that the requested report has a level of detail and complexity that would substitute management judgment on this issue with that of the Company's shareholders. However, the Proposal addresses *a LARGE issue* confronting the company and its brand — probably the single most important public policy issue facing the company — and the request is framed at a *practical level for shareholder consideration*. These are the critical underlying questions at the core of micromanagement articulated by the Commission in the 1998 Release. The Proposal expresses a request for a policy level report that is neither prescriptive nor detailed, and does not require specific methods for implementing complex policy. Therefore, the Proposal cannot be seen to be probing too deeply into matters of a complex nature and the Proposal does not micromanage. *Rule 14a-8(i)(7) discussion including relationship to Commission's statement of intentions in the 1998 Release*, pages 17-19.

Rule 14a-8(i)(3)

The Company Letter claims the Proposal can be excluded because it contains materially false and misleading statements violating Rule 14 a-8(i)(3). The Company Letter claims that it does not market any of its products directly to children under 12, and that the supporting statement provides confusing and irrelevant information regarding the Company's historical involvement in lawsuits and controversies. However, the Company's marketing continues to reach young children, including those under 12 years of age, due in part to the artful grandfathering of the Company's Responsible Marketing Policy.¹ Further, the shareholders would not reasonably confuse the introductory statement regarding the Company's involvement in an array of governance and corporate social responsibility problems, with the focus of the Proposal. Nor has the Company demonstrated that any of the information contained in that passage regarding historical challenges facing the Company is inaccurate. Thus, the Proposal is not excludable under Rule 14a-8(i)(3). *Discussion of Rule 14a-8(i)(3)*, pages 13-16; 19-22.

¹ <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/our-company/responsible-marketing-policy.pdf>

THE PROPOSAL

Whereas, our Company has historically been involved in multiple lawsuits and controversies, including but not limited to, employee labor and racial discrimination issues, apartheid in South Africa, violence in foreign countries related to bottling franchises, environmental issues, including related water quality and scarcity issues, animal testing, consumer issues, including labeling of products, packaging and containers, use of genetically modified organisms, air pollution;

Whereas, more importantly, the most serious issues continue to be related to the public health and safety impacts of our Company's beverages, including syrups and sugary drinks, and the growing national health epidemic relating to increasing uses of sugar in our diet;

Whereas, our Company continues to be the target of multiple campaigns related to our Company's products that contribute to general level of decline in public health of consumers, including reports that 1 in 3 U.S. children born in the year 2000 will develop diabetes, resulting from poor diet, as increase in obesity in turn increases the risk of diabetes, hypertension, heart disease, cancers, asthma, arthritis, reproductive complications and premature death;

Whereas, our Company continues to directly market sugary drinks with advertising directly influencing children's food preferences, diets and health;

Whereas, in 2011, the American Academy of Pediatrics released a policy statement calling for a total ban on child targeted and interactive junk food advertising as a response to concerns regarding childhood obesity;

Whereas, public pressure against junk food and sugary drinks linked to obesity and diabetes, has led to numerous community campaigns to impose local taxes on sugary beverages, which include our products, to which our Company has responded by lobbying efforts in numerous state legislatures to preempt local control or restrict local taxation on our Company's products linked to obesity and diabetes;

Whereas, shareholders believe our Company should be part of the solution to solving the problem of the obesity epidemic in working with healthcare professionals and experts in diet and nutrition, not promoting advertising campaigns and funding Global Energy Balanced Network to shift the blame from poor diet causing obesity to lack of exercise;

Be It, Therefore, Resolved, that shareholders request the board of directors issue a report on Sugar and Public Health, with support from a group of independent and nationally recognized scientists and scholars providing critical feedback on our Company's sugar products marketed to consumers, especially

those Coke products targeted to children and young consumers. Such report to shareholders should be produced at reasonable expense, exclude proprietary or legally privileged information and be published no later than November 1, 2019, and include an assessment of risks to the company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation.

**Response to No Action Request
2019 Proxy Season**

Coca-Cola, Inc.
***Proposal for Report
on Sugar and Public Health***

ANALYSIS AND RESPONSE TO EXCLUSION CLAIMS

BACKGROUND

The Proponent, John C. Harrington, is the President of Harrington Investments, Inc. and a manager of assets of individual and institutional investors requiring social and environmental as well as financial portfolio performance. Our firm utilizes a comprehensive social and environmental screen and commits clients' assets to community investing. The firm also works to advance corporate financial and social responsibility through shareholder resolutions, addressing issues such as U.S. economic security, sustainability, human rights, corporate governance, and CEO compensation. We believe the manner in which these issues are managed affects long-term value creation and societal impact. Therefore, our investing and engagement strategy seeks to improve governance and oversight by clarifying corporate directors' fiduciary duties on issues surfacing at their companies.

We believe that our work and our proposals at companies offer the opportunity for shareholders to engage in appropriate foresight, and seek improved performance, on issues that are likely to affect the long-term value of a company. For instance, our proposal at Monsanto regarding risks associated with glyphosate have proven prescient in the impact facing the Company's purchaser, Bayer, as liability litigation has borne out our concerns, with a severe financial impact, including on the company's market capitalization as investors have reacted to the continuing bad news.²

² In 2016, shareholder John Harrington, the President of Harrington Investments Inc., filed a proposal at Monsanto regarding health risks from the company's flagship weedkiller Roundup. The proposal noted "an increasing number of independent studies assessing the toxicity of glyphosate, the active ingredient in Roundup, associate it with cancer, birth defects, kidney disease, and hormone disruption, causing world-wide concern about its safety". The proposal requested that the company issue a report assessing the effectiveness and risks associated with the company's policy responses to public policy developments intended to control pollution and food contamination from glyphosate, including but not limited to the impact of recent reclassification of glyphosate as "probably carcinogenic," and quantifying potential material, financial risks or operational impacts on the Company in the event that proposed bans and restrictions are enacted. Only two months after Monsanto was acquired by the German pharmaceutical company Bayer in June 2018, a jury granted a \$289 million award in a suit alleging public health threats and cancer of a plaintiff caused by Roundup. This news sliced billions of dollars from Bayer's valuation. Bayer's market capitalization has descended steeply in the following months, from \$99.1 billion as of August 10, 2018 (the date of the jury verdict), to \$64.8 billion as of November 20, 2018.

See, *The Prescience of 5% of Investors: A Monsanto Case Study*, Harvard Law School Forum on Corporate Governance and Financial Regulation, December 17, 2018.
<https://corpgov.law.harvard.edu/2018/12/17/the-prescience-of-5-of-investors-a-monsanto-case-study/>

An Emerging Risk for Coca-Cola

The impetus for the present Proposal is the gap between the Company's public posture as a good citizen and responsible steward of consumer health concerns, and the Company's backdoor strategies of downplaying legitimate scientific warnings about the role of sugar in disease causation. Of concern to the proponent as a shareholder is the apparent lack of focused oversight of these issues by the Board. It appears that the Company's strategy on this issue includes the creation and funding of organizations to "change the subject" of health concerns from sugar to exercise (or hydration). In the meantime, a tidal wave of new science is emerging on the role of sugar in disease causation. Because these activities subject the Company to a fairly severe reputational risk regarding sugar and public health, the proponent believes that the long-term value of Coca-Cola may be undermined by the Company's lack of responsiveness to emerging science on sugar as a health hazard — and in particular, by emulating the misdirected approach of tobacco and asbestos companies in downplaying the risks and diverting attention.

The emerging scientific understanding of these risks has grown exponentially during the last decade. From 2009 to 2012, Robert Lustig, a pediatric endocrinologist at the University of California was virtually the only scientific voice asserting the toxicity of sugar in our diet. In 2012, he appeared on the CBS news show 60 Minutes, and brought the idea of sugar's toxicity to a mainstream audience.³ From there, the concerns began to echo within the medical and scientific community.

Soon thereafter, a breakthrough study in 2014, by George A. Bray and Barry M. Popkin of the American Diabetes Association, reported on fructose consumption through calorie-sweetened beverages over a decade. They showed that consumption "continued to increase and plays a role in the epidemic of obesity, the metabolic syndrome, and fatty liver disease."⁴

Thus the question — do current levels of sugar consumption pose a serious health risk to Americans? — seems in crying need of clarity. Our proposition is that sugar and related caloric sweeteners in the amounts now consumed pose a substantial risk and that the public needs to be better informed about these risks as they select the food they eat.⁵

Additional science in support of that scientific proposition emerged soon thereafter. A 2015 study funded by the National Institutes of Health showed that consuming sugar in the high quantities found in a Western diet "may increase the risk of breast cancer and metastasis to the lungs".⁶ Also in 2015, Dr. Lustig found that changes in overall health, including a reduction in liver fat, resulted in children after only nine days of reducing their dietary sugar to 10% of their daily calories.⁷ An additional scientific spotlight has focused on the similarities of sugar and of alcohol

³ <https://www.cbsnews.com/news/is-sugar-toxic-01-04-2012/>

⁴ <http://care.diabetesjournals.org/content/37/4/950>

⁵ Bray, George A. and Barry M. Popkin, "Dietary Sugar and Body Weight: Have We Reached a Crisis in the Epidemic of Obesity and Diabetes? Health Be Damned! Pour on the Sugar," *Diabetes Care*: 2014 Apr; 37(4): 950-956. <https://doi.org/10.2337/dc13-2085>, <http://care.diabetesjournals.org/content/37/4/950>

⁶ <https://www.mdanderson.org/newsroom/sugar-in-western-diets.h00-158992968.html>

⁷ <http://time.com/4087775/sugar-is-definitely-toxic-a-new-study-says/>

in causing liver damage.⁸

In 2016, the theme of sugar as an addictive substance also drew scientific support, as Dr. David Samadi wrote about how consuming sugar leads to an “overstimulation of the reward centers” and “causes us to become addicted to it”.⁹ In this way, Dr. Samadi explained, sugar acts similarly to “heroin and cocaine”. Addiction to sugar is of particular concern due to the other medical studies revealing its harmful nature.

Increased diagnoses of diseases have trended upward in tandem with rising sugar consumption levels. Dean Schillinger, MD highlights the increased consumption of sugar as a major part of a societal shift leading to the incidence of diabetes more than tripling since 1970.¹⁰ Laura Schmidt, PhD, MSW, MPH, explains that fructose is the “main culprit” in a “cluster of metabolic issues known collectively as metabolic syndrome (MetS), that raises people’s risk of developing chronic diseases. These issues include insulin resistance, elevated blood sugar, high blood fats (triglycerides), high cholesterol, high blood pressure, and a condition known as “sugar belly”, which is linked to heart disease.¹¹ Schmidt goes on to describe the urgency surrounding this public health concern, explaining that “we are sitting on a ticking time bomb” as millions nationwide are at risk of developing full-blown diabetes.¹²

The volume of scientific evidence linking added sugar to serious diseases, such as diabetes, heart disease and liver disease is so great, that the University of California, San Francisco created a research center (SugarScience) focused on the negative health impacts of sugar, based on a comprehensive review of more than 8,000 scientific studies on the health impacts of sugar. The research focuses on sugar-sweetened beverages as one of the strongest areas of focused research due to overwhelming evidence of their role in disease causation.¹³

UCSF contains a fairly comprehensive compilation of research on sugar and sugar-sweetened beverages. Here a few examples of the scientific statistics from their page:

Liquid sugar, such as in sodas, energy drinks and sports drinks, is the leading single source of added sugar in the American diet, representing 36% of the added sugar we consume.

And there's growing scientific evidence that it's the most dangerous way to consume added sugar.

⁸ <http://sugarscience.ucsf.edu/the-toxic-truth/#.XBqAGM9Kjm0>

⁹ https://www.huffpost.com/entry/sugar-is-not-only-a-drug-but-a-poison-too_b_8918630

¹⁰ <https://www.ucsf.edu/news/2018/12/412916/sugars-sick-secrets-how-industry-forces-have-manipulated-science-downplay-harm>

¹¹ <https://www.ucsf.edu/news/2018/12/412916/sugars-sick-secrets-how-industry-forces-have-manipulated-science-downplay-harm>

¹² <https://www.ucsf.edu/news/2018/12/412916/sugars-sick-secrets-how-industry-forces-have-manipulated-science-downplay-harm>

¹³ Source: <http://sugarscience.ucsf.edu/>

In fact, drinking just one 12-oz can of soda per day can increase your risk of dying from heart disease by nearly one-third. Other studies show that people who drink one to two sugar-sweetened beverages per day have a 26 percent higher risk of developing Type 2 diabetes, compared to people who drink less than one per month.

A sugar-laden diet may raise your risk of dying of heart disease even if you aren't overweight. So says a major study published in JAMA Internal Medicine.

Sugar-sweetened beverages such as sodas, energy drinks, and sports drinks are by far the biggest sources of added sugar in the average American's diet. They account for more than one-third of the added sugar we consume as a nation.

...a 12-ounce can of regular soda contains about 9 teaspoons of sugar, so quaffing even one a day would put all women and most men over the daily limit.

I. THE COMPANY HAS NOT SUBSTANTIALLY IMPLEMENTED THE PROPOSAL, AND THEREFORE THE PROPOSAL IS NOT EXCLUDABLE UNDER RULE 14A-8(i)(10).

In order for a Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), the actions in question must compare favorably with the guidelines and essential purpose of the Proposal. The Staff has noted a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. *Texaco, Inc.* (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed *both* the proposal's guidelines and its essential objective. See, e.g., *Exelon Corp.* (Feb. 26, 2010). Thus, when a company can demonstrate that it has already taken actions that meet most of the guidelines of a proposal and meet the proposal's essential purpose, the Staff has concurred that the proposal has been "substantially implemented." In the current instance, the Company has substantially fulfilled *neither* the guidelines nor the essential purpose of the Proposal, and therefore the Proposal cannot be excluded.

The Proposal requests that:

...the board of directors issue a report on Sugar and Public Health, with support from a group of independent and nationally recognized scientists and scholars providing critical feedback on our Company's sugar products marketed to consumers, especially those Coke products targeted to children and young consumers. Such report to shareholders should be produced at reasonable expense, exclude proprietary or legally privileged information and be published no later than November 1, 2019, and include an assessment of risks to the company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation.

The essential purpose of the Proposal is for the Board of Directors, in its fiduciary capacity, to conduct its own oversight assessment and then to provide investors with a materially accurate and complete assessment of the Company's risks associated with sugar and public health that takes account of critical views. The Company's actions failed to implement this essential purpose, because the publications referenced by the Company fall far short of a board or management report providing the management's perspective in response to critical feedback.

The guidelines of the Proposal require that the report be issued *by the Board of Directors*, with support from scientists and scholars providing critical feedback on sugar products of the Company. The Proposal also requires that the report include an assessment of risks to the Company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation. The Company's actions fail to compare favorably with these guidelines. Third-party publications cannot fulfill the board oversight required by the Proposal, and the Company's own publications are misleadingly incomplete.

Partial reporting does not substantially implement a proposal if the actions do not compare favorably with the guidelines of the proposal.

The Company Letter cites a series of precedents in which companies had taken actions that fulfilled the essential purpose of the proposal. *Texaco, Inc.* (Mar. 28, 1991); *Walgreens Boots Alliance, Inc.* (Nov. 13, 2018); *Apple, Inc.* (Dec. 11, 2014); *Entergy Corp.* (Feb. 14, 2014); *Walgreen Co.* (Sept. 26, 2013); *Exelon Corp.* (Feb. 26, 2010); *International Business Machines* (Jan. 4, 2010); *The Dow Chemical Co.* (Mar. 5, 2008); and *Masco Corp.* (Mar. 29, 1999). These precedents are not analogous to the current situation, because the Company has not fulfilled the essential purpose of a report by the Company's fiduciaries providing reasonable assessment of the issues raised. Nor is it analogous to the instance where a company has published the relevant information on its website. *Mondelez International, Inc.* (March 7, 2014). Here, the limited or misleading information published by the Company does not fulfill the purposes of the proposal.

The requirement to fulfill the guidelines and essential purpose of the proposal is a rigorous evaluation. It does not require the company to fulfill every item specified in a proposal exactly as requested, but in essence it necessitates a set of actions that are materially equivalent to the proposal's request. Therefore, a company can do extensive reporting on an issue and still not be considered to substantially implement the proposal seeking a report, even on the same topic, if the actions of the company do not effectively meet most of the guidelines of the proposal. For instance, in *Chesapeake Company* (April 13, 2010), Chesapeake asserted its extensive web publications constituted "substantial implementation" of the proposal on natural gas extraction. However, the proponents argued the proposal could not be substantially implemented if the company failed to address most of the core issues raised by the proposal. The SEC Staff concluded that despite a volume of writing by the company on hydraulic fracturing, the proposal was not substantially implemented. The same failing exists in the present circumstance—there is some disclosure on the general topic of the proposal, but not enough to meet the Proposal's guidelines.

Similarly, in *Abbott Laboratories* (February 8, 2012) the company asserted that its partial disclosure of policies and its lobbying expenditure disclosures to government agencies sufficed to implement the proposal in question. The Staff rejected the argument that the company's partial measures compared favorably with the guidelines of the proposal.

Third-party reporting does not implement requested report requiring direct oversight by Board of Directors.

The Company Letter attempts to paper over the reality that the third party report issued by ATNF does not constitute publication or action by the Board or other company fiduciaries:

While the Indexes reflect a third-party interpretation of the Company's actions to support customers' health and nutrition, the Company acknowledges the index findings and recognizes the role it plays in addressing health challenges. Although the board of directors of the Company did not itself issue the report on sugar and public health, as requested by the Proponent, the Company's collaboration with ATNF, a respected and independent non-profit organization, culminated in the recent issuance of the Spotlight Index.

Surely, the Company's corporate lawyers understand the difference between a third-party report and a report issued by the board or management, and therefore it is also inherently clear how a "request for a report on sugar and public health...would require the Company to do" more than what has already been covered by the Indexes. While the benchmarking provided by ATNF's findings and assessment of the Company's efforts is a valuable contribution, lacking is a report of the board or management to the shareholders subject to the requirements of the securities laws against materially misleading statements or omissions.

This is not the first time that the Company has attempted to claim that a third-party's report implemented a proposal seeking a report by the Company. The Company unsuccessfully attempted in 2004 to assert third-party fulfillment of a proposal requesting a report documenting the distribution of stock options by race and gender of the recipient. The Company attempted at that time to argue that the proposal could be substantially implemented by a report prepared by a task force that resulted from the Company's settlement in litigation. The Company argued that the requested information had been provided to the Company's Diversity Task Force and that this Task Force had certified the Company's stock option distribution to be free of discrimination.

However, the proponent agreed with the Staff that the Task Force report, even though it contained relevant data, did not substantially implement the proposal:

The Proponents do not believe that shareholders should have to rely on the determinations of a Task Force that they had no role in creating. The Task Force was created through a process of negotiations between the Company and the plaintiffs in a lawsuit. The Task Force was not established to protect

or monitor shareholder interests. In this changing environment of corporate transparency and oversight, the Proponents believe that shareholders have the right to directly examine evidence that may have bearing on liabilities they are incurring as shareholders.

Accordingly, the Staff found that the proposal was not substantially implemented. *Coca-Cola Company* (January 19, 2004).

In this instance, the Proposal requests a report by the Company's Board of Directors. In the absence of preparation of requested analyses by the Company's own fiduciaries, a request for a report is not substantially implemented by third-party actions and reports.

Instead of providing responsive disclosures, the Company Letter highlights some positive actions by the company to diversify its products to include lower sugar products, and modest disclosures by the Company that omit and mislead regarding key vulnerabilities — constituting fatal flaws in the Company's attempt to assert substantial implementation .

Moreover, the Reports from the Access to Nutrition Foundation¹⁴ (ATNF) referenced by Coca-Cola as fulfilling the Proposal, came to some of the same conclusions as the Proposal as to what is needed. It is hard to see how the ATNF report can serve as a substitute for the report requested in the Proposal when they urged precisely the same kind of company effort to draw upon external experts to improve its nutrition strategy:

Similar to 2016, there is no evidence to indicate that Coca-Cola takes advice from external experts on its nutrition strategy in a systematic manner, although some input is solicited. The company should install a formal panel with a broad range of relevant expertise to gather regular advice on preventing and addressing obesity and diet-related chronic disease on a strategic level.¹⁵ [*emphasis added*]

Purported actions by the Company do not substantially implement the Proposal because they are misleading without additional disclosures.

An additional reason why the Company's actions do not substantially implement the proposal is that the existing disclosures omit information necessary to make the communications not misleading.

In order for a proposal to be substantially implemented by a Company's actions, there is an underlying assumption that the information provided to investors should be materially complete and non-misleading. In particular, it should not raise significant issues under Rule 14a-9, the prohibition against false or misleading statements and omissions in conjunction with the publication of the proxy statement:

¹⁴ Global Report: "Access to Nutrition Global Index 2018 - Coca-Cola Company Scorecard," by Access to Nutrition Foundation <https://www.accesstonutrition.org/index/global.2018/company/coca-cola>

¹⁵ Global Report: "Access to Nutrition Global Index 2018 - Coca-Cola Company Scorecard," by Access to Nutrition Foundation <https://www.accesstonutrition.org/index/global.2018/company/coca-cola>, p. 2

§ 240.14a-9 False or misleading statements.

No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

If the “implementing” materials published by the Company would give investors a significantly misleading impression on a material issue, a Proposal cannot reasonably be considered to be substantially implemented.

In accordance with this, we would like the Staff to consider the following information which the proponents have found in their examination of the Company’s actions.

As will be discussed below, the omission of the following information raises questions of materiality under Rule 14a-9 and precludes treating existing disclosures as substantial implementation:

- Statements by Company’s leadership incongruent with the materials cited by the Company Letter.
- Company funding of a captive trade association that attempts to distort and minimize the impact that consuming sugary beverages have on public health.

We believe in the absence of these disclosures, investors would be unable to make a reliable assessment of the reputational risks to the Company.

Misleading communications regarding the health effects of sugar

The information that is omitted from the Company’s disclosures, which may lead to a materially misleading impression by investors reading the materials, are the actions of the Company that render it vulnerable to reputational and financial risks due to funding of an “astroturf” trade association which has the agenda of dispelling sugar’s role as a substance that is damaging to public health. This information stands in sharp contrast to the Company’s attempt toward promoting “healthy lifestyle” branding, and we believe it clearly creates significant reputational risk.

Allegations of consumer fraud lawsuit

In a 2017 lawsuit filed by the nonprofit Praxis Project , against the Company and its trade association, the American Beverage Association (ABA), have been accused of misleading consumers about the health risks from consuming sugary beverages under the California Unfair

Competition Law and False Advertising Law. The suit seeks to enjoin Coca-Cola and the ABA from engaging in false and misleading marketing of sugar-sweetened beverages and also asserts claims for the intentional and negligent breach of a special duty. The ABA is a trade association that has been heavily supported by Coca Cola and Pepsi-Cola, and its board is heavily populated by Coca-Cola and Pepsi officials.

As a share owner, the Proponent has found the allegations in the litigation raise questions of significant vulnerability of the Company. The following are direct quotes of some of the most relevant allegations as they relate to our Proposal:

B. Balance & Hydration: Coca-Cola’s Deceptive Advertising Campaign

53. As part of its concerted campaign to shift attention away from the substantial, credible science linking sugar-sweetened beverages to obesity, diabetes, and cardiovascular disease, Coca-Cola also developed a direct advertising campaign that falsely and misleadingly promoted to consumers that they could “balance” their consumption of sugar-sweetened beverages with exercise and through careful monitoring of “calories-in, calories-out.”

54. Directly through its own advertising and through the ABA [American Beverage Association], Coca-Cola falsely and misleadingly advertised that balance—of calories in and calories out—enables healthful consumption of sugar-sweetened beverages and prevents obesity.

55. However, the scientific consensus is that exercise, especially light exercise like the “75 seconds of laughing out loud” featured in one ad by Coca-Cola, cannot offset the negative health effects, including obesity and related chronic diseases, of drinking sugar-sweetened beverages.

56. While health authorities such as the federal government’s 2008 Physical Activity Guidelines encourage people to exercise, these same Guidelines acknowledge that “the contribution that physical activity makes to weight loss and weight stability is relatively small.”

79. The tiny expenditures of exercise suggested in Coca-Cola ads pale in comparison to the quantity of exercise needed to redress excess calories from sugar-sweetened beverages. Furthermore, studies find that even intensive exercise programs often fail to lead to expected weight loss.

57. As Dr. Margaret Chan, Director-General of the World Health Organization, told the annual meeting of the National Academy of Medicine in October 2016:

When crafting preventive strategies, government officials must recognize that the widespread occurrence of obesity and diabetes throughout a

population is not a failure of individual willpower to resist fats and sweets or exercise more. It is a failure of political will to take on powerful economic operators, like the food and soda industries.

58. Coca-Cola's advertising campaigns, however, represent otherwise.

59. For example, the "Be Ok" advertising campaign, which ran extensively in the United States, including during the popular television show American Idol and the Super Bowl, implied that light activities—always undertaken by trim and fit models, instead of overweight, obese or diabetic consumers—like laughing for 75 seconds, or doing a victory jig in the bowling alley, or 15 minutes of happy dancing—would offset the harmful health consequences of consuming sugar-sweetened beverages.

60. Likewise, the "Mixify" multi-platform advertising campaign, sponsored by Coca-Cola, the American Beverage Association, and other sugar-sweetened beverage producers, pitches kids on the notion that they should not be concerned about added sugar or calories. It encourages them to consume sugar-sweetened beverages and then exercise more. Advertisements sponsored by Coca-Cola through the Mixify campaign advise kids, "Just finished an afternoon of Frisbee? Maybe you've earned a little more [soda]."

61. Coca-Cola's "Coming Together" advertising campaign promotes a related deception. It proclaims, "All calories count. No matter where they come from including Coca-Cola and everything else with calories."⁶⁷ This statement is misleading given the health consequences associated with drinking sugar-sweetened beverages, and their lack of nutritional value.

62. As Professor Ruth Fagan, Wagley Professor of Biomedical Ethics and Director of the Johns Hopkins Berman Institute of Bioethics, said of the Coming Together campaign,

For Coca-Cola to suggest that all calories are equal flies in the face of reality. . . . Coca-Cola wants us to ignore the considerable research confirming that sugary soda is a major contributor to obesity, and that it has no nutritional value.

63. The Coming Together campaign also flies in the face of the CDC's conclusion that all calories are not equal because, among other things, "individuals may fail to compensate for . . . calories consumed as liquid." More, some calories have nutritional value, and others are neutral or adverse nutritionally; this distinction is the rationale for Dietary Guidelines.

The examples described in the litigation seem to demonstrate to the Proponent that there are

already indications that the emerging science is recognized by the Company as a concrete threat in the Company's public policy environment. On the lobbying front, Coca-Cola, together with PepsiCo Inc. overtly "Either individually or together...backed a total of 96 national health organizations and lobbied against 29 health bills intended to reduce consumption of their products and fight obesity".^{16,17}

However, there are less obvious ways the Company has taken on the issue of sugar's role as a detriment to public health. For example, the Company funded seemingly disinterested research groups that would advance the Company's messaging,¹⁸ including the Global Energy Balance Network ("GEBN"), whose vice president in 2015, stated there is "virtually no compelling evidence" for the causal relationship between the obesity epidemic and sugary drinks.¹⁹ GEBN also attempted to shift the focus from sugar's role in weight gain, by claiming the key to preventing weight gain is found not in the reduction of sugar, but in eating more calories while increasing exercise.²⁰ Meanwhile, some sugar scientists say, "such ideas are bunk" because they shift the blame to people making bad choices, rather than acknowledging the burden the food environment puts on individuals, particularly those without the resources to purchase healthy options.²¹ Soda companies are said to "add to the cacophony by claiming their products can be enjoyed as part of a healthy lifestyle".²²

The Company further spread such confusing and misleading messages on a global scale through the European Hydration Institute ("EHI"), which claimed to have no conflicts of interest with any commercial organization,²³ but was in fact co-founded by Coca-Cola, and run by a Coca-Cola paid consultant.²⁴ On its homepage, the Institute presents itself as "a foundation established with the objectives of advancing and sharing knowledge of all matters relating to human

¹⁶ <https://www.bloomberg.com/news/articles/2016-10-10/soda-giants-are-likened-to-big-tobacco-in-report-about-lobbying>

¹⁷ A publication compiling several allegedly leaked internal documents, paints a broader picture of "an industry fighting a coordinated war against public health policy on many fronts: coordinating messages, influencing reporters, debunking science, stalking social media influencers, building astro-turf coalitions, and lobbying heavily at every level of government. <https://medium.com/cokeleak/leaked-coca-colas-worldwide-political-strategy-to-kill-soda-taxes-9717f361fb04>

¹⁸ *Praxis Project v. Coca-Cola Co.*, P. 12 citing Anahad O'Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad Diets*, N.Y. TIMES (Aug. 9 2015), <http://goo.gl/tpfrg7> (quoting GEBN's now-discontinued website). See also Anahad O'Connor, *Coke's Chief Scientist, Who Orchestrated Obesity Research, Is Leaving*, N.Y. TIMES (Nov. 24, 2015), <http://goo.gl/u33ZNF> (while Coca-Cola said it had no influence on GEBN, "reports show that Dr. Applebaum and other executives at Coke helped pick the group's leaders, create its mission statement and design its website").

¹⁹ *Praxis Project v. Coca-Cola Co.*, P. 12 citing Dr. Steven Blair of Coca-Cola and ACSM's Global Energy Balance Network, YOUTUBE (Sept. 10, 2015), <https://goo.gl/h14Yq8>.

²⁰ *Praxis Project v. Coca-Cola Co.*, P. 12 citing Anahad O'Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad Diets*, N.Y. TIMES (Aug. 9 2015), <http://goo.gl/tpfrg7> (quoting GEBN's now-discontinued website).

²¹ <https://www.ucsf.edu/news/2018/12/412916/sugars-sick-secrets-how-industry-forces-have-manipulated-science-downplay-harm>

²² <https://www.ucsf.edu/news/2018/12/412916/sugars-sick-secrets-how-industry-forces-have-manipulated-science-downplay-harm>

²³ EUROPEAN HYDRATION INST., <http://goo.gl/JEK1b> (last visited Sept. 15, 2016).

²⁴ *Praxis Project v. Coca-Cola Co.*, P.12, citing *What Is the European Hydration Institute?*, EUROPEAN HYDRATION INST., <http://goo.gl/TGOr6W> (last modified June 14, 2016; last visited Sept. 16, 2016).

hydration and its effects on health, wellness and performance”.²⁵ Yet, in a press release published online, Maria Kapsokefalou, EHI Science Advisory Board member, touts a “total diet” approach “where all foods and drinks” can fit, and where “sugar sweetened drinks” stand out in a *positive* way from other beverages because they have been viewed as “significant contributors to energy intake”. Kapsokefalou’s focus is on “water balance” or hydration as an ultimate goal of achieving public health, and widens the net of sources to achieve adequate water intake, grouping together all foods and beverages—even beverages containing sugar, caffeine, and alcohol—while glossing over their negative effects:

However, it must be realised that drinking patterns vary greatly: some people drink no plain water and some achieve extremely high intakes through consumption of soft drinks or alcoholic drinks. Beverages containing caffeine and alcohol may have diuretic effects, but, since these effects are generally mild and transient in nature, such beverages do contribute to total water intake.²⁶

Furthermore, despite growing scientific evidence of sugar’s role in the obesity epidemic, the Company’s Senior Vice President in 2012, Katie Bayne, publicly stated during an interview with *USA Today* that, “There is no scientific evidence that connects sugary beverages to obesity.”²⁷

A Coke-funded scientist, Dr. Steven Blair, in a YouTube video viewed over 25,000 times, stated that “there is really virtually no compelling evidence” that sugar drinks are linked to the obesity epidemic and that those who are interested in “science, public health” need to work on “how to get the right information out there.”²⁸

Additionally, in a 2013 memo issued by the Company and currently linked to on its FAQs webpage,²⁹ the Company fails to mention sugar entirely when explaining “Our Position on Obesity”,³⁰ instead focusing on calorie consumption.³¹

In contrast to the efforts by the Company and its trade association to change the topic from sugar to exercise, scientists have been increasingly warning that sugar actually is a culprit. *Forbes* magazine covered this issue in an article entitled “Exercise Can’t Save Us: Our Sugar Intake Is The Real Culprit, Say Experts”.³² The 2015 *Forbes* article referenced an editorial in the British

²⁵ https://www.europeanhydrationinstitute.org/what_is_the_ghi/the_institute/#pac

²⁶ https://www.europeanhydrationinstitute.org/what_is_the_ghi/the_institute/#pac

²⁷ Bruce Horowitz, *Coke Says Obesity Grew as Sugar Drink Consumption Fell*, USA TODAY (June 7, 2012), <http://goo.gl/w0jFU2> (statement by Coke executive Katie Bayne).

²⁸ *Praxis Project v. Coca-Cola Co.*, P. 12 citing *Dr. Steven Blair of Coca-Cola and ACSM’s Global Energy Balance Network*, YOUTUBE (Sept. 10, 2015), <https://goo.gl/h14Yq8>.

²⁹ <https://www.coca-colacompany.com/contact-us/faqs>

³⁰ <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/2012/11/position-on-obesity-pdf.pdf>

³¹ <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/2012/11/position-on-obesity-pdf.pdf> (“When it comes to managing weight, it’s important to balance calories consumed with calories burned.”)

³² Alice G. Walton, “Exercise Can’t Save Us: Our Sugar Intake Is The Real Culprit, Say Experts,” *Forbes*: April 24, 2015, <https://www.forbes.com/sites/alicegwalton/2015/04/24/exercise-wont-save-us-sugar-and-carbs-are-our-bodily-downfall/#10d274a72466>

Journal of Sports Medicine, in which three authors argue that the myth that exercise is the key to weight loss – and to health – is erroneous and pervasive, and that it must end:³³

The evidence that diet matters more than exercise is now overwhelming, they write, and has got to be heeded: We can exercise to the moon and back but still be fat for all the sugar and carbs we consume. And perhaps even more jarring is that we can be a normal weight and exercise, and still be unhealthy if we're eating poorly. So, they say, we need a basic reboot of our understanding of health, which has to involve the food industry's powerful PR "machinery," since that was part of the problem to begin with.

An article in the *British Journal of Sports Medicine*³⁴ ends with this conclusion:

It is time to wind back the harms caused by the junk food industry's Public Relations machinery. Let us bust the myth of physical inactivity and obesity. You cannot outrun a bad diet.

Misleading statements regarding promotion of products to children

The Company also claims it has substantially implemented the Proposal by a legalistic interpretation of its own rules in which it does not design its marketing communications "in a way that directly appeals to children under 12" in line with the International Chamber of Commerce Marketing & Advertising Code and its Framework for Responsible Food and Beverage Marketing Communication, nor does it market any of its products, by any media, to "children under 12" (where 35% or more of the audience is under 12), per its Responsible Marketing Policy.³⁵

However, the Company's Responsible Marketing Policy has a glaring exception through which its marketing to young people persists. The Company pledges not to use "Celebrities or characters whose primary appeal is to children under the age of 12, **with the exception of brand equity characters already in use**". This³⁶ presumably includes brand equity characters in place prior to the 2015 year on the policy, such as the Coca-Cola polar bear, viewed by some in the advertising industry as a "symbol of the purity of Coca Cola's drinks."

³³ <https://bjsm.bmj.com/content/49/15/967.full>

³⁴ Malhotra, A, T. Noakes, S. Phinney, "It is time to bust the myth of physical inactivity and obesity: you cannot outrun a bad diet," *Br J Sports Med*: 2015;49:967-968. <http://dx.doi.org/10.1136/bjsports-2015-094911>

³⁵ Coca-Cola p.6

³⁶ <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/our-company/responsible-marketing-policy.pdf>



Children's Christmas Parade in Atlanta, Georgia



The "brand equity characters already in use" are exempted from the Company's "ban" on marketing to children.

Coke ads and marketing feature Santa Claus, animated polar bears and penguins, and hero-movie characters.

Has the exception overridden the rule?

Furthermore, the Company liberally defines media that directly targets children under 12 as media in which “35% or more of the audience is composed of children under 12, where this information is possible to obtain”. Thus, the Company presumably may continue targeting audiences where less than 35% of the audience is under 12, or where it is potentially 35% or more of the audience, but the Company does not appear to have or disclose information on the demographics. The above details and important distinctions are not encapsulated by ostensibly clear-cut statements made publicly on its website that “we do not market any products directly to children under 12” and conflicts with the ICC’s Code.

Indeed, the lawsuit alleges that Coca Cola overtly targets a young audience through its use of “cartoons, celebrities, over 300 apps, billboards at sponsored events, and...massively disseminated other consumer products branded with Coca-Cola”.³⁷

The Company also advertises to young children in less obvious ways. For example, the Company brands products with names such as “vitaminwater”, where most parents who purchase that drink believe it to be healthy.³⁸ In reality, however, Vitaminwater may contain just as much fructose (the main harmful component of added sugar) as Coca-Cola, particularly in countries where it is sweetened with crystalline fructose, like the U.S.³⁹ Yet, the Company obscures this reality by marketing Vitaminwater beverage with health-centered names such as “focus,” “endurance,” “refresh,” “defense” and “essential.” As a result of its use of such deceptive marketing techniques, the Company had to pay out \$1.2 million per the terms of 2015 settlement in a class action lawsuit.⁴⁰

The Company also promotes, funds, and occasionally co-hosts events for the “Get the Ball Rolling” program.⁴¹ While the Company claimed it took part in the program to address obesity, its ongoing participation confusingly groups sugary beverages into a health-focused program targeted towards children. The message to these young children makes it seem as if exercise and activity, but not reducing sugar consumption, are key to fighting against obesity.

Risk Analysis

The Company claims to substantially implement by disclosing risk factors in its Form 10-K⁴² filings. These filings only serve to further illustrate the need for more assertive oversight by the board. In our opinion, the Company remains highly vulnerable to the emerging medical developments on sugar’s negative impact. This threatens the Company’s reputation as it is alleged to be misinforming the public on issues of sugar and health.

The Company’s Form 10-K filing for the year ended December 31, 2017 lightly touch on future

³⁷ *Praxis Project v. Coca-Cola Co.*, P.30

³⁸ Tina Rosenberg, *Labeling the Danger in Soda*, N.Y. TIMES (March 30, 2016), <http://goo.gl/TnryHW>.

³⁹ <https://www.ecowatch.com/5-reasons-why-vitaminwater-might-be-just-as-bad-for-you-as-coke-1882051750.html>

⁴⁰ <https://www.truthinadvertising.org/wp-content/uploads/2014/12/Volz-v-Coca-Cola-final-approval.pdf>

⁴¹ *Praxis Project v. Coca-Cola Co.*, P.26, citing Stuart Cronauge, *Coca-Cola USA Sets Goal To Inspire Americans To Rediscover The Joy Of Activity*, COCA-COLA (May 13, 2013), <http://www.coca-colacompany.com/press-center/press-releases/coca-cola-gets-the-ball-rolling-for-a-fun-active-summer>.

⁴² *Coca Cola Basis for Exclusion* p. 7

risks by acknowledging some reduced demand and a shift in consumer preferences, but it stops far short of delving into the new science and potential damage to the Company this may pose. The closest the Company disclosure comes to discussing the core issues raised by the proposal is where the risk factors mentions the potential decrease in consumer demand and regulatory risks associated with “Increasing public concern about obesity; other health-related public concerns surrounding consumption of sugar-sweetened beverages....”⁴³

This is not fulfillment of the Proposal, which would require the Company to provide a more detailed and critical analysis of those “other health-related public concerns” given the volume of new science that has changed scientific understanding of the role of sugar in disease causation, and especially the role of sugar sweetened beverages. While the Company has made some efforts in gathering data on sugar from a nutritional aspect, judging from the publications cited by the Company, it has not made any strides in determining the potential loss in revenue from reputational damage that may result from the developing research that continues to uncover new, and increasingly harmful effects from incorporating sugar into ones diet, nor the reputational harm from its incomplete media responses that have mislead and confused the public and its shareholders.

Perhaps most importantly, the Company’s existing risk reporting omits discussion of the potential reputational and brand impact associated with the public relations efforts to “change the subject” from sugar to exercise, and the likely repercussions for the company as these efforts are brought to light.

The Company also does not address the impending legal actions on these issues, or their implications on its reputation. For instance, as discussed above, the Company is already on the receiving end of accusations in a federal lawsuit claiming it covered up links between drinking sugar-based products and their negative health impact, but is not discussing this potentially material litigation in its existing disclosures . Roger Collier of the Canadian Medical Association Journal noted “...if the lawsuit recently filed against The Coca-Cola Company...is any indication, companies that trade in sugary goods would be wise to beef up their in-house counsel.”⁴⁴ The Proposal’s request to disclose financial and reputational risks with a focus on sugar’s role in harmful health impacts would seem to encompass discussion of this important litigation.

II. THE PROPOSAL DOES NOT MICROMANAGE THE COMPANY AND THEREFORE THE PROPOSAL IS NOT EXCLUDABLE UNDER RULE 14A-8(i)(7)

The Company’s assertions of micromanagement are not grounded in a rationale consistent with the concept of micromanagement. Instead of claiming the Proposal is overly detailed, the Company Letter asserts that the Proposal is overly-broad – as if it neglects nuances of a complicated web of food business issues that are beyond the capacity of investors to grasp. The

⁴³ P. 10 <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/2018/2017-10K.pdf>

⁴⁴http://www.cmaj.ca/content/189/9/E378?ijkey=b6e19a81608c5f174ea2a295eb7ab47f3c287a0c&keytype2=tf_ipseasha

request for the report provides a good opportunity for the Board to educate investors on these issues – but it is not micromanagement.

In Staff Legal Bulletin 14 J, the Staff attempted to consolidate its discussion of micromanagement and noted an intent to consider the potential for micromanagement in proposals addressing timelines and methods. The Staff also noted that it was the staff’s intention to implement the framework “consistent with the Commission’s guidance in this area.” Therefore, it is crucial to apply the Bulletin with consideration of the Commission’s latest pronouncement on this issue which make it very clear that the Commission has not endorsed or proposed an absolute restriction against requests for timelines or specific methods. Quite to the contrary, the Commission in the 1998 Release - the most recent and authoritative Commission-level statement regarding the application of micromanagement, made it clear that requests regarding methods and timelines can be acceptable:

.... in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to *impose specific methods for implementing complex policies*. **Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to ordinary business.**

We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.

Accordingly, to apply the micromanagement doctrine consistent with the 1998 Release, if the proposal addresses a significant policy issue that is significant for the company, the appropriate questions for assessing micromanagement appear to be:

- Are **large differences** at stake as between the company’s approach and the proposal?
- Is it **practical** for shareholders to weigh in on the timelines or reasonable details included in the proposal?

Below we will assess these questions consistent with the 1998 Release.

Our conclusion is that there are large differences at stake and that it is practical for shareholders to weigh in on the reasonable details included in the proposal.

The Company Letter attempt to argue micromanagement is to assert that:

“The Proposal, in combination with the supporting statement, seeks to micromanage the

Company by effectively mandating an intricately detailed critical report on the impact of the Company's sugar products on public health, and consequently substituting management's judgment on this complex issue with that of the Company's shareholders, who as a group, are not in a position to make an informed judgment.”

Quite to the contrary, the Proposal is framed at a *macro* rather than micro level. It is neither overly prescriptive, nor seeks information at a level of detail that would be inappropriate for a shareholder report. It does not request “specific methods for implementing complex policy.” As stated in the resolved clause, the Proposal merely requests that the board of directors issue a report on Sugar and Public Health, and that it have the support of a group of independent and nationally recognized scientists and scholars providing critical feedback on the Company's sugar products marketed to consumers, especially those Coke products targeted to children and young consumers. It also says that the board’s report should include an assessment of risks to the Company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation. Certainly, these are policy issues that are relevant to shareholder understanding of the risks facing the company, whose brand is significantly tied up with issues related to sugar and its impact on public health. None of these requests qualify as micromanagement. Therefore, the Proposal is not excludable pursuant to Rule 14a-8(i)(7).

The Company Letter cites *PayPal Holdings, Inc.* (Mar. 6, 2018) and *Deere & Company* (Dec. 27, 2017) (concurring with the exclusion of a proposal requesting a reports on "net-zero" emissions of greenhouse gases) and *Ford Motor Company* (Mar. 2, 2004) (concurring with the exclusion of a proposal requesting the preparation and publication of scientific report regarding the existence of global warming or cooling where the report was required to include details such as the measured temperature at certain locations and the method of measurement, the effect on temperature of increases or decreases in certain atmospheric gases, the effects of radiation from the sun on global warming/cooling, carbon dioxide production and absorption).

We believe it is self-evident that the report requested by the current Proposal is not analogous to the precedents. The proposal requests a broad policy report, with critical input, and focuses on major emerging issues on which the Company appears vulnerable. It is neither too detailed, nor delving too deeply, and therefore is not excludable under Rule 14a-8(i)(7).

III. THE PROPOSAL DOES NOT CONTAIN FALSE OR MISLEADING STATEMENTS.

The language of the Proposal is neither false nor misleading, despite the Company’s misdirected approach to Rule 14a-8(i)(3) which is inconsistent with the Staff’s long-standing approach to this issue articulated in Staff Legal Bulletin 14 B. The arguments raised by the Proposal do not rise to the level of “objectively false and misleading” statements that merit Staff action to exclude them.

The Company Letter is out of step with Staff practice in review under Rule 14a-8(i)(3). The problem with the kinds of subjective arguments raised by the Company letter was explained in

Staff Legal Bulletin 14B⁴⁵ of September 15, 2004, where the Staff noted that the process of reviewing company no action letters had devolved to forcing the Staff to evaluate line-by-line company objections to the wording of proposals:

We believe that the staff's process of becoming involved in evaluating wording changes to proposals and/or supporting statements has evolved well beyond its original intent and resulted in an inappropriate extension of rule 14a-8(i)(3). In addition, we believe the process is neither appropriate under nor consistent with rule 14a-8(1)(2), which reads, "The company is not responsible for the contents of [the shareholder proponent's] proposal or supporting statement." Finally, we believe that current practice is not beneficial to participants in the process and diverts resources away from analyzing core issues arising under rule 14a-8.

Accordingly, we are clarifying our views with regard to the application of rule 14a-8(i)(3). Specifically, because the shareholder proponent, and not the company, is responsible for the content of a proposal and its supporting statement, we do not believe that exclusion or modification under rule 14a-8(i)(3) is appropriate for much of the language in supporting statements to which companies have objected. **Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:**

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

⁴⁵ "Unfortunately, our discussion of rule 14a-8(i)(3) in SLB No. 14 has caused the process for company objections and the staff's consideration of those objections to evolve well beyond its original intent. The discussion in SLB No. 14 has resulted in an unintended and unwarranted extension of rule 14a-8(i)(3), as many companies have begun to assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify exclusion of the proposal in its entirety. Our consideration of those requests requires the staff to devote significant resources to editing the specific wording of proposals and, especially, supporting statements."

There continue to be certain situations where we believe modification or exclusion may be consistent with our intended application of rule 14a-8(i)(3). In those situations, it may be appropriate for a company to determine to exclude a statement in reliance on rule 14a-8(i)(3) and seek our concurrence with that determination. Specifically, reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where:

- statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation;
- the company demonstrates objectively that a factual statement is materially false or misleading;
- In this regard, rule 14a-8(i)(3) permits the company to exclude a proposal or a statement that is contrary to any of the proxy rules, including rule 14a-9, which prohibits *materially* false or misleading statements. Further, rule 14a-8(g) makes clear that the company bears the burden of demonstrating that a proposal or statement may be excluded. **As such, the staff will concur in the company's reliance on rule 14a-8(i)(3) to exclude or modify a proposal or statement only where that company has demonstrated objectively that the proposal or statement is *materially* false or misleading.**

Applying this standard to the Company's letter, it becomes clear that the Company Letter's assertions **fall into the "not excludable" categories of statements:**

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

The Company Letter repeatedly asserts that the Proposal as well as the Proponent's supporting statement are misleading regarding targeting children and young consumers with Coke product advertisements. It repeatedly claims it does not market any of its products, sugary drinks or otherwise, directly to children under 12. The Company objects to Paragraph 4 of the supporting statement as it includes how the Company continues to directly market sugary drink to children, influencing their diets and health, claiming it to be false or misleading. Finally, the Company claims Paragraph 5 of the supporting statement is either false or misleading in that it discusses

the total ban on child targeted and interactive junk food advertising put in place by the American Academy of Pediatrics in 2011 as a response to concerns regarding child obesity. The Company claims this statement implies a falsehood because it does not engage in child-targeted advertising.

Their argument is based on a technical interpretation of their own rules, and without adequate attention to loopholes that, in practice, yield the opposite result.

While the company makes a technical argument based on the language of its internal rules to claim that it does not market to children, the reality is that those rules have exceptions through which substantial marketing to children takes place. Therefore, none of those statements are objectively false. As discussed above, examination of this issue by the proponent shows that the Company continues to market its sugary drinks to children under 12, as it excepts characters used in its marketing campaigns that directly appeal to this age group by categorizing them as “brand equity characters” if they were in use prior to their 2015 Responsible Marketing Policy implementation. Furthermore, the Company continues to advertise to children under 12 where the audience contains young children, but they make up less than 35% of the audience or where the audience demographics are unknown. The Company’s actions, therefore, demonstrate that while it may pose a technical argument based on the language of its internal rules to claim that it does not market to children, the reality is that those rules have exceptions through which substantial marketing to children is driven. Therefore, none of those statements are objectively false, and thus these assertions do not constitute exclusion-worthy assertions under SLB14B.

Similarly, the Company also claims shareholders will interpret the proposal as being limited to only the youngest consumers. The interchangeable use of “children under 12” or “children” or “young consumers” would not reasonably lead shareholders to interpret the Proposal as being limited to only the youngest consumers. Since 12 years of age is the threshold repeatedly maintained in the Company’s own policies for demarcating young consumers from the general consumer population, it is likewise used in the Proposal and supporting statement to describe the upper limit of an age range comprised of “children” or “young consumers”. This is not materially misleading as a fact that is likely to affect the decision-making process of shareholders in how to vote on the proposal.

The Company Letter also asserts the introductory paragraph of the Proposal would mislead shareholders into considering irrelevant issues raised where the Company similarly experienced an elevated level of risk. The shareholders, however, would not reasonably confuse the introductory statement on the Company history in Paragraph 1 with the focus of the Proposal. From the language of Paragraph 1 (“Our Company has *historically*...”), it is clear that the introductory paragraph merely reminds shareholders of the real risks faced by the Company in years past, when the rest of the proposal focuses on recent social and scientific developments. It is therefore, relevant background and not impermissible advocacy. This is not materially misleading as a fact that is likely to affect the outcome of shareholders decision on how to vote on the proposal. In addition, the Company has not demonstrated that any of the information contained in that passage is inaccurate. Accordingly, the Proposal is not excludable pursuant to Rule 14a-8(i)(3).

The Coca-Cola Company

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Rule 14a-8(i)(3)
Rule 14a-8(i)(7)
Rule 14a-8(i)(10)

December 14, 2018

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: The Coca-Cola Company - Shareowner Proposal Submitted by John C. Harrington

Dear Ladies and Gentlemen:

The Coca-Cola Company (the “*Company*”) submits this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 to notify the Securities and Exchange Commission (the “*Commission*”) of the Company’s intention to exclude from its proxy materials for its 2019 annual meeting of shareowners (the “*2019 Proxy Materials*”) a shareowner proposal and statement in support thereof (the “*Proposal*”) submitted by John C. Harrington (the “*Proponent*”). The Proposal was received by the Company on November 7, 2018. The Company requests confirmation that the Staff of the Division of Corporation Finance (the “*Staff*”) will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from its 2019 Proxy Materials for the reasons discussed below.

A copy of the Proposal and related correspondence from the Proponent are attached hereto as **Exhibit A**.

In accordance with *Staff Legal Bulletin No. 14D* (Nov. 7, 2008) (“*SLB No. 14D*”), this letter and its exhibits are being delivered by e-mail to shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), a copy of this letter and its exhibits also is being sent to the Proponent. Rule 14a-8(k) and *SLB No. 14D* provide that a proponent is required to send the Company a copy of any correspondence which the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional

correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned.

The Company currently intends to file its definitive 2019 Proxy Materials with the Commission on or about March 7, 2019.

The Proposal

The Proposal requests:

Be It, Therefore, Resolved, that shareholders request the board of directors issue a report on Sugar and Public Health, with support from a group of independent and nationally recognized scientists and scholars providing critical feedback on our Company's sugar products marketed to consumers, especially those Coke products targeted to children and young consumers. Such report to shareholders should be produced at reasonable expense, exclude proprietary or legally privileged information and be published no later than November 1, 2019, and include an assessment of risks to the company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation.

BASES FOR EXCLUSION OF THE PROPOSAL

I. Rule 14a-8(i)(10) – The Company Has Substantially Implemented The Proposal

A. Rule 14a-8(i)(10)

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if it has already substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission stated in 1976 that the exclusion is “designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.” *Exchange Act Release No. 12598* (Jul. 7, 1976). Originally, the Staff narrowly interpreted the predecessor to Rule 14a-8(i)(1) to allow exclusion of a proposal only if the proposal had been “fully effected” by the company. *SEC Release No. 34-19135* (Oct. 14, 1982). In 1983, however, the Commission recognized that this “formalistic” application of the rule “defeated its purpose” and therefore revised its interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” See *SEC Release No. 34-20091* (Aug. 16, 1983)(the “1983 Release”). The Commission subsequently codified this revised interpretation in *SEC Release No. 34-40018* (May 21, 1998). Accordingly, the actions requested by a proposal need not be “fully effected” by the company to be excluded; rather, to be excluded, they need only have been “substantially implemented” by the company. See the 1983 Release.

Applying this standard, the Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (Mar. 28, 1991). Differences between a company’s action’s and a shareholder proposal are permitted where the company’s actions satisfactorily address the proposal’s essential objectives. For example, see e.g., *Walgreens Boots Alliance, Inc.* (Nov. 13, 2018) (concurring in the exclusion of a proposal that requested a report describing the company’s implementation plans ensuring how it policies and practices were advancing and not undermining the U.N. Sustainable Development Goals (“SDGs”) where the company’s Corporate Social Responsibility Report reported on its efforts to contribute to the SDGs); *Apple, Inc.* (Dec. 11, 2014) (concurring in the exclusion of a proposal that requested the establishment of a single Public Policy Committee to oversee various governance and policy issues because the company had existing systems and controls, including multiple board committees that oversee, among other things, the matters listed in the proposal); *Entergy Corp.* (Feb. 14, 2014) (concurring in the exclusion of a proposal calling for a report to achieve specific reductions in greenhouse gas emissions even though the company’s existing environmental sustainability disclosures and report did not address the ability to make substantial greenhouse gas emissions reductions); *Walgreen Co.* (Sept. 26, 2013) (permitting exclusion of a proposal requesting elimination of supermajority voting requirements in the company’s governing documents where the company had eliminated all but one of the supermajority voting requirements); *Exelon Corp.* (Feb. 26, 2010) (concurring in the exclusion of a proposal that requested a report on different aspects of the company’s political contributions when the company had already adopted corporate political contribution guidelines and issued a political contributions report that, together, addressed the essential objective of the proposal); *International Business Machines* (Jan. 4, 2010) (concurring in the exclusion of a proposal that requested periodic reports of the Company’s “Smarter Planet” initiative, including relating to job openings, where the company had already reported on some of those matters using the company’s dedicated “Smarter Planet” web portal and others through other outlets, including the company’s general investor website, employment websites and through the company’s social media accounts); *The Dow Chemical Co.* (Mar. 5, 2008) (concurring in the exclusion of a proposal that requested a “global warming report” discussing how the company’s efforts to ameliorate climate change may have affected the global climate when the company had already made statements about its efforts related to climate change in various corporate documents and disclosures); and *Masco Corp.* (Mar. 29, 1999) (permitting exclusion of a proposal seeking adoption of a standard for independence of the company’s outside directors because the company had adopted a standard that, unlike the one specified in the proposal, added the qualification that only material relationships with affiliates would affect a director’s independence).

Additionally, the Staff has concurred in the exclusion of proposals requesting that a company’s board of directors prepare a report on a particular corporate initiative when the company has published information about that initiative on its website. *See, e.g., Mondalēz International, Inc.* (Mar. 7, 2014) (concurring that a proposal urging the board of directors to prepare a report on the company’s process for identifying and analyzing potential and actual

human rights risks in its operations and supply chain was substantially implemented through relevant information on its website); and *Gap, Inc.* (Mar. 16, 2001) (concurring that a proposal requesting that the board of directors prepare a report on the child labor practices of the company's suppliers was substantially implemented when the company had published information on its website with respect to its vendor code and monitoring programs).

B. The Company has substantially implemented the Proposal through its engagement and collaboration with Access to Nutrition Foundation, which prepared the Global Access to Nutrition Index released in 2013, 2016 and 2018, and the U.S. Spotlight Index, which was released on November 15, 2018

The Proposal requests that the board of directors issue a report focusing broadly on the topics of sugar and public health, “with support from a group of independent and nationally recognized scientists and scholars providing critical feedback on our Company’s sugar products marketed to consumers, especially those Coke products targeted to children and young consumers.” The Proposal broadly identifies sugar and public health as the topics on which the requested report should focus. The resolution also broadly asks for the report to contain feedback on the Company’s sugar products marketed to consumers, and in particular, “products targeted to children and young children,” without any further specificity. The resolution also does not address the geographic scope of the requested report.

The Company has already collaborated with the Access to Nutrition Foundation (“ATNF”), a third-party, on the release of a report that encompasses “sugar and public health” and addresses the essential objectives sought by the Proposal. ATNF, is an independent, non-profit organization based in the Netherlands that publishes analysis and commentary on food and beverage manufacturers’ efforts to improve consumers’ access to nutritious foods and beverages. ATNF is funded by the Bill & Melinda Gates Foundation, the Dutch Ministry of Foreign Affairs and the Robert Wood Johnson Foundation.¹ ATNF hosts the Access to Nutrition Index (the “*Global Index*”), with the aim of encouraging companies to both increase access to healthy products and to responsibly exercise their influence on consumers’ choice and behavior. The Index was designed through an extensive, multi-stakeholder consultative process to ensure that it would be a useful tool for different stakeholder groups (including the World Health Organisation, academia, civil society organizations, industry and investors) and that it would reflect the latest thinking and practices related to the private sector’s role in nutrition. The Global Index was first released in 2013 and was updated in 2016 and 2018, each time with extensive input and consultation from the Company to assess the Company’s policies and products with regard to nutrition and sugar, in particular.

In November 2018, ATNF released the U.S. Spotlight Index (the “*Spotlight Index*” and, together with the Global Index, the “*Indexes*”), a separate report on ten leading food and

¹ See <https://www.accesstonutrition.org/who-we-are>

beverage manufacturers' performance in the U.S. market as it relates to healthy product portfolios and corporate transparency to assist consumers in making healthy choices (i.e., through labelling and marketing).² The Company provided ATNF with data as part of this effort, after an extensive internal collaborative process. ATNF prominently addresses sugar in its report and each publication of the Index, as this is ATNF's key ingredient of focus for the Company. In the Spotlight Index, ATNF recommends that the companies should "[d]efine a comprehensive set of targets such as reducing salt, sugar and saturated fat."³ For example, ATNF reported in its 2018 Global Index that the Company "has continued its efforts to develop new low or no-calorie products. [The Company] reduced sugar in 200 products in 2016 and defined a target to reduce sugar in 500 products in 2017, out of a total product portfolio of 3,600 products."⁴ ATNF also looked at priority areas of improvement for each of the companies in the Indexes, thereby providing critical feedback. As a result of the thorough and detailed analysis conducted by ATNF, the analysis in the Spotlight Index reflects Company performance in 2016 and may not take into account all progress made in the areas of nutrient labeling, ingredient reformulation and new product development since that time. For example, the Company continues to reduce sugar in its beverages, to expand the portfolio of new drinks it offers to consumers such as tea, juice, water and coffee, and to provide smaller package sizes to help people drink less sugar. In 2017, the Company reported that it had reduced sugar in more than 300 of its beverages, globally, and in more than 20 markets, it had launched new Coca-Cola Zero SugarTM.⁵ For example, in a key market like Mexico, the Company offers a broad portfolio that includes 75 brands with 45% of its products that are low or no-sugar. The Company has reduced the calorie content of its portfolio by 21% within the last decade and today offers 260 products with less than 100 calories. This demonstrates that the Company continues to change its recipes to reduce sugar in its beverages.⁶ Another example is in Chile where Coca-Cola Chile's portfolio is composed of 95% low and no-calorie beverages.⁷ Through the Company's efforts to reduce the sugar in its beverages in that country, to date, the system has removed 33,000 tons of sugar from the market across its portfolio of Chilean beverages.⁸ And in places as diverse as Europe, Australia, Brazil and the United States, the Coca-Cola system has led industry in its commitments to reduce sugar.⁹

² For The Coca-Cola Company, see page 181 of the U.S. Spotlight Index: <https://www.accesstonutrition.org/us-spotlight-index>

³ See page 11: <https://www.accesstonutrition.org/us-spotlight-index>

⁴ See <https://www.accesstonutrition.org/index/global.2018/company/coca-cola>

⁵ See page 9: <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/2018/2017-Sustainability-Report-The-Coca-Cola-Company.pdf>

⁶ See <https://www.coca-colamexico.com.mx/historias/hemos-reducido-el-contenido-calorico-de-nuestro-portafolio>

⁷ See <https://www.cocacoladechile.cl/historias/productos-una-diferencia-positiva>

⁸ See <https://www.coca-colacompany.com/stories/how-coca-cola-chile-got-more-consumers-trying-coke-zero>

⁹ See **Brazil:** <http://www.brazil.gov.br/about-brazil/news/2018/11/brazil-to-cut-144-000-tons-of-sugar-from-food-and-beverages>; **Australia:** <http://www.australianbeverages.org/industry-sugar-pledge/>; **Europe:** <https://www.unesda.eu/mediaroom/european-soft-drinks-sector-commits-reduce-added-sugars-10-beverage-industry-joins-forces-triple-pace-sugar-reduction-2020/>; **United States:** <https://www.balanceus.org/industry-efforts/cutting-sugar-american-diet/>

The following statement from the Spotlight Index describes the approach and methodology of the report:

“The Index systematically assesses the extent to which the ten largest food and beverage manufacturers in the United States are working to address the nation’s high rates of obesity and diet-related diseases. (...) The U.S. Index focuses on the specific health and nutrition context in the United States. The Index ranks the manufacturers in two ways. The Corporate Profile assesses the policies, practices and disclosure of the manufacturers to examine their contributions to increasing people’s access to affordable, healthy foods and beverages. This includes companies’ effort to improve the nutritional quality of their products; how they price and distribute their healthy products; as well their marketing, product labeling and support for public health education programs. How rigorously companies define products’ healthiness, and whether their definitions are based on dietary guidelines, is part of the assessment.”¹⁰

While the Indexes reflect a third-party interpretation of the Company’s actions to support customers’ health and nutrition, the Company acknowledges the index findings and recognizes the role it plays in addressing health challenges. Although the board of directors of the Company did not itself issue the report on sugar and public health, as requested by the Proponent, the Company’s collaboration with ATNF, a respected and independent non-profit organization, culminated in the recent issuance of the Spotlight Index. It is unclear, considering the Proponent’s vague and broad request for a report on sugar and public health, how adopting the Proposal would require the Company to do anything other than what has already been covered by the Indexes. Part of the value of ATNF’s findings is that the Company now has a benchmark and improved awareness of where it stands compared to other manufacturers in the food and beverage industry.

In addition, the Proponent’s request to include critical feedback on the Company’s sugar products marketed to children has been substantially implemented. The Company respects the role of parents and caregivers by not marketing any of its products, including milk, juice and water, directly to children under 12, which is a core principle of the Company’s global Responsible Marketing Policy (the “Policy”)¹¹. The Policy applies to any media that directly targets children under 12, including television, print media, websites, social media, movies and SMS/email marketing. The Company defines media that directly targets children under 12 as media in which 35% or more of the audience is composed of children under 12, where this information is possible to obtain. The Company will not design its marketing communications in

¹⁰ See page 6 - https://www.accesstonutrition.org/sites/us18.atnindex.org/files/atnf_us_spotlight_index.2018.pdf

¹¹ The Responsible Marketing Policy is available at <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/our-company/responsible-marketing-policy.pdf>

a way that directly appeals to children under 12. The Company's approach to marketing is consistent with the guiding principles of the International Chamber of Commerce Marketing & Advertising Code and its Framework for Responsible Food and Beverage Marketing Communication.¹²

Moreover, the Policy applies to the sales and marketing of beverages in schools. The [Company's] Global School Beverage Guidelines are part of the Policy and were developed to establish principles to guide the way the Company approaches the availability of beverages in schools across the more than 200 countries and territories where it does business.¹³ The Company monitors compliance with the Policy by making use of the regular analysis conducted by Accenture on behalf of International Food & Beverage Alliance (IFBA), which measures how companies in the food and beverage industry comply with IFBA's responsible marketing commitment.¹⁴ In 2016 and 2017, the Accenture report indicated that the Company met its commitment in child-directed media 95% of the time in television advertising and 100% in print advertising. IFBA contracted with five Self-Regulatory Organization (SROs) to verify compliance of IFBA companies' marketing communications in select countries with the IFBA policy on certain digital media platforms. The monitoring determined that the Company's digital marketing was in compliance with IFBA's responsible marketing policy. Also, while the Proposal calls for the report to provide critical feedback on products targeted to "children and young consumers," the Proposal does not define these groups.

The Proposal also requested that the report on sugar and public health include "an assessment of risks to the company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation." The Company's existing disclosures already acknowledge this risk. For example, the following risk factors, which were included in the Company's Form 10-K for the year ended December 31, 2017, provide information on how these risks may affect its business, financial condition or results of operations in future periods:

“Obesity and other health-related concerns may reduce demand for some of our products.

There is growing concern among consumers, public health professionals and government agencies about the health problems associated with obesity. Increasing public concern about obesity; other health-related public concerns surrounding consumption of sugar-sweetened beverages; possible new or increased taxes on sugar-sweetened beverages by government entities to reduce consumption or to raise revenue; additional governmental regulations concerning

¹² The International Chamber of Commerce Marketing & Advertising Code <https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code/>. The Framework for Responsible Food and Beverage is available at <https://iccwbo.org/publication/framework-for-responsible-food-and-beverage-marketing-communications-2012/>

¹³ The Global School Beverage Guidelines are available at <https://www.coca-colacompany.com/stories/global-school-beverage-guidelines>

¹⁴ See <https://www.coca-colacompany.com/stories/responsible-marketing>

the marketing, labeling, packaging or sale of our sugar-sweetened beverages; and negative publicity resulting from actual or threatened legal actions against us or other companies in our industry relating to the marketing, labeling or sale of sugar-sweetened beverages may reduce demand for, or increase the cost of, our sugar-sweetened beverages, which could adversely affect our profitability.

(...)

If we do not address evolving consumer preferences, our business could suffer.

Consumer preferences have evolved and continue to evolve as a result of, among other things, health, wellness and nutrition considerations, especially the perceived undesirability of artificial ingredients and obesity concerns; shifting consumer demographics, including aging populations; changes in consumer tastes and needs; changes in consumer lifestyles; location of origin or source of products and ingredients; and competitive product and pricing pressures. If we fail to address these changes, or do not successfully anticipate future changes in consumer preferences, our share of sales, revenue growth and overall financial results could be negatively affected.”¹⁵

Accordingly, as the Proposal has already been substantially implemented by ATNF’s release of the Global Indexes in 2013, 2016 and 2018 and the Spotlight Index in November 2018, which included a scorecard for the Company, the Company is of the view that it may properly omit the Proposal from its 2019 Proxy Materials pursuant to Rule 14a-8(i)(10).

II. Rule 14a-8(i)(7) – The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7), As It Relates To The Company’s Ordinary Business Operations

A. Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials that “deals with matters relating to the company’s ordinary business operations” in an effort “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholder meeting.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could

¹⁵ See page 10 <https://www.sec.gov/Archives/edgar/data/21344/000002134418000008/a2017123110-k.htm>

not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

As recently explained by the Staff, the consideration of the excludability of a proposal based on micromanagement looks only to the degree to which a proposal seeks to micromanage and “a proposal may probe too deeply into matters of a complex nature if it “involves intricate detail.” *Staff Legal Bulletin No. 14J* (October 23, 2018) (“**SLB No. 14J**”). The excludability of a proposal would be determined “on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” The Staff further explained that a “proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds.” See, e.g., *PayPal Holdings, Inc.* (Mar. 6, 2018) (concurring with the exclusion of a proposal requesting the preparation of a report evaluating the feasibility of achieving by 2030 “net-zero” emissions of greenhouse gases from parts of the business directly owned and operated by the company and the feasibility of reducing other emissions associated with the company’s activities); *Deere & Company* (Dec. 27, 2017) (concurring with the exclusion of a proposal requesting the preparation of a report evaluating the potential to voluntarily address its role in climate change by achieving “net-zero” emissions of greenhouse gases by a fixed future target date); *Ford Motor Company* (Mar. 2, 2004) (concurring with the exclusion of a proposal requesting the preparation and publication of scientific report regarding the existence of global warming or cooling where the report was required to include details such as the measured temperature at certain locations and the method of measurement, the effect on temperature of increases or decreases in certain atmospheric gases, the effects of radiation from the sun on global warming/cooling, carbon dioxide production and absorption, and a discussion of certain costs and benefits).

B. The Proposal Seeks to “Micromanage” the Company by Probing Too Deeply Into Matters of a Complex Nature on Which Shareholders, as a Group, Would Not Be in a Position to Make an Informed Judgment

The Proposal, when considered within the framework explained by the Staff in SLB 14J and in combination with the supporting statement, seeks to micromanage the Company to such a degree that exclusion is proper. The overly broad request that the board of directors issue a report on sugar and public health vastly over simplifies the complex issues of diet, sugar reduction and initiatives across the food and beverage industry to help consumers control their intake of sugar, which have involved both public and private stakeholders. The Proponent acknowledges the complexity by calling for the report to be prepared “with support from a group of independent and nationally recognized scientists and scholars providing critical feedback on our Company’s sugar products.” The type of multifaceted and detailed report containing critical feedback on sugar products requested by the Proponent would indeed require the involvement and input of a number of cross-function teams and Company management as well as input from third-party experts and specialists. Indeed, the Access to Nutrition Index, discussed above, which rates food

and beverage manufacturers' nutrition-related policies, practices and disclosures worldwide on a recurring basis, was designed through an extensive, multi-stakeholder consultative process "to ensure that the Index would be a useful tool for different stakeholder groups (including the World Health Organisation, academia, civil society organisations, industry and investors)."¹⁶ As discussed above, the Company was one of the ten manufacturers assessed for its contribution to addressing nutrition challenges and its 2018 scorecard details the Company's main areas of strength and priority areas for improvement.¹⁷

Also, the complexity of sugar reduction cannot be approached in a vacuum. Sugar reduction is a global issue involving both governments and companies. For example, in February 2017, the European soft drinks industry announced a new commitment to reduce the average added sugar content of its still and carbonated soft drinks by 10% between 2015 and 2020. The Company reported that it and its bottling partners "have been working closely with the rest of the European soft drinks industry, and national associations, to advance this process, ensuring that the sector responds to consumers' changing preferences regarding sugar. It also wants to ensure that the industry responds to calls from policy-makers at EU and national level, for reformulation and sugar reduction across the food industry."¹⁸

Further, the Proponent also calls for the report to "include an assessment of risks to the company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation." The Company has already disclosed in its Form 10-K for the year ended December 31, 2017, certain risk factors associated with obesity and other health-related concerns.¹⁹ This reporting of any incremental assessment of risk, not already required of the Company, would be an indication that the Proposal is seeking to micromanage the Company.

The Proposal, in combination with the supporting statement, seeks to micromanage the Company by effectively mandating an intricately detailed critical report on the impact of the Company's sugar products on public health, and consequently substituting management's judgment on this complex issue with that of the Company's shareholders, who as a group, are not in a position to make an informed judgment.

III. Rule 14a-8(i)(3) – Certain Statements in the Proposal May Be Omitted Under Rule 14a-8(i)(3) Because They Are Materially False and Misleading

Rule 14a-8(i)(3) permits a company to omit a proposal or supporting statement, or portions thereof, that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false and misleading statements in proxy materials. Under Rule 14a-9,

¹⁶ See <https://www.accessnutrition.org/foundation/about-us>

¹⁷ See page 181 of the U.S. Spotlight Index: <https://www.accessnutrition.org/us-spotlight-index>

¹⁸ See <https://www.coca-colacompany.com/stories/european-soft-drinks-sector-commits-to-10-sugar-reduction-by-2020>

¹⁹ See page 10 <https://www.sec.gov/Archives/edgar/data/21344/000002134418000008/a2017123110-k.htm>

false and misleading statements of material fact include statements that impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal or immoral conduct or associations, without factual support. The Commission has explained that the purpose of permitting a proponent to include a supporting statement is that it "can provide shareholders with background information that may be helpful in considering the proposal." Release No. 34-20091. The Staff has also permitted the exclusion of proposals or portions of the supporting statement that are unrelated or irrelevant to the subject matter of the proposal. *See Bob Evans Farms, Inc.* (June 26, 2006) (concurring with the exclusion of a portion of a supporting statement requesting that stockholders call a significant stockholder of the company to discuss the resolution); *Piper Jaffray Companies* (February 24, 2006) (concurring with the exclusion of a portion of a supporting statement of a board declassification proposal stating that members of management "have stated a disregard for shareholders' interests").

The Proposal as well as the Proponent's supporting statement includes the following statements that we believe are materially false and misleading in violation of Rule 14a-9:

A. The Proposal requests that the report on Sugar and Public Health include critical feedback on the Company's sugar products marketed to consumers, "especially those Coke products targeted to children and young consumers." As discussed above, the Company respects the role of parents and caregivers and therefore does not market any of its products, directly to children under 12, which is a core principle of the Policy. The Proponent has colocated the words "children" and "young consumers" but has not drawn any distinction between them. While the Proposal does not define a range of ages covered by "children and young consumers," because the Proposal only references "young consumers" once, and otherwise the Proposal, including the supporting statement, exclusively references "children," shareholders are likely to interpret this to mean only the youngest consumers. The Company therefore believes that the portion of the Proposal stating "especially those Coke products targeted to children and young consumers" is an objectively false statement since, as discussed above, the Company does not market any of its products, sugary drinks or otherwise, directly to children under 12.

B. Paragraph 1 of the Proponent's supporting statement: ***Whereas**, our Company has historically been involved in multiple lawsuits and controversies, including but not limited to, employee labor and racial discrimination issues, apartheid in South Africa, violence in foreign countries related to bottling franchises, environmental issues, including related water quality and scarcity issues, animal testing, consumer issues, including labeling of products, packaging and containers, use of genetically modified organisms, air pollution.*

Paragraph 1 is wholly unrelated and irrelevant to the Proposal requesting the issuance of a report on sugar and public health and does not provide the Company's shareholders with any information that would aid them in deciding whether or not to vote in favor of the Proposal. A proposal styled about sugar and public health should not be construed as a way to debate unrelated issues. There is no demonstrable or reasonably intuitive link between the items listed

by the Proponent and sugar and public health, and the Proposal does not even attempt to draw one. After discussing these irrelevant issues in the first paragraph, the Proposal transitions to discussing “health and safety issues of our Company’s beverages” by calling such health and safety issues “more important[]” than the irrelevant issues raised in the first paragraph. There is a particular risk that a proposal will mislead shareholders into considering unrelated issues when determining how they will vote where, as here, the irrelevant issues focus on controversial and widely debated topics like labor relations, environmental issues, animal testing, and genetically modified organisms. Accordingly, we believe that paragraph 1 of the Proponent’s supporting statement is excludable under Rule 14a-8(i)(3).

- C. Paragraph 4 of the Proponent’s supporting statement: ***Whereas**, our Company continues to directly market sugary drink with advertising directly influencing children’s food preferences, diets and health.*

As discussed above, the Company does not market any of its products, including sugary drinks, directly to children under 12. Accordingly, since this is a false statement, we believe that paragraph four of the Proponent’s supporting statement is excludable under Rule 14a-8(i)(3).

- D. Paragraph 5 of the Proponent’s supporting statement: ***Whereas**, in 2011, the American Academy of Pediatrics released a policy statement calling for a total ban on child targeted and interactive junk food advertising as a response to concerns regarding childhood obesity.*

As discussed above, the Company does not market any of its products, including sugary drinks, directly to children under 12. This statement falsely implies that the Company engages in child targeted and interactive junk food advertising. Accordingly, we believe that paragraph five of the Proponent’s supporting statement is excludable under Rule 14a-8(i)(3).

Based on the foregoing, we respectfully request that the Staff confirm that it will not recommend enforcement action to the Commission if the Company omits from the Proposal the words “especially those Coke products targeted to children and young consumers” and omits paragraphs 1, 4 and 5 of the supporting statement from its Proxy Materials.

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
December 14, 2018
Page 13

CONCLUSION

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2019 Proxy Materials in reliance on Rules 14a-8(i)(7) and 14a-8(i)(10).

We respectfully request that the Staff concur with the Company's view and confirm that it will not recommend enforcement action to the Commission if the Company omits the Proposal and supporting statement from its 2019 Proxy Materials. If you have any questions or need additional information, please feel free to contact me at (404) 676-2187. When a written response to this letter is available, I would appreciate your sending it to me by e-mail at jkamenz@coca-cola.com.

Sincerely,


A. Jane Kamenz
Securities Counsel

Enclosures

cc: John C. Harrington
Jennifer Manning (The Coca-Cola Company)
Mark E. Preisinger (The Coca-Cola Company)

Exhibit A

Copy of the Proposal and Supporting Statement and Related Correspondence

Jane Kamenz

From: SHAREOWNER SERVICES
Sent: Thursday, November 8, 2018 1:33 PM
To: Mark Preisinger; Jennifer Manning; Jane Kamenz; Ashna Zaheer
Subject: FW: Shareholder proposal - John Harrington
Attachments: KO 2019 Final.pdf; coke proof ltr 2019.pdf; DOC001.pdf
Importance: High

The attached shareholder proposal from John Harrington was received in the Shareowner Services email box last evening at 6:54 p.m.



is happy to Share a Coke with you

Karen V. Danielson
Shareowner Services Manager

The Coca-Cola Company
One Coca-Cola Plaza
USA 11488
Atlanta, Georgia 30313

karendanielson@coca-cola.com
T (404) 676-4986
M (404) 317-9846

Classified - Confidential

From: Brianna Harrington <brianna@harringtoninvestments.com>
Sent: Wednesday, November 7, 2018 6:54 PM
To: SHAREOWNER SERVICES <shareownerservices@coca-cola.com>
Cc: John Harrington: <john@harringtoninvestments.com>
Subject: Shareholder proposal
Importance: High

Good afternoon,

Please confirm the receipt of this email and the attached documents for our shareholder proposal. Thank you!

Brianna Harrington



November 7, 2018

The Coca-Cola Company
Office of the Secretary
P.O. Box 1734
Atlanta, GA 30301

RE: Shareholder Proposal

Dear Corporate Secretary,

As a shareholder in the Coca-Cola Company, I am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the Coca-Cola Company's Proxy Statement for the 2019 annual meeting of shareholders.

I am the beneficial owner of at least \$2,000 worth of the Coca-Cola Company stock. I have held the requisite number of shares for over one year, and plan to hold sufficient shares in the Coca-Cola Company through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Harrington", is written over the word "Sincerely,".

John C. Harrington

President
Harrington Investments, Inc.





KO – 2019

Whereas, our Company has historically been involved in multiple lawsuits and controversies, including but not limited to, employee labor and racial discrimination issues, apartheid in South Africa, violence in foreign countries related to bottling franchises, environmental issues, including related water quality and scarcity issues, animal testing, consumer issues, including labeling of products, packaging and containers, use of genetically modified organisms, air pollution;

Whereas, more importantly, the most serious issues continue to be related to the public health and safety impacts of our Company's beverages, including syrups and sugary drinks, and the growing national health epidemic relating to increasing uses of sugar in our diet;

Whereas, our Company continues to be the target of multiple campaigns related to our Company's products that contribute to general level of decline in public health of consumers, including reports that 1 in 3 U.S. children born in the year 2000 will develop diabetes, resulting from poor diet, as increase in obesity in turn increases the risk of diabetes, hypertension, heart disease, cancers, asthma, arthritis, reproductive complications and premature death;

Whereas, our Company continues to directly market sugary drinks with advertising directly influencing children's food preferences, diets and health;

Whereas, in 2011, the American Academy of Pediatrics released a policy statement calling for a total ban on child targeted and interactive junk food advertising as a response to concerns regarding childhood obesity;

Whereas, public pressure against junk food and sugary drinks linked to obesity and diabetes, has led to numerous community campaigns to impose local taxes on sugary beverages, which include



our products, to which our Company has responded by lobbying efforts in numerous state legislatures to preempt local control or restrict local taxation on our Company's products linked to obesity and diabetes;

Whereas, shareholders believe our Company should be part of the solution to solving the problem of the obesity epidemic in working with healthcare professionals and experts in diet and nutrition, not promoting advertising campaigns and funding Global Energy Balanced Network to shift the blame from poor diet causing obesity to lack of exercise;

Be It, Therefore, Resolved, that shareholders request the board of directors issue a report on Sugar and Public Health, with support from a group of independent and nationally recognized scientists and scholars providing critical feedback on our Company's sugar products marketed to consumers, especially those Coke products targeted to children and young consumers. Such report to shareholders should be produced at reasonable expense, exclude proprietary or legally privileged information and be published no later than November 1, 2019, and include an assessment of risks to the company's finances and reputation associated with changing scientific understanding of the role of sugar in disease causation.



November 7, 2018

Office of the Secretary
The Coca Cola Company
P.O. Box 1734
Atlanta, GA 30301

Account #: ***
Reference #: AM-2176954
Questions: Please call Schwab
Alliance at 1-800-515-2157.

RE: Account * JOHN C HARRINGTON TTEE HARRINGTON INVEST INC 401K PLN FBO JOHN C HARRINGTON**

Dear Chief Executive Officer,

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the John C. Harrington 401K plan account and which holds in the account 100 shares of common stock in the Coca-Cola Company. These shares have been held continuously for at least one year prior to and including November 7, 2018.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,
Michael Woolums
Advisor Services
2423 E Lincoln Dr
Phoenix, AZ 85016-1215

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

Schwab Advisor Services™ serves independent investment advisors, and includes the custody, trading, and support services of Schwab.