



DIVISION OF
CORPORATION FINANCE

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

March 12, 2019

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: McDonald's Corporation
Incoming letter dated January 21, 2019

Dear Ms. Ising:

This letter is in response to your correspondence dated January 21, 2019 concerning the shareholder proposal (the "Proposal") submitted to McDonald's Corporation (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 from the Proponent dated February 22, 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

March 12, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: McDonald's Corporation
Incoming letter dated January 21, 2019

The Proposal requests that the board create a special board committee on food integrity to restore public confidence in the Company's reputation for food quality and integrity. The committee should assess the recent breaches of safety and security of the Company's restaurants' food service as well as long-term concerns and criticism regarding food quality, recommending any necessary improvements in governance, sanitation and safety systems necessary to instill in the Company's culture the highest standards of food quality and security.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates to the products offered for sale by the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Michael Killoy
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

SANFORD J. LEWIS, ATTORNEY

February 22, 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: Shareholder Proposal to McDonald's Corporation Regarding Food Management Risks on Behalf of John C. Harrington


Ladies and Gentlemen:

John C. Harrington (the "Proponent") is beneficial owner of common stock of McDonald's Corporation (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 January 21, 2019 ("Company Letter") sent to the Securities and Exchange Commission by Elizabeth Ising of Gibson Dunn. 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 Elizabeth Ising of Gibson Dunn.

Our response includes a Summary and detailed Analysis and Response.

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 2019 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: Elizabeth Ising

SUMMARY
Response to No Action Request
2019 Proxy Season

McDonalds
Proposal for Special Board Committee on Food Safety and Integrity

The Proposal asks that the board of directors create a special Board Committee on Food Integrity to restore public confidence in our Company's reputation for food quality and integrity. The committee should assess the recent company breaches of safety and security of McDonald's restaurants' food service as well as long-term concerns and criticism regarding food quality, recommending any necessary improvements in governance, sanitation, and safety systems necessary to instill in our Company's culture the highest standards of food quality and security. The proposal also notes in its supporting statement that the proposed committee will help to fulfill the board's fiduciary duties for effective oversight on food security and integrity - a moral and legal obligation of the board.

The issue of food quality and security has become a significant policy issue for the Company as a result of a series of events during the last couple of years that should be raising flags in the boardroom. Compounding the general concerns of the public and public health community regarding the role of fast food and McDonald's in particular in obesity, events in the last couple of years have generated public health alerts regarding McDonald's operations. Recent media reports, problems and allegations have been raised regarding McDonald's operations in India, the United Kingdom, Russia, and Canada. For instance:

- In the US, there was an outbreak of a parasitic infestation resulting in the pulling of lettuce from 3000 McDonald's restaurants with a total of 511 laboratory-confirmed cases of Cyclospora infection reported in people who consumed salads from McDonald's restaurants. Most people infected with Cyclospora develop diarrhea, with frequent, sometimes explosive, bowel movements. Other common symptoms include loss of appetite, weight loss, stomach cramps/pain, bloating, increased gas, nausea, and fatigue.
- The Times of India reported that those dining at McDonald's face "potential health hazards" with the company's India subsidiary telling the Times of India that they "have not been able to verify" that particular restaurants are complying with applicable McDonald's standards including standards for safety and quality.
- In Russia, 44 McDonald's branches were found to be in breach of sanitary rules by a government consumer watchdog agency.
- In the United Kingdom, fecal bacteria were found in ice.
- In Canada, a pregnant woman ordered a latte and received cleaning fluid instead of coffee -

which was reportedly not the first time that this had happened.

The current Proposal provides an opportunity for the Company to bring focused, board level oversight to these issues. The vehicle of a special committee is utilized as the best available governance strategy to encourage allocation of focused responsibility and accountability to among board members and Company priorities.

As a Delaware corporation, the approach of the Proposal is a well-documented governance strategy, allowing the shareholders to urge the Company to establish a vehicle for providing a contractual level of clarity regarding the responsibility and focus of individual board members. For instance, the responsibility to approve a report or policy of the Company can be assigned to a committee, rather than to the board as a whole. See discussion below regarding decision of Delaware Supreme Court in *In re Walt Disney Co. Derivative Litigation*, 906 A.2d 27, 53-54 (Del. 2006) which described the duties of Disney's compensation committee as a "charter-imposed duty," the consequences of which was to allocate decision-making on compensation to the committee members rather than the board as a whole.

Thus, the current Proposal is correctly framed as a governance initiative to encourage the Board to bump up its responsiveness to the emerging issues of food safety and security, and to add clarity to the fiduciary responsibilities of board members to respond to the apparent crisis. As a governance proposal, and as a proposal that addresses a significant policy issue for the Company, we urge the Staff to find that the Proposal is not excludable pursuant to Rule 14a-8(i)(7).

THE PROPOSAL

Whereas, our company has over 36,000 restaurants in over one hundred countries and our company has joined with Alliance for a Healthier Generation to "increase customers access to fruits, vegetables, low-fat dairy, and water options and help families make informed choices",

Whereas, however, the food industry is contributing to the growing global epidemic of health issues:

- The Centers for Disease Control reports that 1 in 3 United States children born in the year two thousand will develop diabetes, resulting from poor diet.
- Childhood obesity greatly increases the risk of diabetes, hypertension, heart disease, cancers, asthma, arthritis, reproductive complications and premature death.
- A study from the Institute of Medicine of the National Academies (IOM) concluded that fast food marketing influences children's food preferences, diets and health.
- A study by the (IOM) found childhood obesity is responsible for \$14.1 billion in annual United States direct medical costs.
- In 2011, the American Academy of Pediatrics released a policy statement calling for a total ban on child targeted television and interactive digital junk food advertising as a response to concerns regarding childhood obesity.
- In the absence of long-term testing to confirm safety of genetically modified foods for health, the company is under pressure to eliminate the use of GMOs;

Furthermore, numerous health establishments/medical institutions terminated or refused to renew their contracts, and/or ended partnerships and associations with McDonald's;

- Allina Health, the not-for-profit parent of Abbott Northwestern Hospital, decided to end its contract with McDonald's a decade early, booting the store off the Minneapolis hospital premises.
- Children's Hospital Los Angeles and Driscoll Children's Hospital closed their McDonald's.
- Cleveland Clinic closed its McDonald's.

Whereas, a McDonald's franchise in Canada mistakenly served cleaning fluid to a pregnant customer instead of a coffee latte;

Whereas, our Company stopped selling salads from 3,000 restaurants in the Midwest after health experts announced more than one hundred people had been

infected by an intestinal parasite (cyclosporiasis) which is found in food and water which has been contaminated with feces;

RESOLVED: Shareholders request that the board of directors create a special Board Committee on Food Integrity to restore public confidence in our Company's reputation for food quality and integrity. The committee should assess the recent company breaches of safety and security of McDonald's restaurants' food service as well as long term concerns and criticism regarding food quality, recommending any necessary improvements in governance, sanitation and safety systems necessary to instill in our Company's culture the highest standards of food quality and security.

Supporting Statement

It should be needless to say that our Company's efforts to increase customers' access to fruits, vegetables, low-fat dairy and water options should not be accompanied by consumer exposure to cleaning fluid and feces. The proposed committee will help to fulfill the board's fiduciary duties for effective oversight on food security and integrity - a moral and legal obligation of the board.

Analysis and Response to No Action Request 2019 Proxy Season

McDonald's Inc. *Proposal for Special Board Committee on Food Safety and Integrity*

ANALYSIS AND RESPONSE TO EXCLUSION CLAIMS

Proponent: John C. Harrington

About the Proponent

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.¹

¹ 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/>

ANALYSIS

The Proposal is not excludable as relating to ordinary business under Rule 14a-8(i)(7).

The Company Letter asserts that the proposal requesting the establishment of a special board committee on food safety and integrity is excludable under Rule 14a-8(i)(7). However, the proponent believes that the proposal is not excludable because it addresses a significant policy issue for the company: the gap between the Company's public posture as a good citizen and responsible steward of consumer health concerns, and a rash of health and nutrition crises confronting the Company that have risen to the level that more assertive board oversight appears to be appropriate.

The issue of food quality and security has become a significant policy issue for the Company as a result of a series of events during the last couple of years that should be raising flags in the boardroom on these issues. Events generating public health alerts regarding McDonald's operations have emerged in recent media reports with regard to McDonald's operations in India, the United Kingdom, Russia, and Canada. For instance:

- In the US, there was an outbreak of a parasitic infestation resulting in the pulling of lettuce from 3000 McDonald's restaurants. The FDA, CDC, along with state and local officials investigated a multi-state outbreak of cyclosporiasis illnesses likely linked to salads from McDonald's restaurants... A total of 511 laboratory-confirmed cases of Cyclospora infection were reported in people who consumed salads from McDonald's restaurants; the cases were reported by 15 states and New York City. Most people infected with Cyclospora develop diarrhea, with frequent, sometimes explosive, bowel movements. Other common symptoms include loss of appetite, weight loss, stomach cramps/pain, bloating, increased gas, nausea, and fatigue.
- The Times of India reported that those dining at McDonald's face "potential health hazards" with the company's India subsidiary telling the Times of India that they "have not been able to verify" that particular restaurants in the north and east of India are complying with applicable McDonald's standards including standards for safety and quality.
- In Russia, 44 McDonald's branches were found to be in breach of sanitary rules by a government consumer watchdog agency.
- In the United Kingdom, fecal bacteria were found in ice. In Canada, a pregnant woman ordered a latte and received cleaning fluid instead of coffee - ***which was reportedly not the first time that this had happened.***

It seems to the Proponent that food safety and integrity programs are in trouble at the company, much as safeguards against consumer fraud seem to have failed at Wells Fargo.

Delineating fiduciary focus: and ongoing and successful initiative by the Proponent

Since 2009, the Proponent has been working with companies in its portfolio to clarify the fiduciary duties of boards of directors to address the environment and human rights.

In 2010, Intel, Inc. agreed to amend its Charter of the Corporate Governance and Nominating Committee to include “corporate responsibility and sustainability performance” in the committee’s overall policy responsibility. Intel also provided the Proponent with an outside legal opinion by the law firm of Gibson Dunn & Crutcher stating that under Delaware Law directors have a clear fiduciary duty to address corporate responsibility and sustainability performance when these issues are written into the committee charter.

A Monsanto attorney confirmed for the Proponent, after Monsanto revised its committee charter to include sustainability, that the members of the Committee, as fiduciaries of the Company and its shareowners, have undertaken a duty to review and monitor the performance of the Company as it affects matters relating to sustainability and to report thereon periodically to the full Board of Directors of the Company.

Similarly, the Board of Directors of Target Corporation received an outside counsel opinion that Target, as a Minnesota Corporation, has a duty pursuant to Section 302A.241 of the Minnesota Business Corporation Act to take actions that are set forth in any charter adopted by the Board of Directors setting forth the authority and responsibilities of such committee.

Wells Fargo Corporation, which has recently been under fire for numerous failings in corporate responsibility, has clarified board duties in a similar vein. On November 28, 2017, it amended its Corporate Responsibility Committee (CRC) Charter to state:

The CRC shall oversee the Company’s policies and programs related to environmental sustainability, human rights, and other social and public matters of significance to the Company, including the Company’s supplier diversity initiatives.

Clarifying these fiduciary duties of directors at a level of contractual clarity is a strong option for companies looking to demonstrate a top level, legally effective commitment to environment and human rights, as it provides a level of contractual clarity about the jurisdiction and responsibility of directors. It is also relevant to institutional investors as an effective approach to address long-term value creation, and to mitigate portfolio companies’ systemic or cross-portfolio impacts.

In contrast to the exemplary actions by companies revising board of directors charters, other firms are reticent to make such changes. Conversations with corporate secretaries and boards have indicated that, indeed, some boards are uncomfortable with revising corporate governance documents, precisely because they do not wish to add clearly articulated legal duties on the environment or human rights, possibly increasing the likelihood that a director could be liable for a related duty of care, good faith or loyalty in oversight. Limiting the articulation of such issues to voluntary principles, codes, or sustainability reports, does not necessarily have the same legal impact of expanding the scope of board fiduciary duties.

Focusing fiduciary duty: an explanation of Delaware law basis for the Proposal

The Proponent's governance efforts to amend committee charters have been justified, in part, by a legal opinion of the Company's own counsel. In the memo provided for Intel, Gibson Dunn noted:

The fact that a board committee's duties can be defined through a committee charter was acknowledged by the Delaware Supreme Court in *In re Walt Disney Co. Derivative Litigation*, 906 A.2d 27, 53-54 (Del. 2006), which described the duties of Disney's compensation committee as a "charter-imposed duty."

At issue in the Walt Disney Company derivative litigation were allegations that an excessive salary was paid to Michael Ovitz as executive president and director. Part of the litigation turned on who had responsibility and fiduciary duty of care in determining appropriate compensation levels. The court in the Walt Disney litigation noted:

The Delaware General Corporation Law (DGCL) expressly empowers a board of directors to appoint committees and to delegate to them a broad range of responsibilities, which may include setting executive compensation. Nothing in the DGCL mandates that the entire board must make those decisions. At Disney, the responsibility to consider and approve executive compensation was allocated to the compensation committee, as distinguished from the full board. The Chancellor's ruling— that executive compensation was to be fixed by the compensation committee —is legally correct.

* * *

The compensation committee also had the charter-imposed duty to "approve employment contracts, or contracts at will" for "all corporate officers who are members of the Board of Directors regardless of salary."

In examining the activities of the Walt Disney board, the court found that these allocations of responsibility in committee charters actually served to alleviate responsibility and liability of some board members by allocating it to others. But another way of understanding this is that it demonstrates that fiduciary responsibilities can be FOCUSED and CLARIFIED through the vehicle of a charter. This is one way in which a Board of Directors may create clear lines of responsibility – a contractual level of clarity about who is responsible for overseeing and setting policy on an issue like consumer relations. The allocation of committee duties is also, as demonstrated in *In re Walt Disney*, a delineation of liability.

Thus, the rationale for the current Proposal is that existing McDonald's responses, including those of the board, are failing to address this food safety and security crisis at the Company. This Proposal, therefore, represents a governance intervention to strengthen the degree of contractual clarity regarding the scope, allocation of responsibility, and focus among board members and committees. The *Walt Disney* precedent demonstrates that there is potential for corporate governance documents to define and allocate attention and responsibility of board members to specific issues or decisions. Such charter-assigned responsibilities can focus on the role of a board committee in their review of reports or policies on behalf of the board, and can also determine who has an approval capacity in relation to defined corporate policy matters. It is

of clear value to McDonald's investors to encourage the Company to better delineate and allocate responsibilities in light of recent events regarding the Company's overall policies and management on food safety and integrity.

The crisis in food safety and security appears to have emerged as a significant policy risk with urgent significance for the Company. The Proponent and others believe that the problem has not been effectively addressed by other efforts by the board and management to date. While it is obviously the case that food quality, safety and sanitation practices are ordinarily a matter of ordinary business – when the company's core value proposition of *reputation* is threatened by issues impacting consumer safety, the issue rises to a significant policy issue. This is not a proposal that seeks to micromanage how the company engages in its food safety practices, but one that seeks a higher-level inquiry by the board regarding the apparent failures on these issues over the last few years.

The Proposal is not excludable as a governance proposal.

The proposal directed toward the establishment of a board committee is a governance proposal and therefore not excludable under Rule 14a-8(i)(7) on that basis. For instance, in Staff Legal Bulletin 14 E, the Staff noted:

In addition, we note that there is widespread recognition that the board's role in the oversight of a company's management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote.

We believe the current Proposal, is not excludable under Rule 14a-8(i)(7) because of its focus on a set of core concerns raised by recent reported events. Although the Proponent agrees that “A crucial part of the Company's business is the day-to-day management of decisions relating to food quality and related food safety processes,” the alarming proliferation of news reports regarding the failure of those safety processes now appears to be an early warning sign of a crisis – a significant policy issue for the Company - that calls for an elevated board response. As such, the governance approach called for in the Proposal is of obvious benefit and appropriate for shareholder consideration.

Public concern about food safety and integrity is a significant policy issue for McDonald's

In many instances, it takes a crisis similar to that occurring at McDonald's for the shift of an issue from “ordinary business” to “significant policy issue.” In the present instance, the media coverage and patterns presented regarding food safety and integrity appear to rise to the level of a material concern for the company, one on which a request for a governance response by the shareholders is appropriate.

In many other instances, an issue that is at one time treated by the staff as ordinary business later rises to a transcendent policy issue. For instance, for a time the Staff allowed exclusion of proposals relating to subprime lending and predatory lending. After the financial crisis, however,

proposals addressing the nitty-gritty of lending practices became fair game and not excludable under Rule 14a-8(i)(7). No-action relief was denied under Rule 14a-8(i)(7) in numerous instances. For example, *Wells Fargo & Company/MN* (March 11, 2013) where the proposal requested that the board conduct an independent review of internal controls to ensure that its mortgaging and foreclosure practices do not violate fair housing and fair lending laws to report to shareholders. *JPMorgan Chase & Co.* (March 4, 2009) in which the proposal recommended that the company issue a report related to its credit card marketing, lending, collection practices, and the impacts the practices have on borrowers.² Similarly, proposals on diversity and gender were once excludable as employment related issues. However, eventually the Commission recognized that shareholders should have the right to express themselves on significant policy issues related to employment³, whether they be matters of social policy or such significant issues as plant closings, executive compensation, or golden parachutes. This has been applied in numerous Staff decisions. For example, in *Citigroup Inc.* (February 2, 2016) the proposal directly asked the company to prepare a report demonstrating that the company does not have a gender pay gap. While the Company attempted to assert that this related to employee relations, and wages therefore would be excludable as ordinary business,⁴ following the precept established in the 1998 release, the Staff stated that it was unable to concur that Citigroup may

² See also *Bank of America Corporation* (March 29, 2006) Proposal requesting that the board develop higher standards for the securitization of subprime loans to preclude securitization of loans involving predatory practices. *Bank of America Corporation* (March 14, 2011) where the proposal asked the board to have its audit committee conduct an independent review of the company's internal controls related to loan modifications, foreclosures, and securitizations, and to report to shareholders its findings. *JPMorgan Chase & Co.* (March 14, 2011) Requesting that the board oversee the development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to loans owned by the company and those serviced for others and report policies and results to shareholders. *Pulte Homes, Inc.* (February 27, 2008) Proposal recommended that "the Board of Directors establish a committee consisting solely of outside directors to oversee the development and enforcement of policies and procedures to ensure that the loan terms and underwriting standards of nontraditional mortgage loans made by the Company, its subsidiaries, and its affiliates are consistent with prudent lending practices, including consideration of a borrower's repayment capacity, and that consumers have sufficient information to clearly understand loan terms and associated risks prior to making a product choice.

³ In 1998 the Commission issued the "Final Rule: Amendments to Rules on Shareholder Proposals," 17 CRF Part 240, Release No. 34-40018, which reversed the Cracker Barrel no-action letter concerning the Division's approach to employment-related shareholder proposals raising social policy issues. The Commission stated:

Since 1992, the relative importance of certain social issues relating to employment matters has reemerged as a consistent topic of widespread public debate. In addition, as a result of the extensive policy discussions that the Cracker Barrel position engendered, and through the rulemaking notice and comment process, we have gained a better understanding of the depth of interest among shareholders in having an opportunity to express their views to company management on employment-related proposals that raise sufficiently significant social policy issues.

⁴ For instance, the company wrote: "The recruiting and retention of employees pertain to the core matters of the Company's business operations. The Company uses a variety of methods to attract and retain employees, including levels of compensation and disclosure of its policies promoting diversity in its workforce. These factors must be weighed against concerns about making sensitive information about employees publicly available to competitors. Also, the Company seeks to promote diversity not only with respect to men and women but also with respect to minority candidates. A report covering gender, to the exclusion of other diversity considerations, may not result in the recruitment of the best candidates. These are matters that are impracticable for stockholders to resolve, and the Proposal would micromanage the Company's employment practices by seeking to dictate how the Company should attract and retain women in its workforce.

exclude the proposal under rule 14a-8(i)(7).

Contrary to the Company's case citations, in this instance the Proposal does not an attempt to micromanage the content or management of specific products as was the case no-action decisions cited by the Company Letter, which focused on trying to stop the use of food coloring in *McDonalds Corp.* (Mar. 24, 1992); *H.J. Heinz* (June 2, 1999) or irradiation of food at *The Kroger Co.* (Mar. 23, 1992) *Borden, Inc.* (Jan. 16, 1990) (same).

APPENDIX

ARTICLES ON RECENT FOOD INTEGRITY
ALLEGATIONS AND ISSUES AT MCDONALDS RESTAURANTS

RESTAURANT HEALTH AND NUTRITION EVENTS

1. INDIA

2. McDonald's Issue Health Warning Due to Poor Hygiene in Over 160 Restaurants

Publication: livekindly.co (online)

Link: <https://www.livekindly.co/mcdonalds-announce-health-scare-due-poor-hygiene-100-restaurants/>

Date: December 31, 2017

Country: London, UK

Those dining at McDonald's venues in India now face "potential health hazards", as reported by the Times of India. Ingredients that have been used were "not in line with global standards", and 84 venues have already been closed down this week.

Seemingly, McDonald's have "no idea what's being dished up" at roughly 40% of their restaurants in India, according to American magazine Inc.

Following disputes with business partner Connaught Plaza Restaurants, a worrying 169 of McDonald's restaurants in the country are now facing uncertain quality and safety standards.

McDonald's India admitted to the Times of India, that they have "not been able to verify" that particular restaurants in the north and east of India are "complying with applicable McDonald's standards, including those pertaining to supplies, operations and safety standards and quality required for McDonald's products".

RUSSIA

Mass Food Safety Violations Found at 44 Moscow McDonald's

Publication: The Moscow Times

Link: <https://themoscowtimes.com/news/mass-food-safety-violations-found-at-44-moscow-mcdonalds-62467>

Date: 8/8/18

Country: Moscow, Russia

Russia's consumer rights watchdog has imposed thousands of dollars in fines on McDonald's fast food restaurants in Moscow following a mass inspection revealing widespread health code violations.

The iconic American chain has faced increased scrutiny over sanitary violations as tensions heightened between Russia and the West over the conflict in Ukraine in 2014.

Forty-four McDonald's restaurants across Moscow have been fined 5.5 million rubles (\$86,500) between April and June 2018, the consumer rights watchdog Rospotrebnadzor said Tuesday.

The 44 McDonald's branches — none of which were closed — were found to be in breach of sanitary rules including poor ventilation, inadequate rodent control, waste

Office of Chief Counsel
Division of Corporation Finance
January 21, 2019
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posed by Sempra operations in any country that may pose an elevated risk of corrupt practices” where the company argued that the proposal related to decisions regarding the location of company facilities and implicated its efforts to ensure ethical behavior and to oversee compliance with applicable laws, noting that “the underlying subject matter of these risks appears to involve ordinary business matters”). Similar to the precedents cited above, the Proposal requests the formation of a special committee for the assessment of risks arising from a subject matter that includes aspects of the Company’s ordinary business operations, and therefore may be excluded under Rule 14a-8(i)(7).

B. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Addresses Decisions Concerning The Company’s Food Preparation Methods

The Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations because it addresses the methods by which the Company prepares food, including its processes for food quality, safety, and sanitation.

As discussed above, when evaluating whether a proposal asking for a review and report may be excluded under Rule 14a 8(i)(7), the Staff evaluates whether the underlying subject matter of the resolution and its supporting statement, taken as a whole, involves a matter of ordinary business to the company. SLB 14C, at part D.2. Here, the Proposal addresses issues relating to the “food quality and integrity,” “sanitation and safety systems necessary to instill . . . the highest standards of food quality and security,” and “effective oversight on food security and integrity,” which are all facets of the Company’s day-to-day operations intrinsically related to its business of serving locally relevant menus of quality food and beverages.

The Proposal is directly related to the management of operations that are at the core of the Company’s business. The Staff has found in the past that proposals relating to “food preparation methods” is a matter relating to ordinary business operations. *McDonalds Corp.* (avail. Mar. 24, 1992); *see also H.J. Heinz* (avail. June 2, 1999) (concurring with exclusion of a proposal requesting that the company stop using food coloring because food coloring was suspected of causing serious adverse reactions in children); *The Kroger Co.* (avail. Mar. 23, 1992) (concurring with exclusion of a proposal under the predecessor to Rule 14a-8(i)(7) requesting a report on the company’s present and/or future plans for the use of food irradiation processes, among others, as ordinary business operations because it related to “the choice of processes and supplies used in the preparation of its products”); *Borden, Inc.* (avail. Jan. 16, 1990) (same).

Office of Chief Counsel
Division of Corporation Finance
January 21, 2019
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A crucial part of the Company's business is the day-to-day management of decisions relating to food quality and related food safety processes.¹ The Company places a high priority on food safety as part of its normal business operations, dedicating substantial resources to ensure that its customers enjoy safe food products. The Company has developed and implemented science- and risk-based food safety standards based on best practices and food safety principles including Good Agriculture Practices, Supplier Food Safety and Quality Management Systems, and the Distribution Center Quality Management Program. In addition, the Company's raw material and processing suppliers, as well as logistic partners, implement and document compliance to the Company's food safety management system requirements. Compliance to these systems is subject to verification through annual third-party audits. At the Company's restaurants, food safety and quality management procedures are integrated into the Company's Operations and Training Program and based on Hazard Analysis of Critical Control Points principles. Moreover, the Company's restaurant crew members receive training on food safety, and restaurant managers receive additional advanced food safety training. The Company's restaurants also conduct daily food safety checks on key food safety standards and procedures. With respect to food quality and consistency, the Company has established three quality centers in North America, Europe, and Asia to ensure that its food products taste great and meet the Company's rigorous standards. Through these centers, the Company provides supplier trainings and assesses product quality. The Company also has a menu governance process to ensure the quality, consistency, and taste of its food products. Supplementing these procedures and processes is the Sustainability and Corporate Responsibility Committee, a standing committee of the Company's Board of Directors (the "Board") that reviews and monitors the Company's strategies and efforts to address food and sourcing (among other brand leadership priorities that are significant to the Company).² As specifically highlighted in the 1998 Release, "decisions on production quality," or in this instance, decisions relating to food quality and safety and the relevant processes involved (such as the "sanitation and safety systems" described above) are matters the Company considers on a day-to-day basis in the management of its business. Thus, consistent with the precedent cited above, the Proposal focuses on the Company's ordinary business decisions regarding food preparation methods and does not focus on a significant policy issue, and therefore may be properly excluded under Rule 14a-8(i)(7).

¹ See Food Safety and Quality, McDonald's, available at <https://corporate.mcdonalds.com/corpmcd/scale-for-good/our-food/foodsafety.html>.

² See Sustainability & Corporate Responsibility Committee Charter, McDonald's, available at https://corporate.mcdonalds.com/content/dam/gwscorp/corporate-governance-content/board-committees-and-charters/RESTATED_SCR_COMMITTEE_CHARTER_2016.pdf.

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C. The Proposal Does Not Focus On A Significant Policy Issue

The Staff has recognized that “proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” 1998 Release. Here, however, the subject matter addressed in the Proposal does not rise to the level of a significant policy issue that transcends day-to-day business matters, and therefore may be excluded under Rule 14a-8(i)(7).

The Company recognizes that the Proposal addresses important issues—food safety and relevant sanitation processes—that are tangentially related significant policy issues linked to food. However, the Company is not aware of any no-action letters in which the Staff has taken the view that matters relating to food safety and sanitation rise to the level of a significant policy issue for the purposes of Rule 14a-8(i)(7). Even if the Staff were to take the view that such matters are a significant policy issue, the fact that a proposal touches upon a significant policy issue does not automatically disqualify the proposal from exclusion under Rule 14a-8(i)(7). The Staff consistently has concurred in the exclusion of proposals that touch upon a significant policy matter but that also encompass ordinary business matters. This position prevents proponents from circumventing the standards of Rule 14a-8(i)(7) by combining ordinary business matters with a significant policy issue.

For example, in *PetSmart, Inc.* (avail. Mar. 24, 2011), the proposal requested that the board require its suppliers to certify they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalents,” the principal purpose of which related to preventing animal cruelty. The Staff granted no-action relief under Rule 14a-8(i)(7) and stated, “[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” Similarly, in *Union Pacific Corp.* (avail. Feb. 25, 2008), the Staff concurred with the exclusion of a proposal requesting disclosure of the company’s efforts to safeguard the company’s operations from terrorist attacks and other homeland security incidents. The company argued that the proposal was excludable because it related to securing the company’s operations from both extraordinary incidents, such as terrorism, and ordinary incidents, such as earthquakes, floods, and counterfeit merchandise. The Staff concurred that the proposal was excludable because it implicated matters relating to the company’s ordinary business operations. *See also Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity because “some of the principles” related to the company’s ordinary business operations).

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Here, the Proposal is not limited to food safety and sanitation and instead encompasses a wide range of considerations relating to the Company's day-to-day business operations. In addition to food safety and sanitation (which, as discussed above, the Company dedicates significant resources to, as these considerations are central to the Company's business of serving locally relevant menus of quality food and beverages), the Proposal specifically requests assessments of breaches of safety and security and concerns and criticism regarding food quality, as well as recommendations for any necessary improvements in governance, sanitation and safety systems. Moreover, the supporting statement addresses a number of other topics such as customer access to food, the Company's strategic alliances, partnerships and associations, and other health issues. Therefore, even if the Proposal arguably touches upon significant policy issues, the Proposal unequivocally implicates the ordinary business decisions of the Company, namely decisions relating to the Company's food preparation methods with respect to food quality and the relevant food safety processes. As in *PetSmart*, *Union Pacific*, and *Apache*, where companies were permitted to exclude proposals that implicated ordinary business matters even if they also touched upon significant policy issues, the Proposal encompasses many aspects of the Company's ordinary business decisions that do not implicate a significant policy issue.

In addition, the Proposal's request that "the board of directors create a special Board Committee" does not introduce a significant policy issue. For example, in *Rite Aid* (avail. Mar. 24, 2015) the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested the board add a new section to its nominating and governance committee charter to provide oversight on the decision to sell various products and services. Like the Proposal, the *Rite Aid* proposal focused on the board's oversight of *specific* risks related to that company's ordinary business—the sale of products and services—which did not raise a significant policy issue or focus on the board's *overall* management of risk. See also *The Western Union Co.* (avail. Mar. 14, 2011) (concurring with the exclusion of a proposal requesting the establishment of a board risk committee and a report by the committee on how the company was monitoring and controlling particular risks, where the subject matters of the risks involved ordinary business matters); Staff Legal Bulletin No. 14E (Oct. 27, 2009). Thus, the Proposal is not focused on the Board's overall management of risk.

For these reasons, the Proposal is not focused on a significant policy issue and therefore may be excluded under Rule 14a-8(i)(7).

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CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or to email Denise A. Horne, the Company's Corporate Vice President, Associate General Counsel and Assistant Secretary, at Denise.Horne@us.mcd.com.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Denise A. Horne, McDonald's Corporation
John C. Harrington, Harrington Investments, Inc.

EXHIBIT A



MCDONALDS
110 N CARPENTER ST
CHICAGO IL 60607
P: **BLACK** S: **BSKY** I: 20C
204 103C

Express Envelope

QUICK START ▼



Tracking Details

Updated: 11/30/2018 6:48 P.M. EST

Delivered



Delivered On

Thursday
11/15/2018

Delivery Time

at 9:33 A.M.

Send Updates

Delivered To

CHICAGO, IL, US

Ask UPS

Left At: Dock





Received By: YULI

[Proof of Delivery](#)

Shipment Progress ^

Overview

Detailed View

	Date	Location
	Delivered 11/15/2018 9:33 A.M.	CHICAGO, IL, US
	Out for Delivery 11/15/2018 8:39 A.M.	Chicago, IL, United States
	Shipped 11/12/2018 4:18 P.M.	Napa, CA, United States
	Label Created 11/21/2018 5:00 P.M.	United States

Shipment Details ^

Service

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