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July 24, 2020

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: Smith & Wesson Brands, Inc.
Shareholder Proposal of Catholic Health Initiatives

Dear Ladies and Gentlemen:

On June 15, 2020, Smith & Wesson Brands, Inc., formerly American Outdoor Brands Corporation (“*AOBC*”), a Nevada corporation, submitted a letter (the “*No Action Letter*”) to the Securities and Exchange Commission (the “*Commission*”) notifying the Commission of its intent to exclude the proposal (the “*Proposal*”) received from Catholic Health Initiatives as co-filer with the Sisters of the Holy Names of Jesus and Mary (collectively, the “*Proponents*”) from its proxy materials (the “*2020 Proxy Materials*”) for its 2020 Annual Meeting of shareholders (the “*2020 Annual Meeting of Shareholders*”).¹ On July 13, 2020, the Proponents submitted a response opposing the No Action Letter (“*Response*”). AOBC submits this supplemental response (the “*Supplemental Letter*”) addressing the Response.

In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) (“*SLB 14D*”), this submission is being delivered by email to shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponents.

The Response, when read carefully, does little more than confirm the basis for AOBC’s position that the Proposal should be excluded from its 2020 Proxy Materials. The Response spans twelve pages, but despite this length fails to define key terms such as mitigation, remediation, adverse impacts, or even the expansive scope of human rights (e.g., the rights to “dignity” or leisure time). Much ink is spilled on words such as prioritize and discretion, but nothing more than the same generalities that serve only to compound the vagueness with misdirection.

I. The Proposal May Be Omitted Pursuant to Rule 14a-8(i)(3)

Rule 14a-8(i)(3) provides that a proposal may be omitted if it is “contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” The Staff has recognized that a proposal may be excluded

¹ On May 29, 2020, AOBC changed its name to Smith & Wesson Brands, Inc. and now trades under the ticker symbol SWBI. To maintain consistency with the Proposal and the No Action Letter, this document refers to the company as AOBC.



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pursuant to Rule 14a-8(i)(3), if “the resolution contained in the proposal is so inherently vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (September 15, 2004) (“*SLB 14B*”).

A. The Proposal is vague and indefinite

Proponents’ primary answer to AOBC’s claim that the proposal is far too vague and indefinite to have any meaning is that AOBC would have “discretion” under the United Nations Guiding Principles on Business and Human Rights (“*UNGP*”). And yet the parties are before the Staff because the Proponents have rejected AOBC’s Corporate Stewardship Policy (the “*Policy*”) as a proper exercise of that discretion. That dichotomy alone demonstrates a disconnect between what Proponents claim they are presenting, as opposed to the actual consequences of the Proposal.

The supporting statement to the Proposal compounds the ambiguity by incorporating, without explanation or detail, familiar sounding words, such as “due diligence,” in ways that would severely handicap persons not an expert in this field. Taken together, the Proposal and supporting statement are rife with language taken from the UNGP that is so generalized and devoid of objective meaning that is not possible for AOBC’s shareholders to determine with any reasonable certainty exactly what actions or measures the Proposal requires or, most importantly, what such actions and measures would cost and how they would impact AOBC’s business.

How would an AOBC shareholder answer these critical questions, when trying to decide how to vote on the Proposal?

- What is the scope of human rights that AOBC would have to address and what are the specific steps the Proposal is asking AOBC to take?² Most shareholders would think human rights address human oppression, starvation, or tyrannical government. But according to an Investor Toolkit on Human Rights (the “*ICCR Tool Kit*”) published by Proponents’ affiliate, the Interfaith Center on Corporate Responsibility (“*ICCR*”) through its Investor Alliance for Human Rights project, a human right includes the right to “Rest and Leisure.” See <https://investorsforhumanrights.org/sites/default/files/attachments/2020-05/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020c.pdf> at p. 45. In no way can shareholders understand from what Proponents have provided that Proponents proposal arguably obligates AOBC to *guarantee adequate rest and leisure to employees of other*

²The UNGP Interpretive Guide defines human rights as anything that interferes with the dignity of an individual. The UN Human Rights Council, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, U.N. Doc HR/PUB/12/2 (2012), available at https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf at p. 9.



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companies. Proponents' omission of essential context such as this makes it practically impossible for AOBC's shareholders to make sense of what is required under the vague terms of the Proposal.

- What are the human rights “impacts” attributed to a firearms company, and what steps must AOBC undertake to identify, mitigate and remedy them on an ongoing basis?³
- How will AOBC be required through its human rights policy to “mitigate” any “potential” (i.e., unknown) impacts to the “dignity” of a human being, even those caused by third parties?⁴
- What additional obligations and business changes must AOBC implement “throughout the company’s value chain”, with respect to “business partners” and “other parties linked” to the business?⁵

³ With respect to this issue, Proponents not only use vague terms, but they deliberately mislead by attempting to downplay the financial costs of mitigation. In fact, contrary to Proponents' suggestion to the Staff, mitigation efforts *do* include financial compensation for the human rights impacts of firearms:

That includes “apologies, **restitution**, rehabilitation, **financial or nonfinancial compensation**, punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.” Where a business causes or contributes to adverse impacts, it should play a role in providing remedy.

ICCR Tool Kit at p. 12 (emphasis added).

⁴ The expansive definition of human rights never provided to shareholders but subscribed to by ICCR, and presumably the affiliated Proponents, is exceedingly broad.

In general terms, human rights are what every individual is entitled to in order to live a life of fundamental welfare, dignity, and equality. They include civil and political rights such as the rights to life, freedom from harassment and discrimination, privacy, and freedom of expression; economic, social, and cultural rights such as the rights to work, social security, and education; and labor rights such as the rights to freedom of association, collective bargaining, and freedom from forced labor and the worst forms of child labor.

ICCR Tool Kit at p. 9.

⁵ For example, Amnesty International, one of the most the most well-known and influential authorities on issues of international human rights, on which the Proposal is built, have expressed the view that the private ownership of firearms is inconsistent with the concept of international human rights.



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The language above is taken directly from the Proposal and the supporting statement to the Proposal. The critical failure is Proponents' refusal to provide shareholders with any basis on which to understand the boundaries of the obligations they are being asked to impose on AOBC. The referenced UNGP alone constitutes 42 pages of original material and another 98 pages in an Interpretive Guide.⁶ Thousands more pages have been written about the "due diligence" obligations referred to in these documents. The ICCR Tool Kit provides additional information, although it is similarly vague and expansive in many respects. Yet Proponents steadfastly refuse to provide answers, demanding that shareholders not be given any information which would enable them to look behind the curtain.

In short, the Proposal is not merely intentionally vague, that vagueness is compounded by a deliberate attempt to mislead. Proponents argue that providing too much detail risks micromanagement. Providing none, however, is impermissibly, and fatally, vague and indefinite.

B. The Proponents' positions are either deliberately or negligently misleading

As indicated above, the Proposal and Proponents' statements are misleading, probably deliberately given the substantial information from their affiliate ICCR that Proponents not only fail to give shareholders, but which they also contradict. Rule 14a-9(a) prohibits statements which, at the time and in light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements therein not false or misleading. See also, SLB 14B and The Boeing Company (February 5, 2010).

Other organizations have provided their positions on the questions and issues AOBC raises. Amnesty International has not only quantified some of the cost of the Proposal, but also takes the view that the private ownership of firearms is *per se* inconsistent with the concept of international human rights on which the Proposal is built. Yet Proponents refuse to assist shareholders in understanding these issues, meekly answering that they are not affiliated with Amnesty International. But how can the Proponents claim in good faith, that AOBC *will not* be bound by or measured against the interpretations of the most well-known and influential international human rights organizations? On what basis do they make such a claim and where is the information shareholders require to evaluate such claims?

⁶ Proponents attempt to discredit prior cited Staff precedent as instances where there was a lack of "guiding principles." AOBC does not believe that the UNGP qualify as "guiding principles." That argument merely seeks to substitute nomenclature for substance because it is the guiding principles themselves which are the problem as they use ambiguous terms to create obligations with virtually no limiting principle. AOBC also takes exception to the Proponents' characterization of what it means to have "discretion." The abject failure of the Proponents to provide meaningful guidelines on the actions AOBC is required to address in the human rights policy does not mean that AOBC has unfettered "discretion" in setting the terms of the human rights policy. These unknown and undefined elements of a human rights policy is another reason why AOBC believes that any action ultimately it took to implement the Proposal could be significantly different from the actions envisioned by shareholders voting on the Proposal. This is part of the reason why AOBC believes the Proposal can be omitted from its 2020 Proxy Materials.



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If the Proposal itself is vague and misleading, Proponents double down in their Response. For example, AOBC argues that special expertise is required to navigate the field of international human rights, citing to the need to understand and interpret, among others, the UNGP, on which Proponents base their Proposal, as well as the UNGP Interpretive Guide. Yet Proponents completely ignore references to these works in their Response, claiming “AOBC does not explain why a request for a comprehensive human rights policy is ‘so inherently vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.’” Their plea to the Staff is simple; ignore the misleading and complex nature of the Proposal and allow AOBC’s shareholders to just sort things out without requiring Proponents to explain the intent or meaning of the proposal they drafted.

An example from the ICCR Tool Kit is illustrative of how easily AOBC shareholders can be misled by Proponents’ failure to explain the potential consequences of the Proposal. The example describes the human rights risk presented by a technology company’s government contract with the U.S. Immigration and Customs Enforcement (ICE), merely because the company’s contract assisted ICE with enforcement of immigration laws.⁷ Consider that example in the context of AOBC’s firearms sales to federal, state, and local law enforcement, particularly in the context of the current “Defund the Police” movements. AOBC’s shareholders would not expect such unstated, negative impacts to the company’s lawful business, and Proponents have not provided this or any other information to shareholders to consider in deciphering the vague terms of the Proposal so that they can make an informed decision.

For the reasons provided in the No Action Letter and in this Supplemental Letter, AOBC believes that the Proposal can be omitted pursuant to Rule 14a-8(i)(3).

II. The Proposal May Be Omitted Pursuant to Rule 14a-8(i)(7)

True to form, Proponents summarily reject any attempt by AOBC to define the imposed obligations, while never providing shareholders with an affirmative vision on which to vote. Instead, Proponents repeatedly set up strawmen, having little to do with AOBC’s actual arguments, and then knock them down. For example, the Proponents argue that the requirement for companies to mitigate adverse human rights impacts, which is clearly set out in the UNGP, “does not translate into compensating victims for every misuse of an AOBC firearm.” While AOBC never made such an argument, Proponents’ argument serves to illustrate AOBC’s point. Proponents continue to focus their energy on explaining generally what the Proposal – amplified by supporting statements - *does not* do, instead of explaining in proper detail what the Proposal *does* do. It is the latter that the law requires Proponents provide shareholders so that they may cast an informed vote and not later be surprised by the result.

⁷ ICCR Tool Kit at p. 30.



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In any event, whether AOBC would have to compensate for every misuse of a firearm is irrelevant to the issues here and just another attempt to distract. Statements in the ICCR Tool Kit and Proponents' own admissions clearly establish that liability does exist – at the very least, the liability related to due diligence and mitigation. In the absence of some boundaries and limiters on the enormous scope of the human rights doctrine on which Proponents rely, voting on the Proposal would just be a guessing game. Whether and when AOBC would have to compensate for the illegal, or even legal, use of its firearms, whether sales to military and law enforcement organizations would or even could be considered “impacts” to be identified and remedied, and whether the UNGP or other authorities on international human rights would require AOBC to stop or start manufacturing specific products, are legitimate questions for AOBC shareholders. Proponents attempt to deflect attention from these critical facts, when their proposal already is too vague to understand, makes it almost a foregone conclusion that shareholders will be voting without an understanding of what the Proposal requires. Which is exactly what the Commission's rules prohibit.

For the reasons provided in the No Action Letter and in this Supplemental Letter, AOBC believes that the Proposal can be omitted pursuant to Rule 14a-8(i)(7).

There are other errors and misrepresentations by the Proponents in the Response, that AOBC will not call out here. AOBC asks the Staff to look past these attempts to divert and distract from the crux of AOBC's arguments.



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If you have any questions or need additional information, please feel free to contact me at (202) 799-4184.

Sincerely,

A handwritten signature in blue ink that reads 'Sanjay Shirodkar'.

/s/ Sanjay M. Shirodkar

cc: Robert J. Cicero, American Outdoor Brands Corporation

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July 13, 2020

Via e-mail at shareholderproposals@sec.gov

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

Re: Request by Smith & Wesson Brands (formerly American Outdoor Brands Corp.)
to omit proposal submitted by Sisters of the Holy Names of Jesus and Mary and
Catholic Health Initiatives

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Sisters of the Holy Names of Jesus and Mary and Catholic Health Initiatives (the “Proponents”) submitted a shareholder proposal (the “Proposal”) to American Outdoor Brands Corporation (“AOBC” or the “Company”), which changed its name in May to Smith & Wesson Brands. (The Company is referred to as AOBC in this response.) The Proposal asks AOBC adopt a comprehensive policy articulating its commitment to respect human rights, including a description of proposed due diligence processes to identify, assess, prevent and mitigate actual and potential human rights impacts.

In a letter to the Division dated June 15, 2020 (the “No-Action Request”), AOBC stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company’s 2020 annual meeting of shareholders. AOBC claims that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(3), on the ground that the Proposal is materially false or misleading; Rule 14a-8(i)(10), arguing that the Company has substantially implemented the Proposal; and Rule 14a-8(i)(7), as related to AOBC’s ordinary business operations. As discussed more fully below, AOBC has not met its burden of proving its entitlement to exclude the Proposal on any of those three bases, and the Proponents respectfully request that AOBC’s request for relief be denied.

The Proposal

The Proposal states:

RESOLVED: Shareholders request that the Board of Directors of American Outdoor Brands Corp. (“AOBC”) adopt a comprehensive policy articulating its commitment to respect human rights, which includes a description of

proposed due diligence processes to identify, assess, prevent and mitigate actual and potential adverse human rights impacts.

False or Misleading Statements

Rule 14a-8(i)(3) allows a company to omit a Proposal that violates any of the Commission's other proxy rules, including Rule 14a-9, which prohibits the making of any statement in a solicitation that 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." AOBC claims that the Proposal runs afoul of Rule 14a-9 because (a) it does not discuss the potential costs to AOBC or the "significant risks" the Proposal would create for the Company's firearms business and (b) it is impermissibly vague. Neither claim has merit.

AOBC, citing a single report by Amnesty International (an organization with which Proponents are not affiliated), urges that the Proposal should disclose that "organizations far more influential than Proponents in the human rights arena have taken the position that most private ownership of firearms is inconsistent with the international human rights regime that underpins the UNGP on which the Proposal is based."¹ AOBC cites the same report as support for AOBC's \$3-222 billion estimate of the Proposal's direct and indirect costs, which AOBC suggests the Proposal should include.² AOBC also contends that the Proposal should discuss the fact that "the scope and impact of [the Proposal's] request is extremely broad."³

All of these alleged omissions are matters that are appropriately raised in AOBC's statement in opposition. AOBC has not established that the arguments made in the Proposal are materially false or misleading without the omitted material. Rather, the Proposal's arguments are "factual assertions that, while not materially false or misleading, may be disputed or countered," which Staff Legal Bulletin 14B states should be addressed in the statement in opposition and not by excluding all or part of a proposal.⁴

AOBC's claim that the Proposal is excessively vague because it is "subject to materially differing interpretations" is also unpersuasive. AOBC does not explain why a request for a comprehensive human rights policy is "so inherently vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any

¹ No-Action Request, at 6.

² No-Action Request, at 6-7.

³ No-Action Request, at 6.

⁴ Staff Legal Bulletin 14B (Sept. 15, 2004).

reasonable certainty exactly what actions or measures the proposal requires.”⁵ Shareholders at dozens of companies have voted on similar proposals, and many companies have adopted human rights policies.⁶ AOBC has discretion to select the specific human rights principles that will be included in its policy, as long as it describes AOBC’s human rights due diligence process.

An argument much like the one AOBC advances was rejected earlier this year at Northrop Grumman Corp.⁷ Northrop Grumman argued that a proposal asking the company to disclose the results of a human rights risk assessment was excessively vague because key terms were not defined, leaving “significant room for interpretation.” Northrop Grumman also made the claim, as AOBC does here, that the proposal could be read to encompass “unknown risks to human rights based on how and where a customer may choose to employ a product at an unspecified future date.” The Proponents pointed out that the latter argument was really about the wisdom of assessing potential risks, not the clarity of the proposal’s request. The Staff denied relief.

The proposals in the determinations cited by AOBC, none of which addressed human rights, sought nonspecific changes involving broad subjects without providing any hint, even in the supporting statement, of how the company might implement the requests. In Apple, Inc.,⁸ the Staff concurred that a request to “improve guiding principles of compensation” was excessively vague, remarking that “[a] proposal that described the nature of improvements that the company could consider, without prescribing the particular result, would be less likely to be viewed as vague and indefinite.” Although the supporting statement critiqued pay levels at Apple and across the S&P 500, it did not identify specific “guiding principles” that would address the proponent’s concerns. Similarly, the eBay, Inc.⁹ proposal, which asked the company to “reform [its] compensation committee,” criticized executive pay levels but was silent as to potential compensation committee reforms. The resolved clause of the proposal submitted to Cisco Systems, Inc.¹⁰ simply stated that “[t]he board shall not take any action whose primary purpose is to prevent the effectiveness of [a] shareholder vote without a compelling justification for such action.” The Staff concurred with the company that the

⁵ Staff Legal Bulletin 14B (Sept. 15, 2004).

⁶ See, e.g., Heidi Welsh & Michael Passoff, “Proxy Preview 2020,” at 48-49 (between 10 and 30 proposals seeking a human rights policy and/or description of human rights due diligence approaches filed each year between 2011 and 2020) (available at <https://www.proxypreview.org/2020/report-cover>); see also, e.g., https://www.unilever.com/Images/unilever-human-rights-policy-statement_tcm244-422954_en.pdf; <https://www.cisco.com/c/dam/assets/csr/pdf/Human-Rights-Policy.pdf>; <https://hmggroup.com/sustainability/sustainability-reporting/standards-and-policies/human-rights-policy.html>; <https://www.generalmills.com/en/News/Issues/human-rights>; https://about.att.com/ecms/dam/csr/PDFs/Human_Rights_Policy.pdf.

⁷ Northrop Grumman Corporation (Mar. 13, 2020).

⁸ Apple, Inc. (Dec. 6, 2019).

⁹ eBay, Inc. (April 10, 2019).

¹⁰ Cisco Systems Inc. (Oct. 7, 2016).

proposal's failure to define key concepts, including "primary purpose" and "compelling justification," as well as specify what it means to "prevent the effectiveness of [a] shareholder vote," rendered the proposal excessively vague.

Here, AOBC retains discretion regarding the details of Proposal implementation, as it must to avoid exclusion on micromanagement grounds. Companies' human rights policies are not identical, and they reflect such factors as the nature of a company's business and the location of its operations and suppliers. But the well-established concepts of human rights and human rights due diligence give shareholders and AOBC a clear understanding of what the Proposal seeks. Accordingly, AOBC should not be permitted to exclude the Proposal in reliance on Rule 14a-8(i)(3).

Substantial Implementation

Rule 14a-8(i)(10) permits exclusion of a proposal that has been "substantially implemented." Substantial implementation does not require that the company have taken the exact measures requested in the proposal, but it does demand that the "essential objective" of the Proposal be satisfied. AOBC argues the Proposal's essential objective is "to mitigate reputational and financial risk"¹¹ and that its existing policies achieve that goal.

AOBC's characterization of the Proposal's essential objective is far too broad. The Proposal does not address reputational and financial risk of all kinds, but focuses solely on human rights; thus, the only kinds of financial and reputational risk that matter for substantial implementation purposes are those related to human rights. The policies AOBC cites addressing business ethics, environmental health and safety, anti-corruption and corporate governance are all irrelevant to the Proposal's request, as are suicide prevention and firearms safety programs.¹² The Corporate Stewardship Policy (the "Policy") touted by AOBC discusses firearms safety, as well as risk assessment, but makes no mention of human rights.¹³ Its primary function seems to be bringing together existing AOBC policies, which do not include a human rights policy.

AOBC asserts that the Proponents "criticize the fact that [AOBC's existing] policies and procedures do not expressly mention 'human rights.'"¹⁴ But the gap between the policy sought in the Proposal and AOBC's existing policies is not merely semantic. A human rights policy articulates a company's commitment to respect human rights standards, which are not the same as legal requirements or a

¹¹ No-Action Request, at 8.

¹² See No-action Request, at 8.

¹³ See <https://ir.smith-wesson.com/static-files/a66d1a75-6794-48dc-8e16-9d60e3486220>.

¹⁴ No-Action Request, at 2; see also *id.* at 10.

company's own rules and expectations set forth in a code of conduct. A human rights approach can provide an additional lens through which to view policies or challenges: "For example, environmental policies can focus solely on technical solutions to perceived technical problems and miss the potential impact on communities and people's rights."¹⁵

The determination in *The Wendy's Company*,¹⁶ on which AOBC relies, is easily distinguishable despite the fact that it also addressed substantial implementation of a human rights-related proposal. The proposal submitted to Wendy's sought disclosure regarding the company's existing human rights due diligence process, whereas the Proposal affirmatively asks AOBC to adopt a comprehensive human rights policy. Put another way, the Wendy's proposal was exclusively process-oriented, while the Proposal asks AOBC to take specific substantive steps.

This difference is material: Wendy's could substantially implement the proposal it received simply by publicly disclosing enough information about its existing practices, however inadequate they were. The proponents in *Wendy's* unsuccessfully argued that the company's disclosures related to the much more limited process of first-tier supplier auditing, not a human rights due diligence process. Because the Wendy's proposal only sought disclosure, the basis for the determination allowing exclusion was not, as AOBC claims, the quality of the company's existing company codes or risk management frameworks,¹⁷ but the fact that its policies and procedures were publicly disclosed.

Finally, AOBC suggests that substantial implementation can be achieved, despite significant gaps between a proposal's request and a company's actions, if the company decides that the steps it did not take are not relevant to its business. Specifically, AOBC explains that because the U.S. legal and regulatory framework "already is highly protective of human rights" and "human rights issues most often arise in supply chains for which there is inadequate oversight, or which involve multiple foreign countries with questionable human rights enforcement," it concluded that an "extensive policy and program focused exclusively on human rights issues had limited relevance" to its business.¹⁸

No support is provided for any of AOBC's assertions regarding human rights, which the Proponents dispute. More fundamentally, the contentions about relevance are inapposite to a substantial implementation analysis. AOBC does not claim that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(5), which

¹⁵ https://www.ohchr.org/Documents/Publications/DevelopHumanRightsPolicy_en.pdf, at 7; see also

¹⁶ *The Wendy's Company* (Apr. 10, 2019). The determination in *Kohl's Corp.* (Jan. 16, 2020) rested on a similar basis.

¹⁷ No-Action Request, at 10.

¹⁸ No-Action Request, at 9.

allows exclusion of proposals that are not relevant to a company’s business. As well, AOBC can make the argument about relevance to shareholders in its statement in opposition. Substantial implementation, however, requires that a company’s actions satisfy the proposal’s essential objective, which is not the case here.

Ordinary Business

Rule 14a-8(i)(7) allows exclusion of proposals related to a company’s ordinary business operations. AOBC argues that the Proposal is excludable on ordinary business grounds because it:

- seeks to dictate the products AOBC sells and how those products are distributed;
- would micromanage AOBC’s position on “the complex issue of human rights”¹⁹ and
- does not focus on a significant policy issue

Sale and Distribution of Products

The Proposal’s subject of human rights has consistently been found to be a significant policy issue transcending ordinary business.²⁰ AOBC nonetheless urges that the Proposal relates to its ordinary business operations because it would require a change in its business model, including the products it sells and the way it distributes them; proposals addressing product selection and distribution, without a link to a significant policy issue like human rights, are generally deemed excludable as ordinary business. AOBC’s claim is not based on the text of the Proposal, which makes no mention of changes to product mix or distribution, nor does it flow logically from the Proposal’s actual request. Instead, it rests on AOBC’s disingenuous misreading of the Proposal and erroneous assumptions regarding the human rights due diligence process.

To support its claim that the Proposal aims to change AOBC’s business model, the Company misrepresents the approach taken by the U.N. Guiding Principles on Human Rights (“UNGPs”), which describe the process of human rights due diligence contained in the Proposal. AOBC argues that the UNGPs require it to take responsibility—which AOBC equates to financial liability—for all adverse

¹⁹ No-Action Request, at 13.

²⁰ E.g., Halliburton Co. (Mar. 9, 2009) (proposal asking Halliburton to “review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies” not excludable); Abbott Laboratories (Feb. 28, 2008) (proposal asking Abbott to “amend the company’s human rights policy to address the right to access to medicines” not excludable).

impacts throughout AOBC's value chain, including all harms from misuse of its firearms by end users.²¹

AOBC's argument fails to acknowledge the flexibility provided by the UNGPs. The UNGPs do state that companies should avoid causing adverse human rights impacts through their own activities and seek to prevent or mitigate adverse human rights impacts linked to their "operations, products or services by their business relationships . . ." ²² They also recommend having a process for remediating adverse impacts.²³

But that language does not translate into compensating victims for every misuse of an AOBC firearm. The UNGPs, alone, do not compel any particular action to prevent, remedy or mitigate adverse impacts; companies have flexibility to decide how they will conduct due diligence and what they will do about actual or potential adverse impacts they identify.

That human rights due diligence does not lead to liability is shown by the efforts of some countries in an "Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises With Respect to Human Rights" to draft and promote a treaty that would impose criminal, civil or administrative liability for human rights violations.²⁴ The treaty has been called a "significant departure" from the UNGPs.²⁵ Such a treaty would not be necessary if the human rights due diligence process itself imposed liability.

The evidence AOBC says supports its conclusion that the Proposal would compel the Company to sell different products consists of statements taken out of context and assertions not made in the Proposal at all. Specifically, AOBC quotes Proposal language referencing the "lethality of firearms products and the potential for their misuse" and statements from another shareholder proposal and investor statement about the sale of military style automatic assault weapons to civilians and the role of Smart Gun technology. But statements in a 2018 shareholder proposal seeking different action than that requested in the Proposal and in an investor statement that is not even mentioned in the Proposal do not carry more weight than the Proposal's actual language.²⁶ The Proposal referenced the lethality of firearms not to argue that they should not be sold, but to highlight the high

²¹ No-Action Request, at 12-13.

²² U.N. Guiding Principles on Business and Human Rights, at 14 (2011) ("UNGPs")(available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)

²³ UNGPs, at 16.

²⁴ <https://www.business-humanrights.org/en/zero-draft-summary>

²⁵ <https://www.littler.com/publication-press/publication/united-nations-further-deliberates-treaty-seeking-impose-corporate>

²⁶ See No-Action Request, at 11.

stakes involved and the potential for human rights due diligence to make a real difference.

AOBC is also mistaken that a policy implementing the Proposal “would necessarily impact each product, contract, customer, or application,” as well as “AOBC’s overall risk management framework.”²⁷ The UNGPs recognize that businesses with “large numbers of entities in their value chains” would need to prioritize areas of greatest risk.²⁸ The UNGPs also provide that the “appropriate action” for a company to take in response to an identified impact will vary depending on how directly the company was involved; when an impact is linked to a company’s products, the UNGPs recommend that the company consider factors such as the degree of leverage it has and the severity of the impact.²⁹ Thus, AOBC would have flexibility in implementing the Proposal and would not be compelled to change its business or distribution model.

AOBC relies on two determinations in *The Home Depot Inc.*³⁰ and *Pfizer Inc.*,³¹ allowing exclusion on ordinary business grounds of proposals on human rights. Those proposals only nominally concerned human rights, though. The resolved clauses asked each company to “review its policies related to human rights to assess areas where the Company needs to adopt and implement additional policies”³² But the supporting statements did not address human rights issues related to the companies’ own conduct or that of its suppliers. Instead, vague allegations were made regarding the human rights records of charitable organizations to which the companies had contributed and to which the proponents objected.³² The proposals did not refer to the companies’ existing human rights policies or changes to those policies advocated by the proponent.

In *Home Depot* and *Pfizer*, then, the proposals’ invocation of “human rights” was merely a hook on which the proponent hung proposals whose true aim was to complain about particular charitable contributions the companies had made. As well, because the human rights records to which the proponents objected were not those of the companies receiving the proposals, but rather the records of other organizations to which the companies contributed, the requisite nexus between human rights and the companies was lacking. It is thus unsurprising that the Staff viewed the proposals as relating to the companies’ ordinary business operations

²⁷ No-Action Request, at 12.

²⁸ UNGPs, at 18.

²⁹ UNGPs, at 22.

³⁰ *The Home Depot Inc.* (Feb. 13, 2018).

³¹ *Pfizer Inc.* (Feb. 12, 2018).

³² These assertions were: “Religious freedom is also a human right,” “Human Rights Campaign works to direct corporate free speech and freedom of association rights,” and “These groups [Human Rights Campaign and Southern Poverty Law Center] are also working to direct corporate free speech and freedom of association rights.”

instead of human rights.³³ By contrast, the requisite nexus is present here: the Proposal’s supporting statement explains how AOBC’s products may cause the Company to contribute to human rights violations and asks AOBC to adopt a human rights policy.

Micro-management

AOBC also argues that the Proposal is excludable on ordinary business grounds because it would “micro-manage the company’s position on the complex issue of human rights.”³⁴ AOBC claims that the Proposal, by referencing the UNGPs in the supporting statement, “involves intricate detail or seeks to impose time-frames or methods for implementing complex policies.”³⁵

The Proposal does not, however, ask AOBC to implement everything in the UNGPs. Nor does it specify human rights principles AOBC should use or the due diligence process AOBC should adopt. The Proposal simply asks AOBC, in general terms, to adopt a human rights policy that contains a due diligence process; the details are left up to AOBC.

In that respect, the Proposal can be distinguished from the proposals in the determinations AOBC cites. The proposal in JPMorgan Chase & Co.³⁶ directed the company to adopt procedures designed to avoid holding or recommending investment in companies that “substantially contribute to genocide or crimes against humanity, the most egregious violations of human rights.” Unlike the Proposal, the JPMorgan Chase proposal identified specific human rights and asked for procedures, not just a policy, to ensure that the company did not invest in companies that violate them.

In Devon Energy Corp.,³⁷ the Staff concurred with the company’s argument that it could exclude on micro-management grounds a proposal seeking disclosure of “short-, medium- and long-term” greenhouse gas reduction targets aligned with the Paris Climate Agreement’s goal of limiting average global temperature rise to 2 degrees Celsius. Devon had urged that the proposal’s request for company-wide, time-bound quantitative targets was too detailed and sought to impose specific time frames for company action. Similarly, the proposal in JPMorgan Chase & Co.³⁸ asked the company to report on risks related to tar sands lending, underwriting, advising and investing, including the “short- and medium-term risk of portfolio devaluation due to stranding of high-cost tar sand assets” and the degree of

³³ Some other determinations on which Northrop Grumman relies involved proposals seeking disclosure regarding lobbying and public policy activities, which the Proposal does not do.

³⁴ No-Action Request, at 13.

³⁵ No-Action Request, at 14.

³⁶ JPMorgan Chase & Co. (Mar. 13, 2019)

³⁷ Devon Energy Corp. (Mar. 4, 2019).

³⁸ JPMorgan Chase & Co. (Mar. 30, 2018)

alignment between the company's tar sands financing and the goals set by the Paris Climate Agreement. Both the Devon and JPMorgan Chase (2018) proposals were more prescriptive than the Proposal, as they focused on specific time frames and benchmarks related to a particular goal set in the Paris Climate Agreement.

Significant Policy Issue

AOBC urges that the issue of human rights does not have a sufficient nexus with AOBC's business to be deemed a significant policy issue transcending ordinary business. In that connection, it has submitted a description of the analysis performed by its Board in support of that conclusion, as contemplated by Staff Legal Bulletins 14I, 14J and 14K.

AOBC argues that the difference between the Proposal's request and the policies AOBC has already adopted (the "delta") is sufficiently small that the Proposal does not raise a significant policy issue. But this characterization rests on AOBC's implication that the Policy addresses human rights, which it does not. None of the policies linked in the Policy addresses human rights, and the process commitments AOBC makes in the Policy around review of policies and business relationships, firearms safety programs, and risk evaluation do not mention using a human rights approach. As a result, the actions AOBC has already taken are not responsive to the Proposal. In other words, the delta is large.

The No-Action Request states that the Board's deliberations were informed by consultation "with experts in the [human rights] field at some of the world's top law firms to understand the legal, political and operational framework of such policies." According to AOBC, those consultations, coupled with engagements with shareholders, support the Board's conclusion that "AOBC's adherence to the lawful manufacture and sale of firearm products is consistent with its commitment to protecting human rights and that AOBC is reasonably addressing matters related to its core business activity and within its control."³⁹

AOBC's reference to consultation with experts is insufficient to show that the Board's analysis was well-reasoned and informed. In Staff Legal Bulletin 14J, the Division stated that during the previous proxy season:

The discussions we found most helpful focused on the board's analysis and the specific substantive factors the board considered in arriving at its conclusion. Less helpful were those that described the board's conclusions or process without discussing the specific factors considered.⁴⁰

³⁹ No-Action Request, at 15.

⁴⁰ Staff Legal Bulletin 14J (Oct. 23, 2018).

The No-Action Request falls into the second category. It describes a process and conclusions, but not the specific substantive factors the Board considered.

It is especially important to review the substantive factors, given the disconnect between laws governing firearms manufacture and sale, compliance with which the Board concluded renders the Proposal irrelevant to AOBC, and human rights standards, the focus of the Proposal. That gap raises a number of questions, including:

- What was the Board’s basis for concluding that human rights are relevant only if a company has significant “foreign operations” and “export sales”⁴¹? Or put another way, why did the Board appear to believe that human rights have limited relevance in the United States?
- Did any of the experts consulted by the Board explain how human rights standards differ from laws and regulations imposed by a particular state or country?
- Did the Board receive information about how other companies have managed to perform human rights due diligence on activities, such as those of suppliers and customers, that they do not directly control?⁴²
- Did the Board take into account not only the results of direct shareholder engagement, but also the fact that a substantially similar proposal was supported by holders of 36% of shares voted for and against at the 2019 annual meeting?

Finally, AOBC comes back around to make another run at the “selection of products” argument discussed above, this time as a fallback in the event human rights is deemed a significant policy issue for the Company. AOBC claims that even if the Proposal “references” a significant policy issue, it is excludable because it “ultimately relates to a matter of ordinary business such as the products or services sold by AOBC.”⁴³ Like its earlier incarnation, this version of the argument is inconsistent with the Proposal’s actual language. The clear focus of the Proposal is human rights, and nowhere does it suggest or even imply changes in AOBC’s product mix.

The determinations on which AOBC relies are inapposite. The proposal in General Electric Co.⁴⁴ used a significant policy issue hook—executive compensation—in the resolved clause but, unlike the Proposal, focused a great deal on specific products in the supporting statement. In Papa John’s International,⁴⁵ the proponent

⁴¹ No-Action Request, at 15.

⁴² See No-Action Request, at 15 (“AOBC is reasonably addressing matters related to its core business and within its control.”).

⁴³ No-Action Request, at 16.

⁴⁴ General Electric Co. (St. Joseph Health System) (Jan. 10, 2005) (proposal asked that social responsibility criteria be integrated into senior executive compensation but supporting statement focused on the depiction of teen smoking in movies)

⁴⁵ Papa John’s International, Inc. (Feb. 13, 2015).

tried to claim significant policy issue status for “the environment, animal welfare and human health,” which was likely viewed as both too general and too remote from the proposal’s request that Papa John’s “expand its menu offerings to include vegan cheeses and vegan meats.” Here, by contrast, the well-defined significant policy issue is human rights.

The Proposal focuses clearly and exclusively on human rights and not AOBC’s specific products. Nothing about human rights due diligence would force AOBC to make product-related changes, as the Proposal would give AOBC flexibility regarding implementation. That flexibility also means that the Proposal would not micro-manage AOBC. The gap between what AOBC currently does and what the Proposal requests is substantial, and the Board’s conclusion that human rights are not relevant to AOBC’s business should not carry weight, given the lack of disclosure regarding the substantive factors the Board considered.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me: Sister Judy Byron at 206.223.1138 or jbyron@ipjc.org

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