February 12, 2020

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

By Email: shareholderproposals@sec.gov

Re: Yum! Brands, Inc. – Supplement to Letter
dated January 10, 2020 Relating to Exclusion of
Shareholder Proposal by CtW Investment Group

Dear Sir or Madam:

We refer to our letter dated January 10, 2020 (the “No-Action Request”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that the shareholder proposal and supporting statement (the “Proposal”) submitted by CtW Investment Group (the “Proponent”) may be excluded from the proxy materials to be distributed by Yum! Brands, Inc. (the “Company”) in connection with its 2020 annual meeting of shareholders (the “2020 Proxy Materials”).

This letter is in response to the letter to the Staff, dated February 4, 2020, submitted by the Proponent (the “Proponent’s Letter”) and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter is also being sent to the Proponent.

The Proponent states that “The Staff has previously found that mandatory arbitration of employment claims is a significant policy issue…” To support that proposition the Proponent cites the Staff’s response to the no-action letter request by the CBRE Group. CBRE Group, Inc. (Mar. 6, 2019). As explained below, the conclusion the Proponent draws from the Staff’s position in CBRE Group is overly broad and the Proponent’s attempt to equate the proposal in CBRE Group with its own proposal is easily rebutted by a comparison of the proposals.

The resolution in the CBRE Group proposal is set forth below:

RESOLVED: Shareholders of CBRE Group, Inc. (the "Company") request that the Board of Directors prepare a report on the impact of mandatory arbitration policies on the Company’s employees. The report shall evaluate the risks that may result from the Company’s current mandatory arbitration policy on claims of sexual harassment. The report shall be prepared at reasonable cost and omit proprietary and personal information, and shall be made available on the Company’s website no later than the 2020 annual meeting of shareholders.
The focus of the CBRE Group proposal was sexual harassment. We know this because the proponent of the CBRE Group proposal said that it was the focus: “Specifically, the Fund’s Proposal focuses on the issue of the Company’s mandatory arbitration policies as they pertain to claims of sexual harassment in the workplace.” Letter to the Staff, dated February 4, 2019 submitted by AFL-CIO Reserve Fund, page 2. The Staff’s recognition that the CBRE Group proposal raised a significant policy issue therefore should only be read as an acknowledgement that sexual harassment in the workplace is a significant policy issue and not, as the Proponent boldly asserts, as a finding by the Staff that mandatory arbitration of employment related claims is a significant policy issue.

In stark contrast to the CBRE Group proposal, the resolution that the Proponent desires to have the Company’s shareholders adopt does not contain any reference to sexual harassment at all. The resolution reads as follows:

RESOLVED that shareholders of YUM! Brands Inc. (“YUM”) urge the Board of Directors to report to shareholders, at reasonable cost and omitting confidential and proprietary information, on the use of contractual provisions requiring employees of YUM or YUM franchisees to arbitrate employment-related claims, to the extent such information is in YUM’s possession or obtainable by YUM using reasonable efforts. The report should specify the proportion of the workforce subject to such provisions and any changes in policy or practice YUM has made, or intends to make, as a result of California’s ban on agreeing to arbitration as a condition of employment.

It is apparent from the language of the resolution that the focus of the Proposal is not sexual harassment in the workplace, or any other significant policy issue recognized by the Staff, but the topic of mandatory arbitration of employment claims generally. Because the Proposal relates to mandatory arbitration of employment claims generally, it necessarily touches upon the myriad types of employment claims that may be resolved through arbitration. These claims include, in addition to those regarding sexual harassment and discrimination, wage and hour claims (such as disputes over mileage reimbursements for delivery drivers and vacation pay) and compliance with standard workplace rules and procedures. The manner in which the Company determines to resolve these myriad types of employment claims (e.g. through mediation, voluntary arbitration, mandatory arbitration, or litigation) constitutes “management of the workforce, such as the hiring, promotion and termination of employees” one of the examples noted by the Commission as among the tasks that are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Exchange Act Release No. 34-40018 (May 21, 1998) ("The 1998 Release").

While the Staff stated in the 1998 Release that proposals “focusing on sufficiently significant social policy issues (e.g., sexual harassment matters) generally would not be considered to be excludable,” the Proposal does not focus on that policy issue. However, even where a proposal references or addresses a significant policy issue within the meaning of the Staff’s interpretations of Rule 14a-8(i)(7), it may be excluded when the proposal also involves ordinary business issues. For example, in JPMorgan Chase & Co. (Mar. 9, 2015), the Staff concurred in the exclusion of a proposal that requested that the company amend its human rights-related policies “to address the right to take part in one’s own government free from retribution,” and also included examples of companies that had adopted non-retaliation policies to protect employees’ expressed political views and contributions in its supporting statement, because the proposal related to “[the company’s] policies concerning its
employees”). See also Deere & Co. (Nov. 14, 2014) (concurring in the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an anti-discrimination policy where the proposal also related to the company’s “policies concerning its employees,” an ordinary business matter); Apache Corp. (Mar. 5, 2008) (concurring in the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that “some of the principles relate to Apache’s ordinary business operations”).

Here, the Proposal covers a broad use of arbitration with individuals that are both employees of the Company and employees of its franchisees, regardless of context. Thus, the mandatory arbitration referred to in the Proposal does not focus only on sexual harassment or any other significant policy issues like those contemplated by the 1998 Release. Like the precedents discussed above, the Proposal relates to ordinary business matters that extend beyond any significant policy issue touched upon by the Proposal. While we acknowledge that there has been increasing public discussion surrounding sexual harassment in the workforce such as the #MeToo movement referenced by the Proponent, there is not widespread agreement that mandatory arbitration in general is controversial. Because the Proposal relates to ordinary course employment practices in a broad range of circumstances, it does not focus on a significant policy issue within the meaning of the Staff’s interpretations of Rule 14a-8(i)(7), and therefore, may be properly excluded.

Conclusion

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations. Should the Staff disagree with the Company’s conclusions regarding the omission of the Proposal, or should any additional information be desired in support of the Company’s position, I would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of your response.

If the Staff has any questions regarding this request or requires additional information, please contact the undersigned by phone at 502-874-8719 or by email at lawrence.derengetti@yum.com.

Sincerely,

Lawrence Derenge
Corporate Counsel
Yum! Brands, Inc.

cc: CtW Investment Group
February 4, 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 Yum! Brands Inc. to omit proposal submitted by CtW Investment Group

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, CtW Investment Group (“CtW”) submitted a shareholder proposal (the "Proposal") to Yum! Brands Inc. (“Yum” or the “Company”). The Proposal asks Yum’s board to report to shareholders on the Company’s use of provisions requiring employees of Yum or its franchisees to arbitrate employment-related claims.

In a letter to the Division dated January 10, 2020 (the "No-Action Request"), Yum stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2020 annual meeting of shareholders. Yum argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7), on the ground that the Proposal deals with Yum’s ordinary business operations. As discussed more fully below, Yum has not met its burden of proving its entitlement to exclude the Proposal on that basis, and we respectfully request that Yum’s request for relief be denied.

The Proposal

The Proposal states:

RESOLVED that shareholders of YUM! Brands Inc. (“YUM”) urge the Board of Directors to report to shareholders, at reasonable cost and omitting confidential and proprietary information, on the use of contractual provisions requiring employees of YUM or YUM franchises to arbitrate employment-related claims, to the extent such information is in YUM's possession or obtainable by YUM using reasonable efforts. The report should specify the proportion of the workforce subject to such provisions and any changes in policy or practice YUM has made, or intends to make, as a result of California’s ban on agreeing to arbitration as a condition of employment.

Ordinary Business
Rule 14a-8(i)(7) allows exclusion of proposals related to a company’s ordinary business operations. Yum argues that the Proposal relates to the Company’s ordinary business operations because it addresses the management of its workforce and would micromanage Yum by limiting the use of mandatory arbitration provisions.

**Mandatory Arbitration of Workplace Claims is a Significant Policy Issue**

Companies are generally not allowed to rely on the ordinary business exclusion to omit proposals addressing “management of the workforce” if they “focus[] on sufficiently significant social policy issues.”\(^1\) To determine whether a topic qualifies as a significant social policy issue, the Division analyzes whether it is a “consistent topic of widespread public debate.” Mandatory arbitration satisfies that standard.

The Staff has previously found that mandatory arbitration of employment-related claims is a significant policy issue, contrary to Yum’s assertion in the No-Action Request. Last season, CBRE Group, Inc. challenged on ordinary business grounds a proposal asking the company to “report on the impact of mandatory arbitration policies on the Company’s employees . . . [and] evaluate the risks that may result from the Company’s current mandatory arbitration policy on claims of sexual harassment.”\(^2\) CBRE framed the subject of the proposal, as Yum does here, as “the Company’s contractual relationships with its employees,” which according to CBRE involved balancing legal and regulatory regimes, the logistics of workforce management, the welfare of employees, and the interests of all the company’s stakeholders. The Staff disagreed, stating that the proposal’s subject “transcends ordinary business matters.”

The CBRE proposal, unlike the Proposal, specifically mentioned sexual harassment claims in the resolved clause. However, the Proposal’s supporting statement makes clear that a major concern about arbitrating employment-related claims is denying sexual harassment and assault victims their day in court. The Proposal’s scope would include other kinds of claims that also involve significant policy issues, such as discrimination on the basis of race or religion. However, the significance of the CBRE determination is that the Staff did not accept the company’s arguments that exclusion was appropriate because mandatory arbitration is accomplished through contracts with employees. That reasoning should apply with equal force to the Proposal.

The use of mandatory arbitration provisions for employment-related claims continues to be a subject of intense controversy, particularly in the context of the

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\(^2\) CBRE Group, Inc. (Mar. 6, 2019).
#MeToo movement. There has been consistent and widespread debate over the fairness of forcing employees to give up their right to sue, even when claims are as serious as workplace sexual harassment and assault, given workers’ lack of bargaining power. Mandatory arbitration also promotes secrecy, which can allow wrongdoers to continue their behavior. Press coverage has been intense, as high-profile figures in the entertainment world, organized groups of tech workers, members of Congress and presidential candidates have expressed opposition to mandatory arbitration. A non-exhaustive list of articles is attached hereto as Exhibit A.

Democratic presidential hopefuls have weighed in on the issue. Elizabeth Warren has announced a plan to combat mandatory arbitration. She has stated that she would, if elected, ban federal contractors from requiring employees to agree to arbitrate claims. Bernie Sanders’ official website condemns the practice. Then-candidate Kamala Harris criticized the mandatory arbitration policy in place at her husband’s law firm, where a female partner accused another partner of sexually assaulting her. Harris issued a statement that she “has long opposed forced arbitration agreements and that position has not changed and she does not believe this is any exception.” Six Democratic senators in the race co-sponsored the Restoring Justice for Workers Act, which would ban forced arbitration of employment claims.

Last year, Google agreed to stop requiring arbitration of employment-related claims, following an earlier agreement not to use it for sexual harassment claims. Twenty thousand Google employees had participated in a walkout to protest the practice. Other tech companies made similar changes. Even after Google changed

4 https://bernieSanders.com/issues/corporate-accountability-and-democracy/
its policy, Google employees (through Googlers for Ending Forced Arbitration) are still involved in the issue, lobbying Congress for a ban on the practice. 8

Gretchen Carlson, a former Fox News host whose suit against sexual harasser Roger Ailes was able to proceed only because she did not sue Fox itself, also continues to campaign against mandatory arbitration provisions. In May 2019, she testified before the House Judiciary Subcommittee. 9 The issue has had high visibility in popular culture: Late last year, “Bombshell,” a movie about Carlson’s treatment by Fox, as well as that of Megyn Kelly, was released. 10 A Showtime miniseries, “The Loudest Voice,” also depicted Carlson’s experience. 11 In December 2019, Carlson and another survivor started a nonprofit, “Lift Our Voices,” aimed at ending the use of mandatory arbitration provisions and nondisclosure agreements. 12

Focus on mandatory arbitration for employment-related claims has not been limited to the sexual harassment context. Late last year, LGBTQ organizations at 14 top law schools, including Harvard and Yale, announced that they would no longer take funding from or promote firms that impose arbitration on employees, citing the impact of such provisions on employees’ ability to obtain redress for discrimination. 13 Many law firms, including Kirkland & Ellis and Sidley Austin, have abandoned the practice under pressure. 14 A non-exhaustive list of articles about mandatory arbitration outside the sexual harassment context appears in Exhibit A.

The public debate has spurred responses by policy makers. In the past several years, many bills have been introduced in Congress on the subject of mandatory arbitration, one of which passed the House in late 2019:

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11 https://www.sho.com/the-loudest-voice/cast/gretchen-carlson
- Forced Arbitration Injustice Repeal Act (116th Congress H.R. 1423, S. 610): would prohibit pre-dispute arbitration agreements that require arbitration of employment, consumer, antitrust, or civil rights disputes.\textsuperscript{15} FAIR passed the House in September 2019.\textsuperscript{16}
- Restoring Justice for Workers Act (116th Congress H.R. 2749, S. 1491): would prohibit pre-dispute arbitration agreements involving employment-related claims.\textsuperscript{17}
- Arbitration Fairness Act (115th Congress H.R.1374, S.537 and S.2591): would invalidate a pre-dispute agreement to arbitrate various kinds of claims, including employment and civil rights.\textsuperscript{18}
- Restoring Statutory Rights and Interests of the States Act (115th Congress H.R.1396, S.550): would provide that a written agreement to arbitrate a violation of federal or state law must is not valid if entered into before the claim has arisen.\textsuperscript{19}
- Ending Forced Arbitration of Sexual Harassment Act (115th Congress H.R.4570, S.2203): would invalidate a pre-dispute written agreement to arbitrate a claim arising out of conduct that would form the basis for a violation of the Civil Rights Act of 1964 based on sex, regardless of whether such a violation is alleged.\textsuperscript{20}
- Mandatory Arbitration Transparency Act (115th Congress H.R.4130, S.647): would prohibit a pre-dispute arbitration agreement from including a confidentiality provision regarding various kinds of claims, including employment, if that provision would violate a whistleblower statute or prevent disclosure of tortious or unlawful conduct, or issues of public policy or concern\textsuperscript{21}

Fifty-six attorneys general of all 50 states, the District of Columbia and U.S. territories sent a letter to Congressional leadership in 2018 urging them to “free [victims of sexual harassment] from the injustice of forced arbitration and secrecy

\textsuperscript{15} https://www.congress.gov/bill/116th-congress/house-bill/1423
\textsuperscript{16} https://www.vox.com/identities/2019/9/20/20872195/forced-mandatory-arbitration-bill-fair-act
\textsuperscript{17} https://www.congress.gov/bill/116th-congress/house-bill/2749
\textsuperscript{19} https://www.congress.gov/bill/115th-congress/house-bill/1396?format=txt&r=46
when it comes to seeking redress for egregious misconduct condemned by all concerned Americans.”

State legislatures have also taken action on mandatory arbitration of employment-related claims. Most notably, in September 2019, California enacted a law requiring that an employee agree “voluntarily and affirmatively” to enter into an agreement to arbitrate employment-related claims and prohibiting retaliation against an employee who declines.

Five other states have adopted measures to bar employers from requiring employees to agree to certain kinds of claims. In 2018, the state of Washington passed a law invalidating any provision of an employment agreement that (a) requires the employee to waive her right to “publicly pursue” a discrimination claim or file a complaint with the “appropriate state or federal agencies” or (b) requires an employee to resolve a discrimination claim in a “dispute resolution process that is confidential.” Vermont and Maryland have also barred pre-dispute agreements to arbitrate sexual harassment claims. New Jersey’s statute, enacted in March 2019, went even further than the others, banning not only mandatory arbitration of claims for employment discrimination, retaliation and harassment, but also many nondisclosure agreements. (New York enacted a law in fall 2018 barring pre-dispute arbitration agreements for sexual harassment claims, and later other discrimination claims, but a federal court in New York has ruled that the statute is preempted by federal law.)

The Proposal’s subject, mandatory arbitration of employment-related claims such as discrimination and harassment, is a consistent topic of widespread public debate as the Staff has interpreted that standard. Media attention has been

25 http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6313-S.SL.pdf#page=1
26 https://onlabor.org/can-states-ban-mandatory-arbitration-of-harassment-cases/
substantial, and legislative initiatives are ongoing on both the state and federal level. Organized efforts are confronting private employers, many of whom have changed their practices as a result. Thus, though the Proposal addresses the workforce, the issue it raises transcends ordinary business operations.

The Proposal Seeks Information at a High Level and Would Not Micromanage Yum

Yum urges that the Proposal would micromanage it because “the aim of the Proposal is to limit, if not completely curtail, contractual provisions that require arbitration of employment-related claims by [against?] the Company or its franchisees.” (No-Action Request, at 5)

We agree with Yum that shareholders “are ill-equipped” to make the “complex, highly fact-specific” decisions whether use of a mandatory arbitration provision is appropriate in particular circumstances. (No-Action Request, at 5) But the Proposal would not do that. No fair reading of the Proposal could conclude that the Proposal seeks to insert shareholders into specific decisions on mandatory arbitration provisions; instead, the Proposal asks for disclosure to enable shareholders to assess the risks presented by the use of the practice.

That disclosure would be made at a very high level. The Proposal asks generally for information about the use of mandatory arbitration, including the proportion of the workforce covered and intentions in light of California’s new law. It does not ask for significant detail about the legal and regulatory environments in different countries, for example, as Yum suggests. Nor does it request that Yum report on the relative costs of litigation and arbitration or the chances of success in each forum. (See No-Action Request, at 5-6) Thus, it does not seek the kind of “intricate detail” the Commission spoke of when describing micromanagement in a 1998 release. Shareholders would be well-positioned to understand information disclosed pursuant to the Proposal, as it would closely resemble the types of disclosures companies make about other risks facing the business.

The Proposal recognizes that some of the information requested may not be in Yum’s possession or readily obtainable by Yum. The Proposal states that disclosure would only be required “to the extent such information is in YUM’s possession or obtainable by YUM using reasonable efforts.” Yum complains that the Proposal would mandate data collection from franchisees, and that such collection is not “specifically contemplated” by the franchise agreements. If reasonable efforts to obtain the information, such as requesting that franchisees voluntarily provide the data, do not succeed, the Proposal would excuse compliance. (We note that Yum has not claimed that the Proposal is beyond its power to implement, and thus excludable under Rule 14a-8(i)(6), by virtue of information being in franchisees’ possession.)

A similar micromanagement argument was rejected in CBRE Group. Like Yum, CBRE argued that many factors go into its decisions whether to use mandatory arbitration provisions, including the legal and regulatory environment, and that shareholders would not be in a position to make an informed judgment. The Staff declined to concur in CBRE’s view.

The Proposal does not try to substitute shareholders’ judgment for that of management on the appropriateness of using such provisions in particular situations, recognizing that such specific decisions are the responsibility of management. The Proposal asks Yum to report, at a high level, on its use of mandatory arbitration provisions, and does not seek granular information. Accordingly, exclusion on micromanagement grounds would be inappropriate.

* * *

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

CtW appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (202) 721-6027.

Sincerely,

Dieter Waizenegger
Executive Director, CtW Investment Group

cc: Lawrence Derenge
    Corporate Counsel
    Yum! Brands Inc.
    Lawrence.derengeiii@yum.com

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32 CBRE Group, Inc. (Mar. 6, 2019).
Appendix A

Coverage of mandatory arbitration of sexual harassment or assault claims:

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

realistically the only tool citizens have to fight illegal or deceitful business practices.

- Alexander J.S. Colvin, “The Growing Use of Mandatory Arbitration,” Economic Policy Institute, Sept. 27, 2017 (https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration/) (study finding that 56% of private-sector, non-unionized U.S. workers are subject to mandatory arbitration, including of discrimination and wage and hour claims, and that arbitration “has a tendency to suppress claims”)
- Megan Leonhardt, “Getting Screwed at Work? The Sneaky Way You May Have Given Up Your Right to Sue,” Money.com, Sept. 27, 2017 (reporting on EPI and Outsourcing Justice studies regarding mandatory arbitration)
January 10, 2020

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

By Email: shareholderproposals@sec.gov

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

Dear Sir or Madam:

Yum! Brands, Inc. (the “Company”) respectfully submits this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from the Company’s proxy materials for its 2020 annual meeting of shareholders (the “2020 Proxy Materials”) the shareholder proposal submitted to the Company by CtW Investment Group (the “Proponent”) in a letter dated December 5, 2019 (the “Proposal”).

The Company requests confirmation that the Commission’s staff (the “Staff”) will not recommend to the Commission that enforcement action be taken against the Company if the Company excludes the Proposal from its 2020 Proxy Materials pursuant to Exchange Act Rule 14a-8(i)(7) on the basis that the Proposal deals with matters relating to the Company’s ordinary business operations.

Pursuant to Exchange Act Rule 14a-8(j), the Company is submitting electronically to the Commission this letter, and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission.

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

On December 5, 2019, the Company received the following Proposal from the Proponent, for inclusion in the 2020 Proxy Materials.

RESOLVED that shareholders of YUM! Brands Inc. ("YUM") urge the Board of Directors to report to shareholders, at reasonable cost and omitting confidential and proprietary information, on the use of contractual provisions requiring employees of YUM or YUM franchisees to arbitrate employment-related claims, to the extent such information is in YUM’s possession or obtainable by YUM using reasonable efforts. The report should specify the proportion of the workforce subject to such provisions and any changes in policy or practice YUM has made, or intends to make, as a result of California’s ban on agreeing to arbitration as a condition of employment.

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

**Basis for Exclusion**

We respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations.

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

Shareholder proposals may be excluded under Rule 14a-8(i)(7) if they relate to a company’s ordinary business operations. The SEC has stated that two central considerations underlie this exclusion. See Staff Legal Bulletin No. 141 (CF) (November 1, 2017). The first covers the proposal’s subject matter, stating that “proposals that raise matters that are ‘so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight’ may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.” *Id.* The second central consideration relates to the degree to which the proposal micromanages the business. *Id.*

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

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

The subject of the Proposal concerns the use of contractual provisions that require employees to arbitrate employment-related claims and thus directly involves the manner in which the Company manages its workforce. The Staff has previously stated that the “management of the workforce, such as the hiring, promotion and termination of employees” is a task that is so fundamental to management’s ability to run a company on a day-to-day basis that it “could not, as a practical matter, be subject to direct shareholder oversight.” Exchange Act Release No. 34-40018 (May 21, 1998) ("The 1998 Release"). The Staff has consistently concurred with exclusion of proposals relating to management of the workforce, including those related to hiring and terminating employees. See, e.g., *Apple, Inc.* (Nov. 16, 2015) (allowing the exclusion of a proposal asking Apple’s compensation committee to adopt new compensation principles
responsive to the U.S.’s “general economy, such as unemployment, working hour[s] and wage inequality”); Merck & Co. Inc. (Mar. 6, 2015) (proposal to fill entry level positions only with outside candidates excludable under Rule 14a-8(i)(7) where the Staff noted that “the proposal relates to procedures for hiring and promoting employees.” Proposals concerning a company’s management of its workforce are generally excludable under Rule 14a-8(i)(7)”; Starwood Hotels & Resorts Worldwide, Inc. (Feb. 14, 2012) (proposal that, by a certain date, management verify United States citizenship for certain workers excludable under Rule 14a-8(i)(7), noting that “[p]roposals concerning a company’s management of its workforce are generally excludable under Rule 14a-8(i)(7)”; Wilshire Enterprises, Inc. (Mar. 27, 2008) (proposal to replace the current chief executive officer is excludable); Wells Fargo & Company (Feb. 22, 2008) (proposal not to employ individuals who had been employed by a credit rating agency during the previous year excludable); Donaldson Company, Inc. (Sept. 13, 2006) (concurring that a proposal requesting the establishment of "appropriate ethical standards related to employee relations" could be excluded); Consolidated Edison, Inc. (Feb. 24, 2005) (concurring that a proposal requesting the termination of certain supervisors could be excluded as it related to “the termination, hiring, or promotion of employees”); and Intel Corp. (Mar. 18, 1999) (proposal to establish an employee bill of rights is excludable).

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

The Company is a global business that owns the KFC, Pizza Hut and Taco Bell restaurant brands and it has employees located around the world. The relationship between the Company and the Company’s employees constitutes a critical component of the Company’s day-to-day management. The workplace environment is fundamentally related to the Company’s ordinary business operations. The determination whether to use certain lawful employment practices related to employee hiring and termination, conditions of employment and labor relations, is a fundamental business issue for the Company’s management and requires an understanding of the business implications that could result from changes made to employee policies. As it operates its business, the Company must balance various needs and requirements that apply to the Company’s entire workforce in and outside of the United States. The types of arrangements that are the subject of the Proposal are inextricably linked to the Company’s policies for hiring and terminating employees, and, more generally, the way the Company manages its workforce. The matters previously considered by the Staff, as set forth above, are no different than the matters addressed in the Proposal. The Proposal relates to fact-specific employment-related decisions that are a fundamental part of day-to-day business decisions of management at various levels in the Company and in various jurisdictions around the world. The Proposal attempts to replace management’s fundamental tasks with shareholder votes.

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Staff has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[w]here the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business...it may be excluded under [R]ule 14a-8(i)(7).” Johnson Controls, Inc. (avail. Oct. 26, 1999).
The Staff has repeatedly recognized that proposals that call for reports where the subject matter of the report deals with the management of the issuer’s workforce may be excluded pursuant to Rule 14a(8)(i)(7). See e.g. Walmart, Inc. (Apr. 8, 2019) (concurring in the exclusion of a proposal calling for a report on hourly employees taking absences for personal or family illness); Bank of America Corporation (Mar. 1, 2017) (concurring in the exclusion of a proposal calling for a report on compensation and incentive policies for low level employees); and Wells Fargo & Company (Feb. 14, 2014) (concurring in the exclusion of a proposal calling for a report on compensation for employees who have the ability to expose the issuer to material financial loss).

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

A proposal that touches upon management’s ability to run the company can be overcome by a significant policy issue, but none are present in this case. The Staff has not previously recognized mandatory arbitration with employees as a practice that raises significant policy issues. In other situations where a proposal has sought policies applying to a large swath of employees, the Staff has not found that such proposals relate to a significant policy issue. See CVS Health Corp. (Mar. 1, 2017) (permitting exclusion of the proponent’s proposal advocating for minimum wage reform); CVS Health Corp. (Feb. 27, 2015) (concurring in the exclusion of a proposal requesting the company “to amend its equal employment opportunity policy (or equivalent policy) to explicitly prohibit discrimination based on political ideology, affiliation or activity,” finding that the proposal related to the company’s policies “concerning its employees” notwithstanding the proponent's assertion that the proposal raised a significant policy issue); see also The Walt Disney Co. (Nov. 24, 2014); Deere & Co. (Nov. 14, 2014); Costco Wholesale Corp. (Nov. 14, 2014). The Staff has consistently determined that changes to employee policies are excludable under Rule 14a-8(i)(7) because the company’s relationships with its employees are part of the general operations of the company. In particular the Staff has recently determined that the type of request made by the Proponent “does not focus on an issue that transcends ordinary business matters.” Amazon.com, Inc. (Mar. 6, 2019) (concurring in the exclusion of a proposal by the proponent to forbid “inequitable employment practices” which includes arbitration of employment claims); see also, YUM! Brands Inc. (Mar. 6, 2019) (concurring in the exclusion of a proposal substantially the same).

Furthermore, the Proposal does not raise a significant policy issue that transcends the Company’s ordinary business in the particular context of the Company. The Proposal covers both employees of the Company and employees of franchisees of the Company. The Company owns only approximately 2% of all restaurants in its system, with the remainder owned and operated by franchisees. As a result, the overwhelming majority of the employees to which the Proposal relates are not employees of the Company but employees of the franchisees. The Company does not have the right under its franchise agreements to make policies regarding the employment practices of these franchisees, including whether the franchisees enter into employment agreements that contain arbitration provisions. Thus, even if, contrary to the numerous letters cited above, the Proposal were to raise a significant policy issue for some issuers, it would not be a significant policy issue for the Company because it relates overwhelmingly to employment relationships over which the Company has no control.

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

The Staff has stated a proposal may also be excluded under Rule 14a-8(i)(7) based on the “degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The 1998 Release. Recently the Staff restated this view and clarified that a proposal that is not excludable based on subject matter may be excludable if that proposal micromanages the company in Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB No. 14J”). A proposal may micromanage a company when it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” SLB No.
Although the Proposal requests preparation of a report, it is apparent from the supporting statement that the aim of the Proposal is to limit, if not completely curtail, contractual provisions that require arbitration of employment-related claims by the Company or its franchisees. As detailed below, any policy changes made to address the issues identified in the supporting statement would require an understanding of intricate facts and circumstances that would be lengthy, complicated and difficult for a shareholder to easily grasp in order to make a fully informed decision.

Insofar as the Proposal relates to its own employees, the Company’s decisions with respect to its employment practices are complex and nuanced and any attempt to address the concerns described in the Proposal will need to be analyzed on a country by country, and in some cases, a state by state basis. The Company employs approximately 34,000 individuals (as of the Company’s most recent Form 10-K, filed February 21, 2019) in at least 17 countries. The terms of employment and ways in which the Company responds to employment-related claims are highly fact-specific and vary based on the local needs and customs. Decisions on whether to require arbitration of employment-related claims as a condition of employment involves the day-to-day management of the Company’s workforce.

As part of its hiring process in certain jurisdictions the Company obtains an agreement whereby the employee agrees to submit claims with the Company to binding arbitration. The decision to enter into this type of agreement necessarily requires management to assess and weigh a number of factors. The Company has employees in at least 17 countries, each with its own unique legal system and employment laws. The decision to require that employee claims arising in some jurisdictions be settled through binding arbitration involves a complex assessment of factors such as the legal structures and frameworks available in each jurisdiction, the cost of litigating in that particular jurisdiction’s court system as compared to the cost of alternative dispute resolution methods, such as binding arbitration, the length of time it takes for a claim to be heard and decided in arbitration compared to the local court system, the likelihood of a fair outcome in each case and the type of claim and ability of the jurisdiction to decide the claim. Shareholders are ill-equipped to make these complex, highly fact-specific determinations.

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

Additionally, as mentioned above, the vast number of individuals to which this Proposal relates are not employees of the Company, but are employees of franchisees. As a result, the report called for by the Proposal would obligate the Company to collect information from its franchisees as to their use of contractual provisions requiring arbitration of employment-related claims. The Company does not collect information from its franchisees regarding contractual agreements entered into with their employees and its franchise agreements specifically provide that the Company’s franchisees are solely responsible for all of their employment practices, including hiring, terminations and other personnel actions (which would include the use of arbitration agreements for employment-related claims) Thus, implementation of the Proposal also implicates the day-to-day management of another part of the Company’s business – the oversight of its franchisees.

The Company has franchises in over 145 countries across the world, with over 49,000 restaurants operated by franchisees. The Company does not require franchisees to report information on franchisees’ arrangements with their employees regarding arbitration, nor is such reporting specifically contemplated by the Company’s franchise agreements. The reporting contemplated by the Company’s franchise agreements is generally focused on the financial performance of franchisees, rather than on items relating to employment or other operational matters. In deciding what information to gather from its franchisees,
the Company must determine what information is most important to maintain and enhance the reputation and quality of its restaurant brands. In doing so, it must also weigh the burden this reporting places on the franchisees in terms of cost and diversion of management time. These decisions involve a complex weighing of the value of information gathered against the burden placed on the franchisee. These decisions require expertise of management and are not of the types that shareholders are equipped to decide. By dictating the type of information that the Company must collect from its franchisees, the Proposal constitutes the type of micromanagement that permits its exclusion under Rule 14a-8(i)(7).

**Conclusion**

Based on the foregoing, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations. Should the Staff disagree with the Company’s conclusions regarding the omission of the Proposal, or should any additional information be desired in support of the Company's position, I would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of your response.

If the Staff has any questions regarding this request or requires additional information, please contact the undersigned by phone at 502-874-8719 or by email at lawrence.derengeiii@yum.com.

Sincerely,

Lawrence Derenge  
Corporate Counsel  
Yum! Brands, Inc.

cc: CtW Investment Group
Exhibit A

Proponent Proposal

See attached
December 5, 2019

Scott A. Catlett
General Counsel & Corporate Secretary
YUM! Brands, Inc.
1441 Gardiner Lane
Louisville, Kentucky 40213
(502) 874-8258

Dear Mr. Catlett,

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

CtW is the beneficial owner of approximately 30 shares of the Company’s common stock, which been held continuously for more than a year prior to this date of submission. The Proposal requests that the Board prepare a report for shareholders on the use of contractual provisions requiring employees of the Company or its franchisees to arbitrate employment-related claims, and to describe any changes in policy that the Company plans to make in the wake of recent legislative changes in California.

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

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

Sincerely,

Dieter Waizenegger
Executive Director, CtW Investment Group

1900 L Street NW, Suite 900 Washington, DC 20036
202-721-6040
www.ctwinvestmentgroup.com
RESOLVED that shareholders of YUM! Brands Inc. ("YUM") urge the Board of Directors to report to shareholders, at reasonable cost and omitting confidential and proprietary information, on the use of contractual provisions requiring employees of YUM or YUM franchisees to arbitrate employment-related claims, to the extent such information is in YUM’s possession or obtainable by Yum using reasonable efforts. The report should specify the proportion of the workforce subject to such provisions and any changes in policy or practice YUM has made, or intends to make, as a result of California’s ban on agreeing to arbitration as a condition of employment.

SUPPORTING STATEMENT

In recent years, public attention has focused on the use by companies of agreements requiring employees to pursue employment-related claims, including sexual harassment claims, through arbitration. High-profile sexual harassment cases involving Fox News, Google and Uber highlighted the impact of these agreements. A robust public debate has ensued, including responses by legislators, regulators and state attorneys general.

Mandatory arbitration precludes employees from suing in court for wrongs like wage theft, discrimination and harassment, and requires them to submit to private arbitration, which has been found to favor companies and discourage claims. Sexual harassment is an urgent concern in the fast food industry— a 2016 study found that 40% of female fast-food employees had been sexually harassed—and press reports indicate that sexual harassment and assault claims have been brought against Yum chains Pizza Hut, Taco Bell and KFC. Wage theft from low-wage employees is widespread; a study estimated that it costs low-wage workers in three large U.S. cities $3 billion per year.¹

A bill to end mandatory arbitration of sexual harassment claims passed in the U.S. House of Representatives in September 2019, and 56 state and territorial attorneys general voiced support for it. A 2019 article characterized the “movement to end forced arbitration” as having “swept Silicon Valley,” with employee walk-outs and company policy changes.² California recently banned the practice of requiring arbitration agreements as a condition of employment and Washington state enacted a law in 2018 invalidating contracts requiring arbitration of sexual harassment or assault claims.

Finally, because arbitration is private and contractual, arbitrating employment-related claims can allow a toxic culture to flourish, increasing the severity of eventual consequences and harming employee morale. Confidentiality provisions can prevent an employee’s lawyer from using knowledge of wrongdoing to identify other victims.

The information sought in this Proposal would allow shareholders to assess the risks posed by the use of mandatory arbitration of employment-related claims. We believe the Proposal strikes an appropriate balance because it gives the Board latitude not to include requested information that is not in YUM’s possession or obtainable without substantial expense.

We urge shareholders to vote for this Proposal.