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October 31, 2020

Via E-mail to shareholderproposals@sec.gov

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

**Re: The Walt Disney Company
Exclusion of Shareholder Proposal by James McRitchie**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2021 annual meeting of shareholders (the “Proxy Materials”) the enclosed shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by James McRitchie (together with his designated representative, John Chevedden, the “Proponent”) requesting that the Company adopt a policy of “promoting significant representation of employee perspectives among corporate decision makers by requiring the initial list of candidates from which new director nominees are chosen include (‘Initial List’) by the Nomination and Governance Committee (but need not be limited to) non-management employees.”

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Proposal seeks to micromanage the Company’s ordinary business operations, or, alternatively, pursuant to Rule 14a-8(i)(3) of the Exchange Act on the basis that the Shareholder Proposal is materially false and misleading in violation of Rule 14a-9.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter, and the Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently

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sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

Background

On August 31, 2020, the Company received the Proposal from the Proponent, which states as follows:

Proposal 4*: Increase Diversity of Director Nominees

Resolved: Shareholders of Walt Disney Company (‘Disney’ or ‘Company’) urge the board to adopt a policy (‘Policy’) of promoting significant representation of employee perspectives among corporate decision makers by requiring the initial list of candidates from which new director nominees are chosen (‘Initial List’) by the Nominations and Governance Committee include (but need not be limited to) non-management employees. The Policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates.

Whereas: There is growing consensus that employees on corporate boards can contribute to long-term corporate sustainability. Policymakers note, having companies run exclusively to benefit shareholders contributes to “stagnant wages, runaway executive compensation and underinvestment in research and innovation.”¹ The Business Roundtable asks corporations to align with stakeholder interests, including employees.² Employee representation grows long-term value of companies in several ways. According to the National Bureau of Economic Research, giving workers formal control rights increases female board representation and raises capital formation.³ Employees are also often more diverse than boards in terms of race, gender, and wealth. The German “co-determination” model of shared governance is lauded as an excellent check against short-term capital allocation practices.⁴

The 2018 UK Corporate Governance Code calls on boards to establish a method for gathering workforce views. Options include a director appointed from the workforce, a formal workforce advisory panel or designating a director to liaise with workers.⁵

¹ <https://www.nytimes.com/2019/01/06/opinion/warren-workers-boards.html>

² <https://opportunity.businessroundtable.org/wp-content/uploads/2020/06/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures.pdf>

³ <http://economics.mit.edu/files/17273>

⁴ https://rooseveltinstitute.org/wp-content/uploads/2017/10/Corp-Gov_FINAL.pdf

⁵ <https://assets.kpmg/content/dam/kpmg/uk/pdf/2018/07/designated-NED.pdf>

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Senators Baldwin and Warren have introduced legislation codifying employee representation on corporate boards, noting that modern corporate governance needs to be accountable to a wider array of interests, notably employees.⁶ Polling demonstrates bipartisan public support (over 53%) for employee representation.⁷

Anticipated benefits include reduced turnover as employees are more empowered to make firm-specific investments, better informed decision-making because employees have specialized knowledge, better monitoring of management with increased information channels, and reduced shareholder myopia since employees often take a longer-term view.⁸

While our Board satisfies independence requirements, it lacks representation from non-management employees, who bring a different understanding of operations than other directors. Additionally, Disney's CEO to median employee pay ratio is 911:1 and Disney has no employee stock ownership plan (ESOP) to help grow employee wealth and engagement.⁹

The Policy we propose resembles the Rooney Rule, which requires teams to interview minority candidates for head coaching and senior operations openings. By adopting the Rooney Rule, National Football League teams increased diversity and set a precedent for other industries. Policies similar to the Rooney Rule have been adopted by Amazon, Costco, Home Depot, Activision Blizzard, Dover, Expedia, Fastenal, Hilton Worldwide Holdings, L Bands, Robert Half International, Ross Stores and others.

Basis for Exclusion

The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”). As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration is that “[c]ertain

⁶ <https://www.wsj.com/articles/companies-shouldnt-be-accountable-only-to-shareholders-1534287687>

⁷ <https://www.dataforprogress.org/blog/2018/12/14/employee-governance>

⁸ <https://www.corpgov.net/2020/04/kokkinis-and-sergakis-employee-participation-in-uk-companies/>

⁹ https://smlr.rutgers.edu/sites/default/files/rutgerskelloggreport_april2019.pdf

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tasks 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." The other consideration is that a proposal should not "seek[] 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." We believe the Proposal implicates the second of these considerations.

The Proposal May Be Excluded Because It Seeks to Micromanage the Company

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) on the basis that it seeks to micromanage the determinations of the Company's board of directors (the "Board") as to which individuals to consider as candidates for nomination to the Board. As the Staff explained in Staff Legal Bulletin 14K (October 16, 2019) ("SLB 14K"), "[w]hen a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." The Staff further specified in SLB 14K that in considering arguments for exclusion based on micromanagement, it will "look to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board."

The Proposal seeks adoption of a policy requiring that any initial list of candidates from which new director nominees are chosen by the Governance and Nominating Committee include non-management employees in order to promote "significant representation of employee perspectives among corporate decision makers." The Proposal seeks to micromanage the Board's approach and decisions regarding director searches, which is one of the ordinary business operations of the Board, by prescribing the manner by which the Board decides who will be included in an initial pool of director candidates. Specifically, the Proposal dictates that individuals with a particular type of experience (i.e., experience as non-management employees of the Company) be included on an initial list of director candidates. Determining what type of experience a director candidate should possess is the responsibility of the Board and the Governance and Nominating Committee as part of the process for determining which candidates to include in the pool of candidates to be considered for nomination to the Board, which is a specified responsibility of the Governance and Nominating Committee pursuant to its charter. The Staff has consistently concurred in exclusion under Rule 14a-8(i)(7) of shareholder proposals requesting that the board of directors take certain actions related to the ordinary business operations of the board of directors. *See* Exxon Mobil Corporation (March 6, 2020) (concurring in exclusion of a proposal requesting that the board charter a new board committee on climate risk because the proposal "micromanages the Company by dictating that the board charter a new board committee on climate risk"); Royal Caribbean Cruises Ltd. (March 14, 2019) (concurring in exclusion of a proposal requesting that

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any stock buybacks adopted by the Board after approval of the proposal not become effective until approved by shareholders because it “micromanages the Company”); Walgreens Boots Alliance, Inc. (November 20, 2018) (concurring in exclusion of a proposal requesting that stock buybacks adopted by the board not become effective until approved by shareholders because it “micromanages the Company”); and JPMorgan Chase & Co. (March 30, 2018) (concurring in exclusion of a proposal requesting the company establish a “Human and Indigenous Peoples’ Rights Committee” because it “micromanages the Company by seeking to impose specific methods for implementing complex policies”).

As part of its ordinary business, the Board determines the processes and procedures necessary to conduct searches for new director candidates. The Proposal attempts to micromanage the Company and the Board by “supplanting the judgment of management and the Board” in connection with the complex matter of determining who or what category of persons may be appropriate candidates for nomination to the Board and prescribing a specific action that the Board must undertake in connection with director searches. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as it seeks to micromanage the Company and the Board.

The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(3)

Rule 14a-8(i)(3) permits a company to exclude all or portions of a shareholder proposal “[i]f the proposal or supporting statement 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.” Specifically, Rule 14a-9 provides that no solicitation may be made by means of any proxy materials “containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.” The Staff takes the view that a proposal may be excluded pursuant to Rule 14a-8(i)(3) where “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” and where “the company demonstrates objectively that a factual statement is materially false or misleading.” Staff Legal Bulletin No. 14B (September 15, 2004).

The Staff has previously concurred in the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(3) in cases where the proposals contained statements that were “materially false or misleading.” *See, e.g.*, Ferro Corporation (March 17, 2015) (concurring in exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which suggested that the stockholders would have increased rights if the Delaware law

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governed the company instead of Ohio law); General Electric Co. (January 6, 2009) (concurring in exclusion of a proposal regarding director service on board committees as false and misleading where the proposal repeatedly referred to “withheld” votes and incorrectly implied that the company offered shareholders the ability to withhold votes in elections of directors); and Johnson & Johnson (January 31, 2007) (concurring in exclusion of a proposal as materially false or misleading where the proposal involved an advisory vote to approve the company’s compensation committee report but contained misleading implications about the contents of the report in light of SEC disclosure requirements).

The Proposal is materially misleading in several respects. Notably, and most concerning, the references in the Proposal’s heading and its supporting statement to “diversity” do not accurately reflect the substance of the Proposal and would be misleading to the Company’s stockholders. We believe these references are intentionally misleading and represent a cynical attempt to capitalize on an important social justice movement to garner greater voting support for a proposal unrelated to diversity.

The Proponent describes the Proposal as a proposal to “Increase Diversity of Director Nominees” in the Proposal’s heading, when in fact the Proposal does not relate to “diversity” as is commonly understood (such as gender, ethnic or racial diversity), but rather advocates for director nominees who are Company non-management employees. The misleading title may cause the Company’s stockholders to have a fundamentally different understanding as to what they are voting to support or oppose. In this regard we note that pursuant to Rule 14a-4(a)(3) of the Exchange Act, the form of proxy must “identify clearly and impartially each separate matter intended to be acted upon.” Were the Company to include the title as written, stockholders reading the Company’s proxy card would be materially misled as to the Proposal’s subject matter.

Further, the Proposal references the “Rooney Rule” which, as the Proposal states, requires National Football League teams to interview minority candidates for head coaching and senior operations openings. By referencing the “Rooney Rule,” which has become a familiar term invoking racial diversity, the Proposal may mislead stockholders into thinking that the Proposal relates to diversity as is commonly understood when in fact the substance of the Proposal, which is to have the Governance and Nominating Committee include Company non-management employees in an initial list of director nominees, does not appear to relate to diversity. While the supporting statement includes a general statement that “Employees are often more diverse than boards in terms of race, gender, and wealth,” the Proponent does not further explain the connection between how including “non-management employees” (without any further specific qualifications or backgrounds) in an initial list of director nominees would increase diversity of the board of directors. Even if increasing diversity of the board is truly the objective of the

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Proposal, it is unclear from the resolution and the supporting statements how including non-management employees in an initial list of director nominees would increase the diversity of the board and the Proponent does not provide any support for this objective.

In addition, the Proponent cites to online materials that are not publicly available and which neither the Company nor its stockholders would be able to access to assess the Proponent's supporting statements. In footnote 4 of the Proposal, the Proponent references a website address which, as of the date of this letter, cannot be found, a screen shot of which is attached hereto as Exhibit B. In Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14"), the Staff included the following interpretive guidance:

May a reference to a website address in the proposal or supporting statement be subject to exclusion under the rule?

Yes. In some circumstances, we may concur in a company's view that it may exclude a website address under rule 14a-8(i)(3) because information contained on the website may be materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules. Companies seeking to exclude a website address under rule 14a-8(i)(3) should specifically indicate why they believe information contained on the particular website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules.

The Staff expanded on its approach to website links in Staff Legal Bulletin 14G (October 16, 2012) ("SLB 14G"), reiterating that website references may be excludable under Rule 14a-8(i)(3) and noting that "if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the [S]taff to evaluate whether the website reference may be excluded." Specifically, the Staff stated that it considers "only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the company can determine what actions the proposal seeks." Further, "[i]f a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite." Without the information included in the link, the Company's stockholders will not be able to make an informed voting decision. In addition, as the Staff noted in SLB 14G, "a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal."

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As discussed above, the Proponent has included misleading references to “diversity” in the Proposal while also citing to online materials that are not available for the Company and its stockholders to evaluate. Accordingly the Proposal is materially misleading in violation of Rule 14a-9 and therefore may be excluded in its entirety under Rule 14a-8(i)(3), consistent with SLB 14 (the Staff may “find it appropriate for [the Company] to exclude the entire proposal, supporting statement, or both, as materially false or misleading.”).

Conclusion

For the foregoing reasons, and consistent with the Staff’s prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company’s ordinary business operations, or, alternatively, Rule 14a-8(i)(3), on the basis that the Proposal is materially false and misleading in violation of Rule 14a-9.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,



Lillian Brown

Enclosures

cc: Jolene Negre, Associate General Counsel and Assistant Secretary
The Walt Disney Company

John Chevedden

EXHIBIT A

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Mr. Alan N. Braverman
Corporate Secretary
The Walt Disney Company (DIS)
500 S Buena Vista Street
Burbank CA 91521

Dear Mr. Braverman:

I am delighted to own shares in The Walt Disney Company. However, I believe the Board should take this opportunity to signal improvement in its corporate governance.

My attached proposal requesting to **Increase Diversity of Director Nominees** is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements, including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

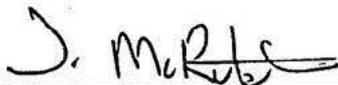
This is my delegation to John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act as my agent regarding this Rule 14a-8 proposal, negotiations and/or modification, and presentation of it for the forthcoming shareholder meeting.

Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

to facilitate prompt and verifiable communications. Please identify me exclusively as the lead filer of the proposal.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. *Please acknowledge receipt of my proposal promptly by email to* *** We look forward to negotiations and implementation.

Sincerely



James McRitchie

August 30, 2020

Date

cc: Jolene Negre, Associate General Counsel and Assistant Secretary, The Walt Disney Company

[DIS: Rule 14a-8 Proposal, August 30, 2020]
[This line and any line above it – *Not* for publication.]
Proposal 4* - **Increase Diversity of Director Nominees**

Resolved: Shareholders of Walt Disney Company ('Disney' or 'Company') urge the board to adopt a policy ('Policy') of promoting significant representation of employee perspectives among corporate decision makers by requiring the initial list of candidates from which new director nominees are chosen ('Initial List') by the Nominations and Governance Committee include (but need not be limited to) non-management employees. The Policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates.

Whereas: There is growing consensus that employees on corporate boards can contribute to long-term corporate sustainability. Policymakers note, having companies run exclusively to benefit shareholders contributes to "stagnant wages, runaway executive compensation and underinvestment in research and innovation."¹ The Business Roundtable asks corporations to align with stakeholder interests, including employees.²

Employee representation grows long-term value of companies in several ways. According to the National Bureau of Economic Research, giving workers formal control rights increases female board representation and raises capital formation.³ Employees are also often more diverse than boards in terms of race, gender, and wealth. The German "co-determination" model of shared governance is lauded as an excellent check against short-term capital allocation practices.⁴

The 2018 UK Corporate Governance Code calls on boards to establish a method for gathering workforce views. Options include a director appointed from the workforce, a formal workforce advisory panel or designating a director to liaise with workers.⁵

Senators Baldwin and Warren have introduced legislation codifying employee representation on corporate boards, noting that modern corporate governance needs to be accountable to a wider array of interests, notably employees.⁶ Polling demonstrates bipartisan public support (over 53%) for employee representation.⁷

Anticipated benefits include reduced turnover as employees are more empowered to make firm-specific investments, better informed decision-making because employees have specialized knowledge, better monitoring of management with increased information channels, and reduced shareholder myopia since employees often take a longer-term view.⁸

While our Board satisfies independence requirements, it lacks representation from non-management employees, who bring a different understanding of operations than other directors. Additionally, Disney's CEO to median employee pay ratio is 911:1 and Disney has no employee stock ownership plan (ESOP) to help grow employee wealth and engagement.⁹

The Policy we propose resembles the Rooney Rule, which requires teams to interview minority candidates for head coaching and senior operations openings. By adopting the Rooney Rule, National Football League teams increased diversity and set a precedent for other industries. Policies similar to the Rooney Rule have been adopted by Amazon, Costco, Home Depot, Activision Blizzard, Dover, Expedia, Fastenal, Hilton Worldwide Holdings, L Brands, Robert Half International, Ross Stores and others.

1 <https://www.nytimes.com/2019/01/06/opinion/warren-workers-boards.html>

2 <https://opportunity.businessroundtable.org/wp-content/uploads/2020/06/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures.pdf>

3 <http://economics.mit.edu/files/17273>

4 https://rooseveltinstitute.org/wp-content/uploads/2017/10/Corp-Gov_FINAL.pdf

5 <https://assets.kpmg/content/dam/kpmg/uk/pdf/2018/07/designated-NED.pdf>

6 <https://www.wsj.com/articles/companies-shouldnt-be-accountable-only-to-shareholders-1534287687>

7 <https://www.dataforprogress.org/blog/2018/12/14/employee-governance>

8 <https://www.corpgov.net/2020/04/kokkinis-and-sergakis-employee-participation-in-uk-companies/>

9 https://smlr.rutgers.edu/sites/default/files/rutgerskelloggreport_april2019.pdf

James McRitchie of CorpGov.net

Increase Long-Term Shareholder Value

Vote to **Increase Diversity of Director Nominees** – Proposal [4*]
[This line and any below, *except for footnotes*, are *not* for publication]
Number 4* to be assigned by DIS

Notes:

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

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

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

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email



Ameritrade

9/11/2020

James Mcritchie

Re: Your TD Ameritrade Account Ending in ***

Dear James Mcritchie,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously for at least 13 months, 100 shares common shares of Walt Disney Co (DIS) in an account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

Matt Beckman
Sr. Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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EXHIBIT B

Footnote 4 Website Screenshot

