

January 20, 2020

VIA E-MAIL

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

Re: *McDonald's Corporation*
Shareholder Proposal of The City of Philadelphia Public Employees Retirement
System
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, McDonald's Corporation (the "Company"), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the "2020 Proxy Materials") a shareholder proposal, including statements in support thereof (the "Proposal"), received from The City of Philadelphia Public Employees Retirement System (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 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 of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if it elects to submit additional correspondence to the Commission or the Staff with respect to this 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.

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THE PROPOSAL

The Proposal states:

RESOLVED, that shareholders of McDonald's Corporation ("McDonald's") urge the Board of Directors (the "Board") to adopt a policy that when McDonald's adjusts or modifies any generally accepted accounting principles ("GAAP") financial performance metric for determining senior executive compensation, the Compensation Committee's Compensation Discussion and Analysis shall include a specific explanation of the Compensation Committee's rationale for each adjustment and a reconciliation of the adjusted metric to GAAP.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

For the reasons discussed below, we believe that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal (i) involves matters relating to the Company's ordinary business operations and (ii) seeks to micromanage the Company by seeking to impose specific methods for implementing complex policies related to the Company's operations; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Involves Matters Related To The Company's Ordinary Business Operations

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

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

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In the 1998 Release, the Commission stated that 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,” and identified two central considerations that underlie this policy. 1998 Release. One of these considerations was that “[c]ertain 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.” *Id.* The second consideration is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). As discussed below, the Proposal implicates both of these considerations.

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” 1998 Release (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. *Id.* In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

B. The Proposal Is Excludable Because It Relates To An Ordinary Business Matter, Including The Company’s Decisions Regarding Disclosures In Its SEC Filings¹

As described in the Company’s 2019 Proxy Statement (the “2019 Proxy”)², the Company has an extensive shareholder engagement program and “throughout the year [it] engage[s] with a significant and diverse portion of shareholders on topics of importance to both the Company and shareholders”, which includes “executive compensation.”³ As described in the 2019 Proxy, the Company’s “executive compensation program is designed to support business initiatives, align

¹ The term “SEC Filings” refers to all filings made with the Commission by the Company pursuant to the Exchange Act or as otherwise required pursuant to the Commission’s rules and regulations.

² Available at <http://d18rn0p25nwr6d.cloudfront.net/CIK-0000063908/1b6a8bd6-b1ee-4158-9d93-98575dbf1296.pdf>.

³ *Id.* at 32.

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the interests of [its] executives with those of [its] shareholders and strongly link pay and performance.”⁴ The Company provides disclosure of its executive compensation program and provides insights into the process and rationale for reviewing and implementing the compensation program in the Company’s Compensation Discussion & Analysis (“CD&A”). The Company “maintains the following guiding principles: (i) pay for performance, (ii) drive business results with a focus on creating long-term shareholder value, and (iii) pay competitively.”⁵ These principles “guide the design and implementation of [the Company’s] compensation programs, in support of [the Company’s] Velocity Growth Plan”.⁶ The Company believes its “compensation program appropriately incentivizes executives through a mix of short- and long-term plans that reflect measurable, rigorous performance goals closely aligned with Company strategy.”⁷

The primary focus of the Proposal is on the level of detail in the Company’s disclosures relating to certain GAAP financial metrics used to determine incentive compensation. Although the Proposal may appear styled as an executive compensation proposal, based on a reading of the Proposal in its entirety, the Proponent focuses on how the Company has decided to comply with certain disclosure requirements in its SEC Filings, specifically pertaining to certain non-GAAP financial metrics. In this regard, the Proposal explicitly relates to disclosure decisions in the Company’s SEC Filings, specifically the CD&A in the Company’s proxy statements, and not the level of executive compensation.

The Proposal requests that the Company include “specific explanation of the Compensation Committee’s rationale for each adjustment and a reconciliation of the adjusted metrics to GAAP” when the Company determines to adjust GAAP performance metrics as part of its compensation practices. The Company already provides detailed disclosure of its use of adjusted GAAP financial metrics in determining certain incentive compensation pursuant to the Commission’s rules and regulations. In this regard, the 2019 Proxy clearly identifies key financial metrics on which the Company based certain incentive compensation, including exclusions from reported financial results. The 2019 Proxy also explains that in order to focus management on the fundamentals of the Company’s underlying business performance, certain items that are not indicative of ongoing performance may be excluded from the financial results used to determine incentive-based compensation.⁸ The determinations made by management of

⁴ *Id.* at page 10.

⁵ *Id.* at page 39.

⁶ *Id.*

⁷ *Id.* at page 37.

⁸ *Id.* at page 40.

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the Company in order to comply with the requirements of the securities laws applicable to the Company and its required SEC Filings are part of the Company's ordinary business operations.

The Staff has consistently agreed that proposals seeking additional detailed disclosure and/or information pertaining to company decisions regarding such disclosure, such as the regular financial information included in SEC filings, are excludable under Rule 14a-8(i)(7). For example, in *The Goldman Sachs Group, Inc.* (avail. Jan. 23, 2017), the proposal requested that the board issue an annual, forward-looking one-page document to inform shareholders, management and all other stakeholders of the audiences and timeframes the board viewed as relevant to its application of "reasonable investor" and materiality in the company's Commission reports. The Staff concurred with exclusion of the proposal, noting it related to the company's ordinary business operations. *See also Eli Lilly and Co.* (avail. Jan. 13, 2017) (concurring with the exclusion of a proposal requiring the company to report "for the previous five years in the Form 10-K section of the Annual Report 2017 any and all lawsuits the company has been involved in worldwide with active or former employees, regardless of their materiality and current state or outcome, and continue[] to do so for all subsequent years" because it "relates to disclosure of ordinary business matters"); *Amerinst Insurance Group, Ltd. (Kimball)* (avail. Apr. 14, 2005) (concurring with the exclusion of a proposal requiring the company to provide a full, complete and adequate disclosure of the accounting of its line items and amounts of operating and management expenses, as "relating to [the company's] ordinary business operations (*i.e.*, presentation of financial information)"); *Union Pacific Corp.* (avail. Jan. 28, 2005) (concurring with the exclusion of a proposal recommending that the board include revenue and on-time performance data from passenger operations in the annual report, as "relating to [the company's] ordinary business operations (*i.e.*, presentation of financial information)"); and *Raytheon Co.* (avail. Jan. 29, 2004) (concurring with the exclusion of a proposal requesting that the company identify in the footnotes to its quarterly and annual financial statements the retiree medical expense for the current period's report compared to the retiree medical costs for the same period of the previous fiscal year).

Here, the Proposal relates to information in the Company's SEC Filings and decisions made by the Company pertaining to such disclosures. In this regard, the Proposal seeks "specific explanation of the Compensation Committee's rationale for each adjustment" to GAAP financial performance metrics used for determining certain incentive compensation. Item 402(b) of Regulation S-K already requires, and the Company already provides, such disclosure.⁹ Additionally, Instruction 5 to Item 402(b) of Regulation S-K specifically provides that "[d]isclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G . . . however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements." Here again, the Company's existing disclosures

⁹ See the 2019 Proxy at pages 39-44.

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present the financial information required by the Commission's existing rules and regulations.¹⁰ As described in the above-cited precedent, proposals seeking to increase or modify a company's disclosure related to its SEC Filings have consistently been viewed by the Staff as excludable under Rule 14a-8(i)(7). Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7) consistent with the foregoing precedent.

Additionally, the Staff has consistently concurred with the exclusion of proposals concerning a company's legal compliance program as relating to matters of ordinary business pursuant to Rule 14a-8(i)(7). *See, e.g., Navient Corp.* (avail. Mar. 26, 2015, *recon. denied* Apr. 8, 2015) (concurring with the exclusion of a proposal requesting "a report on the company's internal controls over student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws" as "concern[ing] a company's legal compliance program"); and *Verizon Communications Inc.* (avail. Jan. 7, 2008) (concurring with the exclusion of a proposal seeking the adoption of policies on compliance with trespass laws as "relating to [the company's] ordinary business operations (*i.e.*, general legal compliance program)"). Likewise, the Proposal requests very specific disclosure regarding the Company's use of non-GAAP financial metrics that necessarily implicate the Company's internal policies for ensuring compliance with the Exchange Act and the Commission's disclosure requirements. Determinations regarding whether and how to disclose a matter require, amongst other things, complex analysis, extensive knowledge and understanding of the Exchange Act and the Commission's rules and regulations, and an appreciation for the context provided by all of the Company's public disclosures, all relevant facts and circumstances, and industry practice. Consistent with the cited precedent, the foregoing analyses, judgments and determinations requested by the Proposal are clearly part of the Company's ordinary business operations relating to its legal compliance program and properly excludable under Rule 14a-8(i)(7).

The Proposal relates to the Company's policies and disclosures that are an integral part of the Company's SEC Filings. Making judgements and evaluations on those policies and disclosures involve complex considerations of legal and accounting rules, the Commission's regulations and guidance, and industry practice upon which shareholders, as a group, would not be in the best position to make an informed judgment. The disclosure requested by the Proposal, like in the proposals above, involves the routine preparation of disclosure for SEC Filings and relates to the ordinary course disclosure decisions the Company makes as part of its obligations to file with the Commission.

¹⁰ *Id.*

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C. *The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations*

Although the Proposal touches upon matters concerning senior executive compensation, the Proposal is nonetheless excludable under Rule 14a-8(i)(7) because it fails to sufficiently focus on any significant policy issue. Notably, the Staff recently confirmed this approach to the ordinary business exclusion in the context of proposals that touch upon executive compensation matters. *See* Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB 14J”). There, the Staff noted that the Rule 14a-8(i)(7) framework is intended to “ensure[] that form is not elevated over substance and that a proposal is not included simply because it addresses an excludable matter in a manner that is connected to or touches upon senior executive or director compensation matters.” *Id.* The Staff went on to clarify that “[i]ncluding an aspect of senior executive or director compensation in a proposal that otherwise focuses on an ordinary business matter will not insulate a proposal from exclusion under Rule 14a-8(i)(7).” *Id.*

In this regard, the Staff recently concurred with the exclusion of a proposal styled as a senior executive compensation proposal but which was, in substance, not focused on that topic. *See AT&T Inc. (Third Generation Financial)* (avail. Jan. 29, 2019). There, the proposal requested that the board “amend the compensation of the CEO and CFO to include the [c]ompany’s long-term issuer debt rating from S&P Global and Moody’s. . . as an incentive metric weighting.” Although the proposal was styled as an executive compensation proposal in that it specifically related to amending compensation metrics for the CEO and CFO, when taken as a whole, the remainder of the proposal focused on the company’s debt rating. In concurring with exclusion of the proposal, the Staff noted that “although the [p]roposal relates to executive compensation, the focus of the [p]roposal is on the ordinary business matter of management of existing debt.”

To this end, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *PetSmart, Inc.* (avail. Mar. 24, 2011), the proposal requested that the board require its suppliers to certify they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalent,” the principal purpose of which related to preventing animal cruelty. In concurring with the company’s request for exclusion under Rule 14a-8(i)(7), the Staff stated, “[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” (emphasis added). *See also JPMorgan Chase & Co.* (avail. Mar. 9, 2015) (concurring with the exclusion of a proposal requesting the company amend its human rights-related policies “to address the right to take part in one’s own government free from retribution” because the

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proposal related to “[the company’s] policies concerning its employees”); *CVS Health Corp.* (avail. Feb. 27, 2015) (concurring with the exclusion of a proposal despite references in the supporting statement to human rights concerns, as relating to the company’s “ordinary business operations” and “policies concerning [the company’s] employees”); and *Mattel, Inc.* (avail. Feb. 10, 2012) (concurring with the exclusion of a proposal that requested the company to require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices (the “ICTI Code”), noting that the ICTI Code encompasses “several topics that relate to the [c]ompany’s ordinary business operations and are not significant policy issues”).

As discussed above, although the Proposal references senior executive compensation, the Proposal focuses on the Company’s decisions regarding certain disclosures in its SEC Filings. Notably, the Proposal does not seek to prohibit or curb the use of non-GAAP metrics as a factor in determining senior executive compensation and neither implicates nor takes issue with the amount or nature of compensation received by the Company’s executives. This important fact indicates that reforming executive compensation practices is neither the agenda nor central thrust of this Proposal. Rather, the Proposal focuses on transparency and disclosure of the Company’s existing uses of non-GAAP metrics—which implicate ordinary business decisions.

Although the Commission has extensive rules, regulations and guidance pertaining to the use and disclosure of non-GAAP financial measures, the Commission has also expressly and intentionally excluded CD&A disclosures on compensation targets, including non-GAAP financial metrics used therein, from the requirements of Regulation G.¹¹ The foregoing suggests that the Commission views such disclosure as not material to investors or significant for purposes of the Commission’s rules and regulations, including Rule 14a-8. Although companies are not prohibited from providing additional disclosures above and beyond legal standards, providing enhanced disclosure of itemized adjustments to GAAP financial metrics used as part of a company’s executive compensation practice, including narrative disclosure of the specific rationale underpinning each such adjustment and a full reconciliation, is not required by the Commission’s rules and regulations. As such, because determining how and what to disclose, both based on the Commission’s rules and regulations and other factors, are part of the Company’s day-to-day ordinary business decisions, the Proposal is properly excludable.

¹¹ See Instruction 5 to Item 402(b) of Regulation S-K. See also the Staff’s Compliance & Disclosure Interpretations regarding Non-GAAP Financial Measures, Section 108, Question 108.01, available at <https://www.sec.gov/divisions/corpfin/guidance/nongAAPinterp.htm>.

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D. The Proposal Also Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company

As noted above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is “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 further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” In SLB 14J, the Staff explained that “[u]nlike the first consideration [of the ordinary business exclusion], which looks to a proposal’s subject matter, the second consideration looks only to the degree to which a proposal seeks to micromanage. Thus, a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company.”

More recently, in Staff Legal Bulletin No. 14K (Oct. 16, 2019), the Staff further clarified that “a proposal, regardless of its precatory nature, that prescribes specific timeframes or methods for implementing complex policies . . . may be viewed as micromanaging the company.” Moreover, “the precatory nature of a proposal does not bear on the degree to which a proposal micromanages.” *Id.* Instead, the Staff assesses the “level of prescriptiveness of the proposal,” and “if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” *Id.*

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to complex day-to-day operations. For example, in *General Electric Co.* (avail. Mar. 5, 2019), the proposal requested a board committee to direct an outside firm to “undertake a thorough review of any compensation, including supplementary pension impacts, paid or credited to the 25 most highly compensated executives in any given year for the period of 2014 through 2017 to determine if that level of compensation was warranted for each individual” and “what means and methods of recoupment might be available to [s]hareowners.” The proposal further requested that information on the foregoing “be set forth in the 2019 Annual Report to Shareowners,” including decisions of the committee regarding “which executives, if any, should be affected, in what manner, and to what extent.” The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) based on micromanagement, noting “the [p]roposal would, among other things, dictate the scope of executives and time period to be covered by the review, direct a board committee to make individualized decisions with respect to the level and potential recoupment of the executives’ compensation, and detail the manner of disclosing the specifics of those decisions.” *See also*

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Amazon.com, Inc. (Oxfam America) (avail. Apr. 3, 2019) (concurring with the exclusion of a proposal requesting that the company prepare human rights impact assessments for at least three food products sold by the company presenting a high risk of adverse human rights impacts because the proposal sought “to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors”); *Abbott Laboratories (Oxfam America)* (avail. Feb. 28, 2019) (concurring with the exclusion of a proposal that would “micromanage[] the [c]ompany because, among other things, the [p]roposal would require the compensation committee to approve each sale by a senior executive during a buyback and [would require] the [c]ompany to include explanatory disclosure in the proxy statement describing how the committee concluded that approving the sale was in the [c]ompany’s long-term best interest”); *Johnson & Johnson* (avail. Feb. 14, 2019) (concurring with the exclusion of a proposal requesting the adoption of a policy prohibiting adjustments of financial performance metrics that would exclude legal or compliance costs when determining the amount or vesting of any senior executive incentive compensation award as “micromanag[ing] the [c]ompany by seeking to impose specific methods for implementing complex policies”); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as “seek[ing] to micromanage 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”); and *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010) (concurring with the exclusion of a proposal requiring the use of “specific technologies,” namely the installation of low-flow showerheads, at certain of the company’s hotels because “although the proposal raises concerns with global warming, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is appropriate”).

As with the proposals in the precedent cited above, the Proposal micromanages the Company by prescribing that the Company disclose *each and every adjustment* made to any GAAP financial performance metric used to determine senior executive officer compensation (regardless of the amount, materiality, or nature of the adjustment) and explain in writing the detailed rationale provided by the Compensation Committee for each such individual adjustment (recognizing there may be multiple adjustments to any given GAAP metric), in addition to specific reconciliations beyond what is legally required. The Proposal further dictates where and how the Company must present such specific and complex disclosure (*i.e.*, in the Company’s CD&A). By sweepingly capturing any and all adjustments to GAAP financial performance metrics, the Proposal could result in requiring disclosure of adjustments relating to (i) information on immaterial gains or losses, (ii) details on anticipated gains or losses that did not materialize due to circumstances beyond the Company’s control, or (iii) proprietary information, such as litigation settlements. As such, the Proposal prescribes that the Compensation Committee evaluate adjustments to GAAP performance metrics in a particular

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manner without regard to the Committee's existing processes to evaluate such metrics or the categories of exclusions, which are described in the 2019 Proxy.¹² The foregoing is like the proposal in *Abbott*, which similarly required the compensation committee to approve *each and every* proposed sale by a senior executive during a particular period, and explain in writing, for inclusion in the company's proxy statement, a rationale for the approval provided. The Proposal micromanages the Company to the same degree as the proposal in *Abbott* and is similarly excludable under Rule 14a-8(i)(7).

Based on the requested elements described in the Proposal, it is of the same prescriptive nature as those proposals discussed above that the Staff concurred were excludable based on the degree to which they impermissibly micromanaged the company. Additionally, the Proposal prescribes extensive disclosure of each and every adjustment in the CD&A and thus is fundamentally at odds with the purpose and intent of the Commission's CD&A rules and regulations, which are intended to provide "narrative disclosure explaining all *material elements* of the company's executive compensation programs."¹³ (emphasis added). Altogether the decisions made by the Company, including its Compensation Committee, as to how, when, whether and why it makes certain adjustments to GAAP financial metrics, including decisions pertaining to disclosure of the foregoing in its SEC Filings, are inherently based on complex considerations that generally are outside the knowledge and expertise of shareholders. Therefore, consistent with the precedent cited above, the Proposal involves intricate detail and "seeks to impose specific . . . methods for implementing complex policies," and accordingly may be excluded pursuant to Rule 14a-8(i)(7) because it attempts to micromanage the Company.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because The Proposal Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading

A. Background On Rule 14a-8(i)(3)

The Proposal seeks disclosure in the Company's SEC Filings: a "specific explanation of the Compensation Committee's rationale for each adjustment" to GAAP financial metrics used in determining aspects of senior executive compensation. However, the Proposal fails to explain

¹² As described in the 2019 Proxy at page 42, the Compensation Committee "considers potential exclusions pursuant to pre-established guidelines, including materiality, to provide clarity and consistency on how it views the business when evaluating performance. Charges/credits that may be excluded include the following categories: 'strategic' (e.g., restructurings, acquisitions and divestitures, such as developmental license transactions); 'regulatory' (e.g., changes in tax or accounting rules); and 'external' (e.g., extraordinary, non-recurring events, such as natural disasters)."

¹³ See <https://www.sec.gov/fast-answers/answers-execomphm.html>.

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to any degree of certainty what standard would satisfy the Proponent and the scope of adjustments covered by the Proposal. As such, the Proposal is impermissibly vague and indefinite, and, therefore, excludable in its entirety under Rule 14a-8(i)(3).

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if 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. The Staff consistently has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite if “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 (Sept. 15, 2004) (“SLB 14B”). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) where the company argued that its shareholders “would not know with any certainty what they are voting either for or against”); and *Fuqua Industries, Inc.* (avail. Mar. 12, 1991) (concurring with the exclusion under Rule 14a-8(i)(3) where a company and its shareholders might interpret the proposal differently, such that “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal”).

B. The Proposal Fails To Define Key Terms And Is Subject To Multiple Interpretations

Under these standards, the Staff has consistently concurred with the exclusion of proposals with vague terms or references, including proposals that are open to multiple interpretations or fail to provide guidance on what is required to implement the proposals. For example, in *Apple Inc.* (avail. Dec. 6, 2019), a proposal requested that the company “improve guiding principles of executive compensation.” The company argued that the proposal was excludable because it failed to clarify key terms and, as a result, was subject to multiple interpretations as it related to potential implementation. The Staff concurred with exclusion under Rule 14a-8(i)(3), noting that “the [p]roposal lacks sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles.” *See also eBay Inc.* (avail. Apr. 10, 2019) (concurring with the exclusion of a proposal that the company “reform [its] executive compensation committee,” where the Staff noted the company’s view that “neither shareholders nor the [c]ompany would be able to determine with any reasonable certainty the nature of the ‘reform’ the [p]roposal is requesting”); *Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (concurring in the exclusion of a

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proposal requesting an amendment to the company's bylaws and any other appropriate governing documents to require management to "strictly honor shareholders rights to disclosure identification and contact information" as "vague and indefinite," where the company asserted that the proposal "[did] not describe or define in any meaningfully determinate way the standard for [the] supposed 'shareholder[s] rights'" and that "it appear[ed] the [p]roponent ha[d] a different view of what those rights entail[ed] than is supported by generally understood principles of corporate law"); *The Home Depot, Inc.* (avail. Mar. 12, 2014, *recon. denied* Mar. 27, 2014) (concurring with the exclusion of a proposal requesting a sustainability report where the company argued that the meaning of "benchmark objective footprint information" was unclear); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion of a proposal requesting that the board review the company's policies and procedures relating to the "directors' moral, ethical and legal fiduciary duties and opportunities" as "vague and indefinite" where the phrase "moral, ethical and legal fiduciary" was not defined or meaningfully described); and *Morgan Stanley* (avail. Mar. 12, 2013) (concurring with the exclusion of a proposal where the company argued that the key term "extraordinary transactions" could have multiple interpretations).

As in the precedent cited above, the Proposal fails to give the Company and its shareholders a sufficient idea of the breadth and depth of disclosure the Proposal seeks. For example, the Proposal lacks guidance on what level of explanatory detail would be required in order to provide a "*specific explanation* of the Compensation Committee's rationale for each adjustment." (emphasis added). For example, the Proposal provides no clarity on the level of specificity that would be required, the length and formatting of such disclosure, the depth of explanation of each event or cause of such GAAP adjustment, or a suggested approach when such adjustments are connected to trade secrets or other confidential or proprietary information.

Further, the Proposal is open to multiple interpretations by the Company and its shareholders because it is unclear what adjustments are within scope of the Proposal. In this regard, the Proposal fails to define "*each adjustment.*" As such, among other possible interpretations, the Company and its shareholders would not be able to determine with any reasonable certainty whether the Proposal seeks (i) a stated rationale for each time a GAAP metric is used in the Company's senior executive compensation program, (ii) a stated rationale for each time a GAAP metric is adjusted, or (iii) a stated rationale for each and every adjustment made, which could entail multiple adjustments per each GAAP metric that is used. Accordingly, the Proposal is subject to multiple interpretations with different outcomes, and thus is so impermissibly vague that neither shareholders voting on the Proposal nor the Company in implementing the Proposal would understand exactly what is required. The Proposal provides no additional guidance as to how to resolve these ambiguities nor does it make any other references to the requested action other than highlighting the Company's previous explanations of non-GAAP adjustments as used in the relevant proxy statement discussion.

Office of Chief Counsel
Division of Corporation Finance
January 20, 2020
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Consistent with Staff precedent, the Company's shareholders cannot be expected to make an informed decision on the merits of the Proposal if they are unable "to determine with any reasonable certainty exactly what actions or measures the proposal requires." SLB 14B. Accordingly, we believe that as a result of the vague and indefinite nature of the Proposal, the Proposal is impermissibly misleading and, thus, excludable in its entirety under Rule 14a-8(i)(3).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials.

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

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Denise A. Horne, McDonald's Corporation
Christopher DiFusco, Chief Investment Officer, The City of Philadelphia Public
Employees Retirement System

EXHIBIT A

From: Kristyn Bair <Kristyn.Bair@Phila.gov>

Sent: Thursday, October 17, 2019 12:25 PM

To: Corporate Secretary <corporatesecretary@us.mcd.com>; Board of Directors <bod@us.mcd.com>

Cc: James Cousounis <James.Cousounis@Phila.gov>; O'Brien, Maureen <mobrien@segalmarco.com>

Subject: City of Philadelphia Board of Pensions and Retirement Shareholder Proposal-McDonalds

Good Afternoon,

Please see attached shareholder proposal and custodial verification from City of Philadelphia Board of Pensions and Retirement. If you have any questions do not hesitate to contact me.

Thank you,

Kristyn Bair

Investment Officer II

City of Philadelphia Board of Pensions and Retirement

Two Penn Center Plaza, 17th Floor

1500 John F. Kennedy Blvd.

Philadelphia, PA 19102

(p) 215-685-3477 | Kristyn.Bair@phila.gov



BOARD OF PENSIONS AND RETIREMENT
PHILADELPHIA PUBLIC EMPLOYEES
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CHRISTOPHER DIFUSCO
Chief Investment Officer

Sixteenth Floor
Two Penn Center Plaza
Philadelphia, PA 19102-1712
(215) 685-3463
FAX (215) 496-7460

October 17, 2019

By regular mail and email: corporatesecretary@us.mcd.com, bod@us.mcd.com

Mr. Jerome N. Krulewitch
Executive Vice President, General Counsel and Secretary
McDonald's Corporation
110 North Carpenter Street
Chicago, Illinois 60607

Re: The City of Philadelphia Public Employees Retirement System

Dear Mr. Krulewitch:

In my capacity as the Chief Investment Officer of The City of Philadelphia Public Employees Retirement System (the "Fund"), I write to give notice that pursuant to the 2019 proxy statement of McDonald's Corporation (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2020 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock for at least one year prior to the date of this letter is being sent under separate cover. The Fund also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting.

I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally.

Sincerely,

A handwritten signature in blue ink that reads 'Christopher R. DiFusco'.

Christopher DiFusco
Chief Investment Officer

RESOLVED, that shareholders of McDonald's Corporation ("McDonald's") urge the Board of Directors (the "Board") to adopt a policy that when McDonald's adjusts or modifies any generally accepted accounting principles ("GAAP") financial performance metric for determining senior executive compensation, the Compensation Committee's Compensation Discussion and Analysis shall include a specific explanation of the Compensation Committee's rationale for each adjustment and a reconciliation of the adjusted metric to GAAP.

SUPPORTING STATEMENT:

McDonald's selects several GAAP metrics to assess senior executive performance for purposes of determining incentive compensation. On page 41 of the 2019 proxy statement ("proxy"), McDonald's specifies metrics for the annual incentive plan and long-term incentive plan that purport to align the interests of executives with shareholders.

However, McDonald's adjusts the calculation of some incentive metrics for reasons that are not specified. Instead, McDonald's provides a vague explanation for any adjustments made. On page 42 of the proxy, McDonald's states: "...certain items that are not indicative of ongoing performance may be excluded from the financial results used to determine incentive-based compensation, both in establishing the applicable targets and for purposes of evaluating performance. The Committee considers potential exclusions pursuant to pre-established guidelines, including materiality, to provide clarity and consistency on how it views the business when evaluating performance. Charges/credits that may be excluded include the following categories: "strategic" (e.g., restructurings, acquisitions and divestitures, such as developmental licensee transactions); "regulatory" (e.g., changes in tax or accounting rules); and "external" (e.g., extraordinary, non-recurring events, such as natural disasters)."

McDonald's fails to reconcile the GAAP and adjusted GAAP results in the proxy and the explanation provided is unsatisfactory.

Many investors believe that companies should do a better job disclosing the purpose of using adjusted-GAAP metrics for executive compensation. For example, the Council of Institutional Investors has petitioned the SEC to address this lack of transparency. The petition seeks "...a requirement for clear explanations and GAAP reconciliations that would permit a shareholder to understand the company's approach and factor that into its say-on-pay vote and/or buy/sell decision" (<https://www.sec.gov/rules/petitions/2019/petn4-745.pdf>).

For these reasons, we urge a vote FOR this resolution.

10/17/19

By regular mail and email: corporatesecretary@us.mcd.com, bod@us.mcd.com

Mr. Jerome N. Krulewitch
Executive Vice President, General Counsel and Secretary
McDonald's Corporation
110 North Carpenter Street
Chicago, Illinois 60607

Re: The City of Philadelphia Public Employees Retirement System

Dear Mr. Krulewitch:

As custodian of The City of Philadelphia Public Employees Retirement System (the "Fund"), we are writing to report that as of the close of business on 10/17/19 the Fund held shares of McDonald's Corporation ("Company") stock in our account at Depository Trust Company and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since 10/17/18.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 212-623-8787.

Sincerely,



Neil Kleinberg