

February 19, 2021

Via email to shareholderproposals@sec.gov

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

**Re: Target Corporation – Notice of Intent to Exclude from 2021 Proxy Materials
Shareholder Proposal of Aaron M. Epstein**

Ladies and Gentlemen:

This letter is submitted on behalf of Target Corporation, a Minnesota corporation (“Target” or the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2021 Annual Meeting of Shareholders (the “2021 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof from Aaron M. Epstein (the “Proponent”). The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend an enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials in reliance on Rule 14a-8.

Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we have concurrently sent copies of this correspondence to the Proponent as notification of the Company’s intention to exclude the Proposal from its 2021 Proxy Materials.

Rule 14a-8(k) and 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 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.

The Proposal

As detailed below, the earliest date the Company could have received the Proposal is January 20, 2021, and the first date the Company became aware of the Proposal is February 10, 2021. A full copy of the Proposal is attached hereto as Exhibit A. The Proposal reads as follows:

RESOLVED that should it not be possible to hold Shareholder Meetings where members and associates meet in-person, that such meetings be held in zoom type format in which all participants can be heard and seen via their internet connected devices. Participants include shareholders registered for meeting attendance, and Target associates. All shareholders who wish to ask questions may speak their questions directly, and not have them read by another. All participants who choose to be seen may be seen at all times during the meeting. In addition, all persons who are called upon by [sic] meeting director when recognized are to be seen as well as heard.

Basis for Exclusion

We hereby respectfully request the Staff concur in our view that the Proposal may be excluded from the Company's 2021 Proxy Materials pursuant to Rule 14a-8(e)(2) because the Proposal was received by the Company at its principal executive offices after the deadline for submitting shareholder proposals for inclusion in the 2021 Proxy Materials. Alternatively, even if the Proposal were received prior to the deadline for submitting shareholder proposals for inclusion in the 2021 Proxy Materials, the Proposal is excludable under Rule 14a-8(i)(1) because it is an improper subject for shareholder action under the laws of the jurisdiction of the Company's organization and Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations.

Background

On April 27, 2020, the Company filed with the Commission, and commenced distribution to its shareholders of, a definitive proxy statement (the "2020 Proxy Statement") and form of proxy for its 2020 Annual Meeting of Shareholders. As required by Rule 14a-5(e), the Company included in its 2020 Proxy Statement the deadline for receiving shareholder proposals submitted for inclusion in the Company's proxy materials for the Company's next annual meeting, calculated in the manner prescribed by Rule 14a-8(e). Specifically, the following disclosure appeared on page 74 of the 2020 Proxy Statement:

18. How do I submit a proposal or nominate a director candidate for the 2021 annual meeting of shareholders?

Shareholder proposals

Proposals by shareholders that are submitted for inclusion in our proxy statement for our 2021 annual meeting of shareholders must follow the procedures provided in Rule 14a-8 under the Exchange Act. To be timely under Rule 14a-8, they must

be received by our *Corporate Secretary* by *December 28, 2020*. The contact information for our *Corporate Secretary* is *Target Corporation, 1000 Nicollet Mall, Mail Stop TPS-2670, Minneapolis, Minnesota 55403*. (emphasis added)

A copy of page 74 of the 2020 Proxy Statement is attached hereto as Exhibit B. Moreover, the Company calculated the December 28, 2020 deadline in the manner prescribed in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14").

As indicated above, the deadline for shareholder proposals for inclusion at our 2021 annual meeting must be *received* by the Company's Corporate Secretary by December 28, 2020 (the "Deadline"). The letter containing the Proposal (together, the "Letter") is dated as of December 7, 2020 and indicates that three copies of the Letter were transmitted to the Company as of that date, including:

- an original to "Mr. Don H. Liu, Corporate Secretary, TARGET CORPORATION, 1000 Nicollet Mall, Minneapolis, MN 55405" and
- copies to "John Hulbert, Barb Andres" (Mr. Hulbert is Target's Vice President, Investor Relations, and Barb Andres is the Executive Assistant to Target's Vice President, Investor Relations).

However, as detailed below, the Letter was not received by the Company until after the Deadline. The first copy of the Letter received by any Company representative was the copy of the Letter that was addressed to Mr. Hulbert, which was first seen by Ms. Andres on February 10, 2021. Exhibit A includes a copy of the envelope transmitting the Letter that was addressed to Mr. Hulbert (the "Envelope").

Since the Letter was sent without tracking, the cause for delay in delivery is unclear. However, the Letter and the Envelope both contained two notable errors. They both:

1. Incorrectly listed Target's zip code as 55405 (instead of 55403, the correct zip code provided in the 2020 Proxy Statement); and
2. Did not include the mail stop number (TPS-2670, as provided in the 2020 Proxy Statement).

The timing of the transmission and receipt of the Letter is outlined below:

- December 7, 2020: The Letter is postmarked to the Company containing the errors indicated above.
- During the month of December 2020:
 - Mr. Liu's Executive Assistant or one of her colleagues regularly checks for mail on a weekly basis at the Corporate Secretary's TPS-2670 mail stop, with more frequent checks in the two weeks leading up to the Deadline.
 - Ms. Andres periodically checks for mail at the Investor Relations' TPN-0841 mail stop.

- The Company received physical copies of five shareholder proposals from other shareholder proponents at the Corporate Secretary's mail stop, each of which used tracking and each of which was received before the Deadline.
- December 28, 2020: The Deadline for shareholder submissions passes, and the Letter has not been received.
- During the month of January 2021:
 - Mr. Liu's Executive Assistant or one of her colleagues continues to regularly check for mail on a weekly basis at the Corporate Secretary's TPS-2670 mail stop.
 - Ms. Andres continues to periodically check for mail at the Investor Relations' TPN-0841 mail stop.
- January 20, 2021: Ms. Andres checks for mail at the Investor Relations' TPN-0841 mail stop and the Letter has still not been received, 23 days after the Deadline has passed.
- February 10, 2021: Ms. Andres checks for mail at the Investor Relations' TPN-0841 mail stop and the copies of the Letter have been received by Mr. Hulbert and Ms. Andres. Ms. Andres forwards a copy of the Letter to the Company's Corporate Secretary, the primary addressee of the Letter.
- February 19, 2021: As of the date of this no-action request letter, the original Letter addressed to the Company's Corporate Secretary still has not been received. As Target's Corporate Secretary, Mr. Liu's mail is checked at least once a week while the Company's employees are working remotely due to COVID-19 restrictions, and was checked even more frequently during the month of December 2020 leading up to the Deadline.

Based on the timeline of events, it appears logical that the Proponent's use of an incorrect zip code and failure to include the mail stop number is likely the primary factor contributing to the delay in the Company's receipt of the Letter. Regardless of the reason for the delay, the Proposal was not received at the Company's principal executive offices by the Deadline, as instructed by the 2020 Proxy Statement for all Rule 14a-8 proposal submissions.

Analysis

I. The Proposal May Be Excluded Under Rule 14a-8(e)(2) Because It Was Received By The Company At Its Principal Executive Offices After The Deadline For Submitting Shareholder Proposals For Inclusion In The 2021 Proxy Materials

A. Background of Rule 14a-8(e) and Rule 14a-8(f)

Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to follow one of the eligibility or procedural requirements contained in Rule 14a-8. Ordinarily, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has timely failed to adequately correct the problem. However, Rule 14a-8(f)(1) continues by clarifying that a company "need not provide [the

proponent] such notice of a deficiency if the deficiency cannot be remedied, *such as if [the proponent] fail[s] to submit a proposal by the company's properly determined deadline*" (emphasis added).

One of the eligibility or procedural requirements contained in Rule 14a-8 is timeliness, the requirement to submit a proposal by the applicable deadline. If a proponent is submitting a proposal "for the company's annual meeting, [the proponent] can in most cases find the deadline in [the prior] year's proxy statement." Rule 14a-8(e)(1). Rule 14a-8(e)(2) instructs how a company generally calculates this deadline:

The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting.

SLB 14, Section C.3.b indicates that, to calculate the deadline, a company should "[i] start with the release date disclosed in the previous year's proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days." Consistent with this guidance, to calculate the deadline for receiving shareholder proposals submitted for inclusion in the Company's 2021 Proxy Materials, the Company (i) started with the release date of its 2020 Proxy Statement (*i.e.*, April 27, 2020), (ii) increased the year by one (*i.e.*, April 27, 2021), and (iii) counted back 120 calendar days (*i.e.*, December 28, 2020).¹ This Deadline, along with clear instructions on where to transmit shareholder proposals, are included in the Company's 2020 Proxy Statement. *See Exhibit B* and above under the heading, "Background." And, as noted above, the Company did not receive the Proposal at its principal executive offices until after the Deadline.

The Staff strictly construes the deadline for shareholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at companies' principal executive offices after the deadline. *See, e.g., Hewlett Packard Enterprise Co.* (Jan. 15, 2021) (concurring with the exclusion of a proposal received two days after the submission deadline); *DTE Energy Co. (Moore)* (Dec. 18, 2018) (concurring with the exclusion of a proposal received two days after the submission deadline); *Verizon Communications, Inc.* (Jan. 4, 2018) (concurring with the exclusion of a revised proposal received one day after the submission deadline); *Wal-Mart Stores, Inc.* (Feb. 13, 2017) (concurring with the exclusion of a proposal received six days after the submission deadline); *Whole Foods Market, Inc.* (Oct. 30, 2014) (concurring with the exclusion of a proposal received two weeks after the submission deadline); *Dean Foods Co.* (Jan. 27, 2014) (concurring with the exclusion of a proposal received three days after the submission deadline); *PepsiCo, Inc.* (Jan. 3, 2014) (same); *Tootsie Roll Industries, Inc.* (Jan. 14, 2008) (concurring with the exclusion of a proposal received two days after the submission deadline, even when the deadline fell on a Saturday). The Company properly disclosed in its 2020 Proxy Statement the December 28, 2020 deadline for receipt of shareholder proposals for its 2021 Annual Meeting of Shareholders, as well as the designated address for submitting such proposals. However, potentially due to one or both of the errors in the transmission of the Letter listed above,

¹ Per SLB 14, Section C.3.b, "day one" for purposes of this calculation was April 27, 2021, resulting in a deadline for receiving shareholder proposals for inclusion in the Company's 2021 Proxy Materials of December 28, 2020.

the Proposal was not received at the Company's principal executive offices until, at the earliest, January 20, 2021, which is 23 days after the properly calculated and disclosed Deadline. Further, the Company has yet to receive any copy of the Letter at the address designated in the 2020 Proxy Statement. Therefore, consistent with the foregoing precedent, the Proposal is excludable pursuant to Rule 14a-8(e)(2) as untimely.

Moreover, the Staff has previously concurred with the exclusion of a proposal as untimely pursuant to Rule 14a-8(e)(2) when it was sent to an incorrect address, as is the case here. For example, in *Verizon Communications Inc.* (Jan. 29, 2008), the Staff concurred that a proposal was excludable, noting "in particular [the company's] representation that [the company] received the proposal at its principal executive offices after [the] deadline." In *Verizon*, the proponent delivered the stockholder proposal to an incorrect company address, which the no-action request stated had "not been [the company's] principal executive offices for several years," despite clear instruction in Verizon's prior year proxy statement instructing where to submit Rule 14a-8 stockholder proposals. The Staff concurred with exclusion of the proposal under Rule 14a-8(e)(2) because it was received after the submission deadline. *See also Discover Financial Services* (Mar. 20, 2020) (concurring with the exclusion of a proposal under Rule 14a-8(e)(2) where it was emailed to a former employee's email address and the unused email address did not trigger an "undeliverable" email response to the sender); *Sprint Corp.* (Aug. 1, 2018) (concurring with the exclusion of a proposal under Rule 14a-8(e)(2) where it was emailed to both a former employee's email address who had not worked at the company for approximately four years and also sent to a non-lawyer staff member who never received it because it was filtered into his spam folder and who also did not regularly monitor incoming emails or spam for stockholder proposals); *Ellie Mae Inc.* (Mar. 12, 2015) (concurring with the exclusion of a proposal pursuant to Rule 14a-8(e)(2) where the proposal was emailed to a former employee's email address, and the employee's departure had been announced on a Current Report on Form 8-K five months earlier, and a facsimile number that was not monitored for stockholder proposals).

B. The Proposal Was Untimely And May Therefore Be Excluded Under Rule 14a-8(e)(2)

Similar to the above-cited precedents, the Proposal was submitted to an incorrect address, as the address contained an incorrect zip code and failed to include the mail stop number as instructed in the 2020 Proxy Statement. *See Exhibit B* and above under the heading "Background." We acknowledge we cannot definitively determine that the delayed delivery to the Company was a result of the errors in the address to which the Proposal was submitted. However, without tracking details, the exact reason for the delay will remain unknown. Further, given the timing of the transmission and receipt of the Letter outlined above under the heading "Background," we do know that the Proposal was not delivered to the Company's principal executive offices until, at the earliest, January 20, 2021, which is 23 days after the properly calculated and disclosed Deadline. The Proponent was on notice of where to send the Proposal but did not follow the instructions in the 2020 Proxy Statement for submission of shareholder proposals. Accordingly, the Proposal is properly excludable from the 2021 Proxy Materials because it was not received at the Company's principal executive offices within the time frame required under Rule 14a-8(e)(2).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(1) Because It Is An Improper Subject For Shareholder Action Under Minnesota Law

A. *Background of Rule 14a-8(i)(1)*

Rule 14a-8(i)(1) permits a company to exclude a shareholder proposal if “the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.” Most shareholder proposals cast as recommendations or requests are proper under state law; however, mandatory proposals that purport to be binding on a company if approved by shareholders may not be considered proper under state law. *See* note to Rule 14a-8(i)(1). In its 1976 adopting release for certain amendments to Rule 14a-8(c)(1) (now Rule 14a-8(i)(1)), the Commission stated:

The text of the above Note is in accord with the longstanding interpretive view of the Commission and its staff under subparagraph (c)(1). In this regard, it is the Commission’s understanding that the laws of most states do not, for the most part, explicitly indicate those matters which are proper for security holders to act upon but instead provide only that “the business and affairs of every corporation organized under this law shall be managed by its board of directors,” or words to that effect. Under such a statute, the board may be considered to have exclusive discretion in corporate matters, absent a specific provision to the contrary in the statute itself, or the corporation’s charter or by-laws. Accordingly, proposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board’s discretionary authority under the typical statute. Exchange Act Release No. 34-12999 (Nov. 22, 1976).

Accordingly, the Staff has consistently concurred in the exclusion under Rule 14a-8(i)(1) where a shareholder proposal mandates or directs a company’s board of directors to take certain actions as inconsistent with the discretionary authority granted to the board of directors under state law. *See, e.g., National Technical Systems, Inc.* (Mar. 29, 2011); *Bank of America Corp. (Maryknoll Fathers and Brothers, et al.)* (Feb. 24, 2010); *MGM MIRAGE* (Feb. 6, 2008); and *Cisco Systems, Inc.* (Jul 29, 2005). In each case, the proposal mandated, rather than requested, that the company take a specific action.

B. *The Proposal Is Improper For Shareholder Action Under Minnesota Law*

Contrary to Rule 14a-8(i)(1), the Proposal is stated in mandatory rather than precatory language. Section 302A.201, Subd. 1 of the Minnesota Business Corporation Act (the “MBCA”) states that “[t]he business and affairs of a corporation shall be managed by or under the direction of a board, subject to the provisions of subdivision 2 and section 302A.457.” Section 302A.201, Subd. 2 addresses management by the unanimous action of shareholders, and Section 302A.457 addresses shareholder control agreements, neither of which are applicable here. Furthermore, Section 302A.431, Subd. 3 states that “[t]o the extent authorized in the articles or bylaws, the board of directors may determine that a regular meeting of the shareholders shall be held solely by means of remote communication in accordance with section 302A.436, subdivision 2.” MBCA Section 302A.436, Subd. 2 clarifies that to the extent authorized in a company’s governance documents and *determined by the board*, a shareholder meeting may be held by remote communication (emphasis added). Subd. 4 of that same statute lists the requirements for meetings and participation

held by means of remote communication,² with which the Company's rules governing virtual meetings comply. As a result, the specific rules governing virtual or remote shareholder meetings outside of the requirements of MBCA 302A.436, Subd. 4 is a topic that remains subject to the board's exclusive discretion. *See* MBCA Section 302A.201.

Notwithstanding the board's authority under the MBCA and the Company's governance documents, the Proposal is not drafted as a request of, or as a recommendation to, the Company's Board of Directors (the "Board"), but rather mandates that virtual shareholder meetings "be held in zoom type format in which all participants can be heard and seen," that "[a]ll shareholders who wish to ask questions may speak their questions directly," that "[a]ll participants who choose to be seen may be seen at all times during the meeting" and that "all persons who are called upon by [sic] meeting director when recognized are to be seen as well as heard." The Proposal therefore attempts to require the Board to comply with certain rules governing the Company's virtual or remote shareholder meetings, leaving no discretion to the Board. Thus, if implemented, the Proposal would usurp the Board's discretion provided under the MBCA and the Company's governance documents to manage the functions of the Company, regardless of whether the Board determines that such rules are in the best interest of the Company. Therefore, the Proposal is not a proper subject for shareholder action under Minnesota law and may be omitted under Rule 14a-8(i)(1).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations

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

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations." According to the Commission, 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. 34-40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission outlined two central considerations for determining whether the ordinary business exclusion applies: (1) whether the subject matter of the proposal relates to a task "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" and (2) "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."

² MBCA 302A.436, Subd. 4 requires that in shareholder meetings held by remote communication, "(1) the corporation shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and (2) the corporation shall implement reasonable measures to provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to: (i) read or hear the proceedings of the meeting substantially concurrently with those proceedings; (ii) if allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and (iii) if otherwise entitled, vote on matters submitted to the shareholders."

As discussed below, the Proposal relates to the conduct of annual meetings by attempting to regulate the mode or means through which the Company communicates with its shareholders as well as the manner by which the Company's Board of Directors and management communicates with its shareholders. Both of these issues are fundamental to management's ability to run the Company and involve a consideration of multiple and complex factors that would be impracticable for shareholders to decide. As such, the Proposal may be omitted under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

B. The Proposal Seeks To Regulate The Conduct Of An Annual Meeting Through the Mode of Communication And May Therefore Be Excluded Under Rule 14a-8(i)(7)

The Proposal relates to, and attempts to regulate, the conduct of the annual meeting by dictating the mode or means through which the Company communicates with its shareholders at its annual meeting (*i.e.*, requiring virtual meetings to be held in a "zoom type format in which all participants can be heard and seen"). The Staff has routinely permitted the omission under Rule 14a-8(i)(7) of proposals seeking to oversee the conduct of a company's annual meeting, and specifically the manner of communicating with shareholders at the meeting, as relating to a company's ordinary business. *See, e.g., USA Technologies, Inc.* (Mar. 11, 2016) (concurring in the omission of a proposal under Rule 14a-8(i)(7) that sought a bylaw amendment to include rules of conduct at all meetings of shareholders); *Servotronics, Inc.* (Feb. 19, 2015) (concurring in the omission of a proposal "concerning the conduct of shareholder meetings" where the proposal requested that "a question-and-answer period be included in conjunction with [the company's] [a]nnual [s]hareholder [m]eetings"); *Mattel, Inc.* (Jan. 14, 2014) (concurring in the omission of a proposal requesting that the chairman "answer with accuracy the questions asked by shareholders at the [a]nnual [m]eeting"); *Citigroup Inc. (Mathis)* (Feb. 7, 2013) (concurring in the omission of a proposal requesting "a reasonable amount of time before and after the annual meeting for shareholder dialogue with [the company's] directors"); *Bank of America Corp.* (Dec. 22, 2009) (concurring in the omission of a proposal recommending that all shareholders be entitled to attend and speak at all annual meetings because "[p]roposals concerning the conduct of shareholder meetings generally are excludable under rule 14a-8(i)(7)"); *Bank of America Corp. (Slaton)* (Feb. 16, 2006) (same); *Exxon Mobil Corp.* (Mar. 2, 2005) (concurring in the omission of a proposal seeking to set aside time at each annual meeting for stockholders to ask questions and receive replies directly from non-employee directors); and *Citigroup Inc.* (Jan. 14, 2004) (concurring in the omission of a proposal seeking to prescribe, among other things, the amount of time each stockholder may speak and when such speaker may ask a follow-up question).

Moreover, the Staff has consistently agreed that proposals relating to the webcast and use of electronic media and communications technology to record and conduct annual meetings may be excluded under Rule 14a-8(i)(7) as relating to the ordinary business of conducting annual meetings. *See, e.g., Con-way, Inc.* (Jan. 22, 2009) (concurring in the omission of a proposal requesting that the company broadcast future annual meetings over the Internet using webcast technology, since the proposal involved "shareholder relations and the conduct of annual meetings"); *Northeast Utilities* (Mar. 3, 2008) (concurring in the omission of a proposal requesting, among other things, that the company allow stockholder voting to be conducted by electronic means); *Commonwealth Energy Corp.* (Nov. 15, 2002) (concurring in the omission of a proposal requesting that, among other things, the company make audio or video recordings of its annual meetings as relating to "shareholder relations and the conduct of annual meetings"); and

Irvine Sensors Corp. (Jan. 2, 2001) (concurring in the omission of a proposal requesting that the company webcast its annual meetings since the proposal related to “procedures for establishing regular communications and updates with shareholders”).

More recently, the Staff has similarly found that the decision whether to hold an annual meeting virtually or in-person is also a matter of ordinary business. *See, e.g., Frontier Communications Corp.* (Feb. 19, 2019) (concurring in the exclusion of a shareholder proposal as relating to the company’s ordinary business operations and specifically noting that the “[p]roposal relates to the determination of whether to hold annual meetings in person”) and *Smith & Wesson Brands, Inc.* (June 25, 2019) (same). Since the Staff has determined that the decision whether to hold an annual meeting using an in-person or virtual format falls within the realm of a company’s ordinary business operations, it follows that the *type* of virtual format a company utilizes in such virtual meeting is even more so within the purview of the company’s ordinary business operations. Accordingly, the Proposal, which seeks to impose the detailed requirements as to the format and logistics, improperly attempts to limit or specify the type of electronic media the Company uses to conduct its annual shareholder, an issue within the company’s ordinary business operations.

Therefore, because the Proposal improperly attempts to regulate the format and conduct at the Company’s annual shareholder meetings, it may be excluded from the Company’s 2021 Proxy Materials as relating to ordinary business operations.

C. The Proposal Seeks To Regulate The Company’s Communications With Its Shareholders And May Therefore Be Excluded Under Rule 14a-8(i)(7)

The Company also believes that the Proposal can be omitted from its 2021 Proxy Materials under Rule 14a-8(i)(7) because it attempts to regulate the Company’s communications with its shareholders at the annual meeting, which is a matter concerning the Company’s ordinary business. In general, how a company communicates with its shareholders involves a complex consideration of effectiveness, investor relations considerations and associated costs—all of which the Board of Directors and management are able to consider more thoroughly than the shareholders. The Staff has consistently concurred with the omission under Rule 14a-8(i)(7) of proposals relating to the communication of companies and their stockholders, whether at annual meetings or otherwise. *See, e.g., ARIAD Pharmaceuticals, Inc.* (June 1, 2016) (concurring with the exclusion of a proposal that required the company’s board to respond to questions specified in the proposal); *Peregrine Pharmaceuticals, Inc.* (Jul. 16, 2013) (concurring in the omission of a proposal requesting that management respond to stockholder questions on public company conference calls because the proposal related to “the ability of shareholders to communicate with management”); *Ford Motor Co.* (Mar. 1, 2010) (concurring in the omission of a proposal relating to how the company distributes restated financial statements to stockholders since “[p]roposals concerning the methods used by a company to distribute or present information to its shareholders are generally excludable under rule 14a-8(i)(7)”; *Servotronics, Inc.* (Feb. 19, 2015) (concurring in the omission of a proposal requesting “a question-and-answer period be included in conjunction with [the company’s] [a]n[n]ual [s]hareholder [m]eetings”); and *Citigroup Inc.* (Feb. 7, 2013) (concurring in the omission of a proposal requesting “a reasonable amount of time before and after the annual meeting for shareholder dialogue” with directors).

Consistent with the precedents described above, the Proposal similarly seeks to regulate the conduct of the annual meeting by prescribing rules dictating the manner of Company and shareholder communication. Specifically, in addition to attempting to require all virtual meetings “be held in zoom type format in which all participants can be heard and seen via their internet connected devices,” the proposal also seeks to require that “[a]ll shareholders who wish to ask questions may speak their questions directly” without having them read by someone else, that “[a]ll participants who choose to be seen may be seen *at all times* during the meeting” and that all persons called upon “are to be seen as well as heard” (emphasis added). As a result, it is clear that the Proposal impermissibly seeks to dictate the means through which the Company communicates with its shareholders.

In light of the foregoing, the Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company’s ordinary business operations because it improperly seeks to regulate the mode of communication by the Company with its shareholders and seeks to dictate the manner by which the Company communicates with its shareholders.

Request For Waiver Under Rule 14a-8(j)(1)

The Company further respectfully requests that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a company “intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy statement with the Commission.” However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission later than 80 days before the filing of its definitive proxy statement if the company demonstrates good cause for missing the deadline. The Company intends to file its 2021 Proxy Materials with the Commission on or about April 26, 2021, which is less than 80 calendar days from the date the Staff receives this letter.

As explained above, the Company did not receive the Proposal until, at the earliest, January 20, 2021, and was not made aware of the Proposal until February 10, 2021, which is 75 calendar days prior to the date the Company intends to file its 2021 Proxy Materials with the Commission. Upon becoming aware of the Proposal, the Company reviewed the Proposal, made appropriate inquiries to determine any available information about the transmission of the Proposal that may have caused it to be received past the Deadline, and reached out to the Proponent, while at the same time compiling the information necessary for the submission of this no-action request.

The Staff has previously granted waivers of Rule 14a-8(j)(1) under similar circumstances and has found “good cause” to waive the 80-day requirement where the untimely submission of a proposal prevented a company from satisfying the 80-day rule. Indeed, Staff Legal Bulletin No. 14B (Sept. 15, 2004) indicated that the “most common basis for the company’s showing of good cause is the proposal was not submitted timely and the company did not receive the proposal until the 80-day deadline had passed.” *See, e.g., salesforce.com, inc.* (Mar. 24, 2017) (waiving the 80-day requirement when the proposal was received by the company fewer than 80 days before the company intended to file its definitive proxy materials); *TD Ameritrade Holding Corp.* (Dec. 14, 2016) (waiving the 80-day requirement because the late submission of the proposal made it impossible for the company to comply with the 80-day rule); *CUI Global, Inc.* (Aug. 26, 2015) (waiving the 80-day requirement when the proposal was received by the company fewer than 80

days before the company intended to file its definitive proxy materials); and *Caesars Entertainment Corp.* (Mar. 20, 2015) (waiving the 80-day requirement where the company received the stockholder proposal 77 days prior to the date that the company intended to file its definitive proxy materials). Accordingly, since the Company was not made aware of the untimely Proposal until February 10, 2021 (75 days prior to the date the Company intends to file its definitive 2021 Proxy Materials) due to the fact that it was never directly received by the Company's Corporate Secretary (likely due to Proponent's use of an incorrect zip code and failure to include the mail stop number) and was not received by anyone at the Company's principal executive offices until a significant period of time after the Deadline, we believe that these facts constitute good cause for the Company's inability to meet the 80-day requirement and respectfully request that the Staff waive the 80-day requirement with respect to this letter.

Conclusion

Based upon the foregoing, the Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials pursuant to Rule 14a-8. We would be happy to provide any additional information and answer any questions regarding this matter.

Should you have any questions, please contact me at Amy.Seidel@FaegreDrinker.com or (612) 766-7769.

Thank you for your consideration.

Regards,

FAEGRE DRINKER BIDDLE & REATH LLP



Amy C. Seidel
Partner

cc: Aaron M. Epstein

Email:

Andrew J. Neuharth
Director Counsel, Corporate Law
Target Corporation
Email: Andrew.Neuharth@target.com

EXHIBIT A

AARON M. EPSTEIN

E-Mail:

December 7, 2020

Mr. Don H. Liu
Corporate Secretary
TARGET CORPORATION
1000 Nicollet Mall
Minneapolis, MN 55405

Shareholder Proposal 2020 Shareholder Meeting

Dear Mr. Liu:

I am an existing shareholder who holds more than \$2,000 of common stock on Dec. 7, 2020 and I plan to submit the following resolution to shareholders for approval at the 2021 Annual Shareholder Meeting.

RESOLVED that should it not be possible to hold Shareholder Meetings where members and associates meet in-person, that such meetings be held in zoom type format in which all participants can be heard and seen via their internet connected devices. Participants include shareholders registered for meeting attendance, and Target associates. All shareholders who wish to ask questions may speak their questions directly, and not have them read by another. All participants who choose to be seen may be seen at all times during the meeting. In addition, all persons who are called upon by meeting director when recognized are to be seen as well as heard.

SUPPORTING STATEMENT

The Annual Shareholder Meeting is a **MEETING** . A meeting is not only a presentation, performance, etc., but a gathering where ideas, information, opinions are to be exchanged. If the shareholder cannot speak directly, but have questions read by another, the meeting concept is greatly diminished. Some shareholders can articulate

well in writing, but many can do better by being heard as well as seen. Communication is exchanged also by body language, vocal expression, facial expression, etc. by the speaker. Fortunately, this is made possible today by use of zoom type technology in which both sight and sound are utilized.

Effective use of this zoom type communication has been proven. A viable example is the Los Angeles Police Department's community meetings in which approximately 15 officers and 120 civilians communicate with sight and sound effectively.

Communication by all parties makes for a well-run Target. A yes vote for this Proposal is necessary.

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Kindest Regards,


Aaron M. Epstein

cc: John Hulbert, Barb Andres

COPY

AARON M. EPSTEIN

SANTA CLARITA CA 913

7 DEC 2020 PM 3 L



N-0841

**Mr. John Hulbert
TARGET CORPORATION
1000 Nicollet Mall
Minneapolis, MN 55405**

55403-254200



EXHIBIT B

15. What is householding?

We have adopted a procedure approved by the SEC called “householding.” Under this procedure, certain shareholders who have the same address and last name and do not participate in electronic delivery of proxy materials will receive only one copy of our annual report and proxy statement, unless one or more of these shareholders notifies us that they would like to continue to receive individual copies. This will reduce our printing costs and postage fees. Shareholders who participate in householding will continue to receive separate proxy cards. Also, householding will not in any way affect dividend check mailings.

If you and other shareholders with whom you share an address currently receive multiple copies of our annual report and/or proxy statement, or if you hold stock in more than one account, and in either case, you would like to receive only a single copy of the annual report or proxy statement for your household, please contact our Investor Relations Department by email, phone or mail using the information in the “Hard Copy” column of Question 14.

If you participate in householding and would like to receive a separate copy of our 2019 Annual Report or this Proxy Statement, please contact us in the manner described in the immediately preceding paragraph. We will deliver the requested documents to you promptly upon receipt of your request.

16. How are proxies being solicited and who pays the related expenses?

Proxies are being solicited principally by mail, by telephone, and through the Internet. In addition to sending you these materials, some of our directors and officers, as well as management employees, may contact you by telephone, mail, email, or in person. You may also be solicited by means of news releases issued by Target, postings on our website, www.target.com, and print advertisements. None of our officers or employees will receive any extra compensation for soliciting you. We have retained Morrow Sodali LLC to act as a proxy solicitor for a fee estimated to be \$25,000, plus reimbursement of out-of-pocket expenses. We will pay the expenses in connection with our solicitation of proxies.

17. How can I communicate with Target’s Board?

Shareholders and other interested parties seeking to communicate with any individual director or group of directors may send correspondence to Target Board of Directors, c/o Corporate Secretary, 1000 Nicollet Mall, TPS-2670, Minneapolis, Minnesota 55403 or email BoardOfDirectors@target.com, which is managed by the Corporate Secretary. The Corporate Secretary, in turn, has been instructed by the Board to forward all communications, except those that are clearly unrelated to Board or shareholder matters, to the relevant Board members.

18. How do I submit a proposal or nominate a director candidate for the 2021 annual meeting of shareholders?

Shareholder proposals

Proposals by shareholders that are submitted for inclusion in our proxy statement for our 2021 annual meeting of shareholders must follow the procedures provided in Rule 14a-8 under the Exchange Act. To be timely under Rule 14a-8, they must be received by our Corporate Secretary by December 28, 2020. The contact information for our Corporate Secretary is Target Corporation, 1000 Nicollet Mall, Mail Stop TPS-2670, Minneapolis, Minnesota 55403.

If a shareholder does not submit a proposal for inclusion in our proxy statement but does wish to propose an item of business to be considered at an annual meeting of shareholders (other than director nominations), that shareholder must give advance written notice of such proposal to our Corporate Secretary, which notice must be received at least 90 days prior to the anniversary of the most recent annual meeting of shareholders. For our 2021 annual meeting of shareholders, notice must be received by March 12, 2021, and must comply with all applicable statutes and regulations, as well as certain other provisions contained in our bylaws, which generally require the shareholder to provide a brief description of the proposed business, reasons for proposing the business, and certain information about the shareholder and the Target securities held by the shareholder.

Nomination of director candidates

Any shareholder who wishes the Governance Committee to consider a candidate for nomination should submit a written request and related information to our Corporate Secretary no later than December 31 of the calendar year preceding the next annual meeting of shareholders. Under our bylaws, if a shareholder plans to directly nominate a person as a director at an annual meeting of shareholders, the shareholder is required to place the proposed director’s name in nomination by written request received by our Corporate Secretary at least 90 days prior to the anniversary of the most recent annual meeting of shareholders. Shareholder-proposed nominations for our 2021 annual meeting of shareholders must be received by March 12, 2021, and must comply with all applicable statutes and regulations, as well as certain other provisions contained in our bylaws, which generally require the shareholder to provide certain information about the proposed director, the shareholder, and the Target securities held by the shareholder.

In addition, our bylaws provide that under certain circumstances, a shareholder or group of shareholders may include director candidates that they have nominated in our proxy statement for an annual meeting of shareholders. These proxy access provisions of our bylaws provide, among other things, that a shareholder or group of up to 20 shareholders seeking to include their director candidates in our proxy statement must own 3% or more of Target’s outstanding common stock continuously for at least the previous three years. The number of shareholder-nominated candidates appearing in any proxy statement cannot exceed 20% of the number of directors then serving on the