



January 8, 2021

VIA EMAIL (*shareholderproposals@sec.gov*)

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

RE: The Wendy's Company — Shareholder Proposal of the Franciscan Sisters of Allegany, NY

Dear Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), The Wendy's Company, a Delaware corporation (the “**Company**”), hereby requests confirmation that the staff of the Division of Corporation Finance (the “**Staff**”) of the U.S. Securities and Exchange Commission (the “**Commission**”) will not recommend any enforcement action if the Company omits from its proxy statement and form of proxy for its 2021 Annual Meeting of Stockholders (collectively, the “**2021 Proxy Materials**”) the shareholder proposal (the “**Proposal**”) and statement in support thereof (the “**Supporting Statement**”) submitted by the Franciscan Sisters of Allegany, NY (the “**Proponent**”), which are further described below.

In accordance with Rule 14a-8(j) of the Exchange Act, this letter is being submitted to the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission. In accordance with Section C of Staff Legal Bulletin No. 14D (November 7, 2008) (“**SLB No. 14D**”), we are submitting this letter to the Commission via email to *shareholderproposals@sec.gov*. Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (October 18, 2011), we request that the Staff provide its response to this request for no-action relief via email to the undersigned at the email address noted in the last paragraph of this letter.

Pursuant to Rule 14a-8(j) of the Exchange Act, we are simultaneously sending a copy of this letter and the attachments hereto to the Proponent and its designated agent. Rule 14a-8(k) of the Exchange Act and SLB No. 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that such proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of such correspondence to the undersigned on behalf of the Company.

I. THE PROPOSAL

The text of the resolution contained in the Proposal is set forth below:

RESOLVED: Shareholders request the Board issue a report, at reasonable cost and omitting proprietary information, addressing Wendy’s Supplier Code of Conduct and the extent to which Wendy’s Quality Assurance audits and third-party reviews effectively protect workers in its food supply chain from human rights violations, including harms associated with COVID-19. This report should include:

- Whether Wendy’s requires its food suppliers to implement COVID-19 worker safety protocols (“Protocols”), and, if so, the content of the Protocols, as well as the section(s) of Wendy’s Quality Assurance audit instrument relating to the Protocols and/or the Code’s Human Rights and Labor Practices Expectations⁸ (“Expectations”);
- The number of times Wendy’s has suspended one of its meat or produce suppliers (“Suppliers”) for failing to meet Expectations and/or Protocols;
- A list of all third-party auditors approved by Wendy’s to monitor adherence to Expectations and/or Protocols, the total number of Supplier locations, how often Wendy’s requires third-party audits on-site at each Supplier location for adherence with Expectations and/or Protocols, and the number of Supplier locations so audited in the last year including the number of Supplier workers personally interviewed at each location;
- Whether Wendy’s ensures Suppliers’ workers have access to a third-party grievance mechanism, with the authority to order a remedy, for reporting violations of Expectations and/or Protocols, and, if so, the required procedures, number of grievances filed by Suppliers’ employees in the last year, and outcomes of all such grievances.

⁸https://www.wendys.com/sites/default/files/2018-04/2017%20Wendy%27s%20Supplier%20Code%20of%20Conduct_FINAL.pdf

II. BASIS FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, we hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2021 Proxy Materials for the following, separately sufficient, reasons:

- Rule 14a-8(i)(10) of the Exchange Act (“**Rule 14a-8(i)(10)**”) because the Company has already substantially implemented the Proposal; and
- Rule 14a-8(i)(7) of the Exchange Act (“**Rule 14a-8(i)(7)**”) because the Proposal deals with matters relating to the Company’s ordinary business operations.

III. BACKGROUND

On December 9, 2020, the Company received the Proposal via email, accompanied by a cover letter from the Proponent dated December 9, 2020, which stated that a letter verifying the Proponent's ownership of the requisite number of shares of the Company's common stock was forthcoming. On December 11, 2020, the Company received a letter via email from Charles Schwab Corporation, dated December 9, 2020 purporting to verify the Proponent's stock ownership (the "**Initial Broker Letter**"). On December 14, 2020, in accordance with Rule 14a-8(f)(1), the Company sent a letter to the Proponent (the "**Deficiency Letter**") via email requesting a revised written statement that properly verified that the Proponent owned the requisite number of shares of the Company's common stock for at least one year as of December 9, 2020, the date the Proposal was submitted to the Company. On December 22, 2020, the Company received a letter via email from Charles Schwab Corporation, dated December 22, 2020, verifying the Proponent's stock ownership (the "**Revised Broker Letter**"). Copies of the Proposal, Supporting Statement, cover letter, Initial Broker Letter, Deficiency Letter, Revised Broker Letter and related correspondence are attached hereto as **Exhibit A**, pursuant to Staff Legal Bulletin No. 14C (June 28, 2005) ("**SLB No. 14C**").

IV. BACKGROUND OF THE WENDY'S SYSTEM SUPPLY CHAIN

The Company is the world's third-largest quick-service hamburger company. The Wendy's® restaurant system (the "**Wendy's System**") includes over 6,800 franchise and Company-owned restaurants globally, with more than ninety percent (90%) located in the United States and Canada. Approximately 95% of restaurants in the Wendy's System are operated by franchisees. Wendy's core values were created by our founder, Dave Thomas, fifty (50) years ago — "Quality is our Recipe," "Do the Right Thing," "Treat People with Respect," "Profit Means Growth" and "Give Something Back." They are timeless guideposts for our employees and franchisees, as well as our suppliers.

Wendy's restaurants offer an extensive menu, specializing in hamburger sandwiches and featuring fillet of chicken breast sandwiches, chicken nuggets, chili, french fries, baked potatoes, freshly prepared salads, soft drinks, Frosty® desserts and kids' meals. In addition, the restaurants sell a variety of promotional products on a limited basis. Wendy's also entered the breakfast daypart across its U.S. system on March 2, 2020. Wendy's breakfast menu features a variety of breakfast sandwiches, biscuits and croissants, sides such as seasoned potatoes, oatmeal bars and seasonal fruit, and a beverage platform that includes hot coffee, cold brew iced coffee and our vanilla and chocolate Frosty-ccino iced coffee. In providing these products and serving the needs of our customers and franchisees, the Company approves authorized suppliers, vendors and distributors (each, a "**Supplier**" and collectively, the "**Suppliers**") that provide goods, products, equipment and services (collectively, "**Products**") to the Wendy's System. Several hundred Suppliers are approved to supply Products to the Wendy's System, and the vast majority of Suppliers are located in the United States and Canada, which reflects the footprint of our restaurants. Our core values, strong ethical principles and quality are of paramount importance to us, and we expect Suppliers to use best practices, demonstrate business integrity and uphold the highest ethics in all aspects of their operations, including human rights and labor practices.

As is common with other franchise restaurant concepts, purchasing for the Wendy's System is governed by a cooperative structure. The Company works closely with Quality Supply Chain Co-op, Inc. ("QSCC") to provide the Wendy's System with Products that best combine quality, consistency and value. QSCC is the independent cooperative that oversees the supply chain and is the sole authorized purchasing organization for all Wendy's restaurants in the United States and Canada.

QSCC is an autonomous not-for-profit business entity. The Company and most of our franchisees are members of QSCC, and QSCC is governed by a board of directors democratically elected by QSCC members. While the Company collaborates with QSCC, we do not control the decisions and activities of QSCC except to require that all Suppliers satisfy our quality control standards. QSCC represents its members in supply chain initiatives and operates in ways that ensure QSCC's cooperative autonomy and continued ownership and control by its members. QSCC requires Suppliers to execute and adhere to a mandatory *Supplier Operation Agreement* (the "QSCC SOA") that explicitly requires Suppliers to comply with all applicable laws, rules and regulations regarding, among other things, human rights-related matters, including but not limited to workplace health and safety, child labor and voluntary employment.

Furthermore, we have established a comprehensive mandatory *Code of Conduct for Suppliers to Wendy's* (the "Code") that applies to Suppliers of food, paper and packaging to the Wendy's System that are contractually managed by QSCC and other Suppliers that provide a significant stream of goods or services to the Company on an annual basis, regardless of whether they are contractually managed by QSCC.¹ Our commitment to operating under our core values extends to the long-standing, collaborative relationships that we have with Suppliers, and the Code provides public transparency to the requirements that are contractually imposed on Suppliers, the repeated noncompliance with which may be cause for immediate termination.² All Suppliers are required to reaffirm annually their receipt and understanding of the Code. The Code further obligates Suppliers to maintain a non-retaliatory grievance system and encourages Suppliers and their employees to report any concerns or violations directly to the Company by providing its compliance hotline.³ The Code is further described in Sections V.B and VI.B below, and is publicly available on our corporate website⁴ and attached hereto as **Exhibit B**.

V. RULE 14A-8(I)(10) ANALYSIS

A. Rule 14a-8(i)(10) Background

Rule 14a-8-(i)(10) permits a company to exclude a shareholder proposal from its proxy materials "[i]f the company has already substantially implemented the proposal." The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of

¹ Code at 4.

² Code at 19.

³ Code at 5, 15-16.

⁴ The Code is also publicly available at

https://wendys.com/sites/default/files/2018-04/2017%20Wendy%27s%20Supplier%20Code%20of%20Conduct_FINAL.pdf.

shareholders having to consider matters which already have been favorably acted upon by the management.” See Proposed Amendments to Rule 14a-8 Under the Securities Act of 1934 Relating to Proposals by Security Holders, Exchange Act Release No. 34-12598 (July 7, 1976) (the “**1976 Release**”). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when a proposal was “‘fully’ effected” by the company. See Proposed Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Exchange Act Release No. 34-19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” of avoiding shareholder votes on matters already addressed by management because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. See Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Related to Proposals by Security Holders, Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “**1983 Release**”). The Commission subsequently adopted this revised interpretation to the rule to permit the omission of proposals that have been “substantially implemented.” *Id.* The 1998 amendments to Rule 14a-8 of the Exchange Act codified this position. See Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018 (May 21, 1998) (the “**1998 Release**”).

When a company has demonstrated that it has already taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. The actions requested by a proposal need not be “fully effected” by the company to be excluded; rather, to be excluded, such actions need only to have been “substantially implemented” by the company. See the 1983 Release. In 1998, the Commission reiterated that “substantial” implementation under the rule does not require the company to implement a shareholder proposal fully or exactly as presented or preferred by the proponent. See the 1998 Release. The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” See *Texaco, Inc.* (March 28, 1991).

Accordingly, the Staff has permitted the exclusion of shareholder proposals under Rule 14a-8(i)(10) when a company’s actions have satisfactorily addressed the proposal’s underlying concerns and essential objectives. This is true even when the company did not take the exact action requested by the proponent or exercised discretion in determining how to implement the proposal and whether to implement it in full. In 2019, for example, the Staff concurred with our decision to exclude a proposal under Rule 14a-8(i)(10) to commission a report assessing human rights risks of the Company’s operations, including the principles and methodology used to make the assessment, the frequency of assessment and how we would use the assessment’s results, because our Code and other public disclosures on our corporate website “compared favorably” with the Proposal’s guidelines and therefore substantially implemented it. See, e.g., *The Wendy’s Company* (Apr. 10, 2019). See also *Duke Energy Corporation* (Feb. 21, 2012) (concurring with exclusion of a proposal requesting the company to assess potential actions to reduce certain greenhouse gas and other emissions because the requested information was available in the company’s Annual Report on Form 10-K and annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (concurring with exclusion of a proposal requesting a report on certain aspects of the company’s political contributions because the company already adopted corporate political contribution guidelines and

issued a related report that, together, provided “an up-to-date view of the [c]ompany’s policies and procedures with regard to political contributions” addressing the proposal’s essential objective); *International Business Machines* (Jan. 4, 2010) (concurring with exclusion of a proposal requesting periodic reports of the company’s “Smarter Planet” initiative because the company already reported on certain of those matters through the company’s related web portal, investor website, employment websites, social media and other outlets); and *The Dow Chemical Co.* (Mar. 5, 2008) (concurring with exclusion of a proposal requesting a report discussing how the company’s efforts to ameliorate climate change have affected the global climate because the company already made statements about its efforts related to climate change in various corporate documents and disclosures).

In addition, the Staff has consistently concurred with the exclusion of shareholder proposals requesting reports where the company’s prior public communications addressed the underlying concerns of the proposal, even if the disclosure was not in the exact form requested by the proposal. *See, e.g., Hess Corp.* (Apr. 11, 2019) (concurring with the exclusion on substantial implementation grounds of a proposal requesting a report on how the company could reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Agreement’s goal where the company had addressed the underlying concern and essential objective of the proposal in its most recent Sustainability Report, its response to a CDP Climate Change Questionnaire and its recent Investor Day Presentation); and *MGM Resorts International* (Feb. 28, 2012) (concurring with the exclusion on substantial implementation grounds of a proposal requesting a report on the company’s sustainability policies and performance, including multiple, objective statistical indicators, where the company’s annual sustainability report addressed the underlying concern and essential objective of the proposal).

Furthermore, the Staff has taken the position that a shareholder proposal requesting that a company’s board of directors prepare a report on a particular corporate initiative may be excluded when the company has published information about that initiative on its website. *See, e.g., The Wendy’s Company, supra; Amazon.com, Inc.* (Apr. 1, 2020) (Proposal by International Brotherhood of Teamsters General Fund and the CtW Investment Group); *Nike, Inc.* (Jun. 19, 2020); *Mondelēz International, Inc.* (March 7, 2014) (concurring that a proposal urging the board of directors to prepare a report on the company’s process for identifying and analyzing potential and actual human rights risks in its operations and supply chain was substantially implemented through relevant information on the company’s website); and *The Gap, Inc.* (March 16, 2001) (concurring that a proposal requesting that the board of directors prepare a report on child labor practices of company suppliers was substantially implemented where the company had published information on its website about its vendor code and monitoring programs). *See also, e.g., Aetna Inc.* (March 27, 2009) (concurring that a proposal requesting a report describing the company’s policy responses to concerns regarding gender and insurance was substantially implemented when the company published a paper addressing such issues).

B. The Proposal is Excludable under Rule 14a-8(i)(10) Because It Has Been Substantially Implemented by the Company

The Proposal and Supporting Statement make clear that the underlying concern or “essential objective” of the Proposal is to obtain information regarding the “extent to which Wendy’s Quality

Assurance audits and third-party reviews effectively protect workers in its food supply chain from human rights violations, including harms associated with COVID-19.” See **Exhibit A**. The Proposal also demands that any such report include highly detailed information with respect to four specific concerns, which we believe relate to the ordinary business matters listed in the table below, and which we have already addressed and therefore substantially implemented through (i) our mandatory Code that sets forth comprehensive guidelines with respect to human rights and labor practices of our Suppliers, which is freely available on our corporate website; and (ii) a substantial number of other related public disclosures on our corporate website (the “**Public Disclosures**”)⁵ that address various environmental, social and governance topics:

Specific Proposal Request	Ordinary Business Matter
Whether the Company requires its food Suppliers to implement COVID-19 safety protocols (“ Protocols ”) and specific information about any such Protocols	The extent to which the Company has required additional protocols for its Suppliers with respect to COVID-19
The number of times the Company has suspended one of its meat or produce Suppliers for failing to meet the Code’s expectations regarding human rights and labor practices (the “ Human Rights Expectations ”) and/or Protocols	The extent to which the Company enforces compliance with the Code’s Human Rights Expectations with respect to its meat and produce Suppliers
A list of all third-party auditors approved by the Company to monitor adherence to the Human Rights Expectations and/or Protocols, including specific statistics about such audits	The extent to which the Company reviews its meat and produce Suppliers for compliance with the Code’s Human Rights Expectations
Whether the Company ensures its meat and produce Suppliers’ workers have access to a third-party grievance mechanism, including specific details with respect to such grievances	The Company’s role with respect to a grievance mechanism for the employees of its meat and produce Suppliers

While the Code and Public Disclosures do not detail all of the highly specific and voluminous data requested by the Proposal, the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(10) where, like here, the proposal has been substantially implemented and disclosed, even if not in the precise manner prescribed by the Proponent. For example, in *PG&E Corp.* (Mar. 10, 2010), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal that requested a report detailing, among other things, the company’s standards for choosing the

⁵ See e.g., The Wendy’s Company, *What We Value*, available at <https://www.wendys.com/what-we-value> (last visited Jan. 8, 2021); The Wendy’s Company, *Supply Chain Practices*, available at <https://www.wendys.com/supply-chain-practices> (last visited Jan. 8, 2021); The Wendy’s Company, *Wendy’s Animal Welfare Program*, available at <https://www.wendys.com/animal-welfare-program> (last visited Jan. 8, 2021); and The Wendy’s Company, *The Square Deal™ Wendy’s Blog*, available at <https://www.squaredealblog.com/> (last visited Jan. 8, 2021).

organizations to which it made charitable contributions and the “business rationale and purpose for each of the charitable contributions,” thereby requiring that the company disclose a list of all charitable contributions. The company successfully argued that it had substantially implemented the proposal by reference to its website that described its policies and guidelines for determining the types of grants that it made, even though the website did not specifically list or provide the rationale for each individual contribution. *See also The Boeing Co.* (Feb. 17, 2011) (concurring with exclusion of a proposal requesting that the company “review its policies related to human rights” and report its findings because the company already adopted its own policies, practices and procedures regarding human rights); *ConAgra Foods, Inc.* (July 3, 2006) (concurring with exclusion of a proposal requesting a sustainability report because the company was already providing information generally of the type proposed to be included in the report); and *The Gap, supra* (concurring with exclusion of a proposal requesting a report on child labor practices of company suppliers because the company already established a code of vendor conduct, monitored compliance, published information relating thereto and discussed labor issues with shareholders).

The Code espouses the best practices of our supply chain and outlines the specific expectations and requirements we have for Suppliers. The Code addresses the environmental and social issues that are most relevant to our business and brand and articulates how we manage and govern our most relevant environmental and social risks in light of our operations and supply chain. The Code demonstrates the Company’s priority focus on Supplier responsibility across critical areas of our supply chain.⁶ The Company believes people are our most valuable asset and, to that end, the Company takes all human rights and labor practices issues seriously and expects the same from our Suppliers.⁷ A Supplier’s repeated noncompliance with the Code is grounds for immediate termination.⁸

It is important to note that, as indicated above, the substantial majority of Suppliers operate and supply the Wendy’s System from the United States and Canada and therefore are subject to rigorous, comprehensive and stringently enforced applicable local, state/provincial and federal labor laws and regulations, which at this time include, in certain areas, particular COVID-19 protocols and mandates specific to different regions. Additionally, the Code specifically addresses various human rights principles relating to global supply chain compliance in connection with our business, as well as the Human Rights Expectations referenced in the Proposal, including the following topics, which are described in greater detail in the Code:⁹

- *Hiring Practices*
- *Minimum Age Requirements and Child Labor*
- *Healthy and Safe Work Environment*
- *Housing Conditions*
- *Voluntary Employment*
- *Working Hours and Time Off*

⁶ Code at 4.

⁷ Code at 10.

⁸ Code at 19.

⁹ Code at 10-11.

- *Wages and Benefits*
- *No Discrimination or Harassment*
- *Freedom of Association*
- *Labor Practices Reviews*

Furthermore, Suppliers are expected to use best practices in all aspects of their operations and conduct business in a manner consistent with the core principles and strong ethical values of the Company and our franchisees.¹⁰ This focus on upholding quality while adhering to such principles and values – specifically, “Do the Right Thing” and “Treat People with Respect” – applies to all components of our business, including human rights and labor practices.¹¹ Accordingly, the Code represents a codification of our “way of doing business” and a pledge with Suppliers to work toward continuous improvement in all aspects of Company operations, including human rights.¹²

In addition, our corporate website reflects our commitment to communicating with shareholders and other interested parties, such as consumers or employees of our Suppliers, about the principles we value.¹³ For example, on our corporate website, we share updates on a variety of Environmental, Social and Governance topics, including information related to our supply chain management,¹⁴ responsible sourcing and our commitment to animal welfare.¹⁵ We also maintain a frequently-updated blog called “The Square Deal” where we provide our views on a variety of important Corporate Social Responsibility topics, including human rights and worker safety, in a more informal setting to better connect with our stakeholders.¹⁶

i) The Company’s Public Disclosures address the extent to which the Company has required additional protocols for its Suppliers with respect to COVID-19

The Proposal’s first request for detailed information asks for the report to disclose: (i) whether Wendy’s requires its food Suppliers to implement the COVID-19 work safety protocols (“**Protocols**”); and (ii) if so, the content of the Protocols, as well as the section(s) of Wendy’s Quality Assurance audit instrument relating to the Protocols and/or the Code’s Human Rights Expectations. While this aspect of the Proposal requests specific and detailed information regarding the Company’s supply chain, we believe that the underlying objective of the Proponent is to seek information as to whether the Company has required any additional protocols for its Suppliers with respect to COVID-19. On its corporate website, the Company has already addressed the ways in which it has adapted to supply chain challenges amidst an unexpected global pandemic, including, as requested by the Proposal, specifics regarding the content of new protocols

¹⁰ Code at 2.

¹¹ Code at 10.

¹² Code at 4.

¹³ See The Wendy’s Company, *What We Value*, *supra*.

¹⁴ See The Wendy’s Company, *Supply Chain Practices*, *supra*.

¹⁵ See The Wendy’s Company, *Wendy’s Animal Welfare Program*, *supra*.

¹⁶ See The Wendy’s Company, *The Square Deal™ Wendy’s Blog*, *supra*.

related to the COVID-19 pandemic and the Company's expectations for any changes to existing protocols going forward.¹⁷ For example, among other topics, we have disclosed¹⁸ that:

- we have communicated our “expectations to distribution partners and others who regularly access our restaurants to perform evaluations, maintenance and other necessary services and established a protocol for sharing information as needed to support safety concerns in our restaurants”; and
- while we do not own or operate any supply chain or manufacturing operations, due to many years of work building strong supplier relationships, the Company was “able to successfully pivot many of our interactions with suppliers to virtual formats in the short term” and that “we have been able to continue to conduct facility evaluations remotely and collaborate with suppliers on new products using virtual tools and data sharing between suppliers and our Culinary and Quality Assurance teams.”

These Public Disclosures also acknowledge that while we anticipate certain items and processes will not need to endure permanently, we recognize that some COVID-19-induced changes to our supply chain and operations are likely to be maintained and that we will closely monitor any changes in federal, state and local or provincial requirements or regulations related to workplace safety conditions based on learnings from the COVID-19 pandemic.¹⁹ As part of these Public Disclosures, we noted that “[a]s with any area in which regulation evolves, the standards and practices that we expect from our suppliers will also evolve to reflect any heightened requirements placed on suppliers by relevant regulatory authorities.”²⁰ Because the Code requires our Suppliers (including their suppliers and contractors) to comply with all applicable federal, state/provincial and local laws and regulations as part of responsible business operations, to the extent COVID-19-specific protocols become mandated, our Code would automatically require our Suppliers to comply with any such requirements.²¹ Therefore, based on the Public Disclosures described above, the Company believes it has substantially implemented the underlying objective of the first request for detailed information in the Proposal relating to the extent to which we have required additional protocols for our Suppliers with respect to COVID-19.

ii) The Company's Code of Conduct for Suppliers and Public Disclosures address the extent to which the Company enforces compliance with the Code's Human Rights Expectations with respect to its meat and produce Suppliers

The Proposal's second request for detailed information seeks the disclosure of the number of times the Company has suspended one of its meat or produce Suppliers for failing to meet the Human Rights Expectations and/or Protocols. While this aspect of the Proposal requests specific and detailed information regarding the Company's supply chain, we believe that the Proposal's underlying objective is to seek information regarding the extent to which the Company enforces

¹⁷ The Wendy's Company, *Adapting to Supply Chain Challenges Amidst a Global Pandemic*, available at <https://www.wendys.com/supply-chain-practices> (last visited Jan. 8, 2021).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Code at 3, 10-11.

compliance with the Code's Human Rights Expectations with respect to its meat and produce Suppliers. Though the Company does not report the precise and detailed information requested by this aspect of the Proposal, the Code clearly explains the processes by which any covered Supplier could be disciplined or terminated and the degree to which the Company takes seriously its responsibilities to monitor its Suppliers.²²

The Code drives the Company's expectations for all Suppliers and, as a condition of doing business with the Wendy's System, each of our Suppliers is expected to comply with the provisions outlined in the Code and to reaffirm annually to the Company their receipt and understanding of the applicable provisions of the Code.²³ In addition, Suppliers are expected to require similar standards of doing business from their suppliers and contractors, as applicable, and non-compliance by a supplier or contractor of a Supplier may have direct consequences to the Supplier's relationship with Wendy's.²⁴ Based on an evaluation of various risk factors, we may require Suppliers to provide additional assurance of their business practices related to human rights and labor practices.²⁵ If a Supplier does not comply with applicable Code provisions to our satisfaction or does not uphold our core values and ethical principles, then termination of the Supplier relationship will likely proceed. Repeat noncompliance is also inconsistent with our way of doing business and may be cause for immediate termination.²⁶

Much like in *PG&E*, while the Company does not disclose the precise and detailed information requested by this aspect of the Proposal, the provisions of the Code described above set forth the framework for Supplier non-compliance with the Code, as well as the Company's policies and guidelines for determining the processes by which the Company would choose to discipline a Supplier. Therefore, the Company believes it has substantially implemented the underlying objective of the second request for detailed information in the Proposal regarding the extent to which the Company enforces compliance with the Code's Human Rights Expectations with respect to its meat and produce Suppliers.

iii) The Company's Code of Conduct for Suppliers and Public Disclosures provide information regarding the extent to which the Company reviews its meat and produce Suppliers for compliance with the Human Rights Expectations

The Proposal's third request for detailed information asks for the report to disclose: (i) a list of all third-party auditors approved by the Company to monitor adherence to the Human Rights Expectations and/or Protocols; (ii) the total number of meat and produce Suppliers; (iii) how often the Company requires third-party audits on-site at each meat or produce Supplier location for adherence with the Human Rights Expectations and/or Protocols; (iv) the number of meat or produce Supplier locations so audited in the last year; and (v) the number of workers at such meat or produce Suppliers personally interviewed at each location. While this aspect of the Proposal requests specific and detailed disclosure regarding the Company's supply chain, we believe that the Proposal's underlying objective is to seek information regarding the extent to which the

²² Code at 16-19.

²³ Code at 5.

²⁴ Code at 16.

²⁵ Code at 10.

²⁶ Code at 19.

Company reviews its meat and produce Suppliers for compliance with respect to the Human Rights Expectations and/or Protocols, regardless of whether the reviews and assessments are conducted by the Company's Quality Assurance team, third-party experts, or both.

Again, while the Company has not implemented every intricate detail or disclosed every statistic requested by the Proponent, the Company believes that the Code and the Public Disclosures compare favorably to this specific request for a voluminous amount information by addressing the underlying concern of the request as described below.

Oversight Framework

As described in the Public Disclosures, in addition to the assurances and third-party assessments required by the Code, we also conduct our own regular Quality Assurance audits of the farms, plants, facilities and other operations locations of all our Suppliers, during which the Company's Quality Assurance auditors observe operations conditions of our Suppliers, which audits include some observational questions related to worker welfare, safety and health.²⁷ We support an open, honest and transparent dialogue with our Suppliers, and we developed the Code with the input of our Supplier community, including the elements summarized below:

- Suppliers undergo regular audits conducted by both trained Company Quality Assurance representatives and third-party experts.²⁸ We have the right to conduct (or have our designee conduct) unannounced inspections of Supplier facilities and records.²⁹ In addition to these Quality Assurance audits, the Code also states that “[s]uppliers of certain fresh agricultural products harvested by hand or in an otherwise manually intensive way will be subject to third party human rights and labor practices reviews”³⁰, with our corporate website explaining that these reviews apply to suppliers of hand-harvested, whole, fresh produce, such as tomatoes, lettuce and berries.³¹ The corporate website notes that “[u]nlike areas such as food safety and animal welfare in which there are industry-wide or global standard assessments and auditing certifications, there does not today exist a singular human rights and labor practices assessment that is broadly used or accepted by all sectors and geographies of agricultural work.”³²
- Suppliers are urged to conduct their own audits and inspections to ensure compliance with the Code and applicable legal and contractual standards. Suppliers are expected to document all audit results.³³
- The Company monitors the Code compliance of Suppliers. Verification of a Supplier's Code compliance may be demonstrated through various methods, including but not limited to: (i) third-party certification; (ii) submission of materials, such as existing sustainability or annual reports, audits or supplier contracts; (iii) compliance with local, state/provincial or national regulatory programs; (iv) Company Quality Assurance audits; and (v)

²⁷ The Wendy's Company, *Supply Chain Management and Responsible Sourcing*, *supra*.

²⁸ *Id.*

²⁹ Code at 17.

³⁰ Code at 11.

³¹ The Wendy's Company, *Supply Chain Management and Responsible Sourcing*, *supra*.

³² *Id.*

³³ Code at 17.

participation in national or international programs focused on continuous improvement of business conduct, as applicable.³⁴

- All Suppliers (including their suppliers and contractors), are expected to comply with all applicable federal, state/provincial and local laws and regulations as part of responsible business operations.³⁵
- As a condition of doing business with the Wendy's System, each Supplier must comply with all applicable Code provisions and annually reaffirm to the Company the Supplier's receipt and understanding of the mandatory Code and specific expectations outlined therein.³⁶

Through the Code and the Public Disclosures, the Company is transparent in our explanation of the frequency of and methodology used to conduct audits and assessments of our Suppliers, which serves to address the underlying objective of the Proponent's request, as well as the overall essential objective of the Proposal.

Specific Disclosures

The Code and the existing Public Disclosures also compare favorably with the third request for specific information contained in the Proposal by addressing many of the detailed requests for information.

First, with respect to the request to provide a list of all third-party auditors approved by the Company to monitor adherence to the Human Rights Expectations and/or Protocols, while the Company does not publish a list of every approved third-party auditor, we do provide disclosure regarding the detailed guidelines and principles that help guide our requirements for assurance and compliance. For example, our corporate website discloses that, with respect to the Human Rights Expectations in the Code, we have "evaluated and subsequently authorized several human rights and labor practice frameworks that are generally consistent with the expectations set forth in the Code" and that "[s]ome of the certifications more commonly used today include the Equitable Food Initiative, SA8000, and SEDEX/SMETA."³⁷ In addition, the Company also specifically addresses the Fair Food Program that the Proponent cites in the Supporting Statement, noting that "[f]rom time to time, we have been asked by certain stakeholders about participation by Wendy's and our suppliers in the Fair Food Program" and that we "consider[] the Fair Food Program to be an acceptable assurance that would meet the requirements set forth in the Code; however, at the present time, none of our suppliers use the Fair Food Program framework."³⁸

Second, with respect to the request to provide the total number of meat and produce Suppliers, the Company discloses on its corporate website that "[a]t the end of 2020, the [Company's] North America supply chain encompassed about 450 suppliers, which includes more than 300 food and

³⁴ *Id.*

³⁵ Code at 3.

³⁶ *Id.* at 5 and 16.

³⁷ The Wendy's Company, *Supply Chain Practices*, available at <https://www.wendys.com/node/3026> (last visited Jan. 8, 2021).

³⁸ *Id.*

packaging manufacturing and processing facilities and about 30 distribution centers, which are all covered by the [Code]” and that “[the Company’s] largest volume of supplier facilities are in the areas of meat protein packing and processing (~100), produce (~80), dairy products (~50), packaging (~50), and bakery items (~30).”³⁹

Third, with respect to the request to disclose how often the Company requires third-party audits on-site at each meat or produce Supplier location for adherence with the Human Rights Expectations and/or Protocols, the Public Disclosures already specifically disclose that the assessments conducted by the Company’s Quality Assurance team, which include some observational questions related to worker welfare, safety and health, occur regularly.⁴⁰ In addition, as described above, the Code is clear that the Company closely monitors compliance of its Suppliers, and that third-party verification is one of the ways in which a Supplier’s compliance with the Code may be demonstrated.⁴¹

Fourth, with respect to the request to disclose the number of meat or produce Supplier locations audited with respect to the Human Rights Expectations and/or the Protocols in the last year, as noted above, the Company conducts “regular” Quality Assurance audits of the farms, plants, facilities and other operations locations of all of its Suppliers and has disclosed the number of its Supplier locations in the Public Disclosures and, therefore, believes it has substantially implemented the requested information.

Finally, though the Company does not publicly disclose the exact number of workers at each of its meat and produce Suppliers who were personally interviewed at each location because it does not maintain or have full access to detailed employment information for the employees of its Suppliers, we expect all Suppliers to document the results of their own internal audits, as set forth in the Code.⁴²

When viewing the disclosures made by the Company regarding the Proposal’s third request for specific information, we believe that the Company has substantially implemented this prong of the Proposal by addressing the underlying objective regarding the extent to which the Company reviews its meat and produce Suppliers for compliance with the Code’s Human Rights Expectations.

iv) The Company’s Code of Conduct for Suppliers and Public Disclosures address the Company’s role with respect to a grievance mechanism for the employees of its meat and produce Suppliers

The Proposal’s fourth request for detailed information asks for the report to disclose: (i) whether Wendy’s ensures that workers at its meat and produce Suppliers have access to a third-party grievance mechanism with the authority to order a remedy, for reporting violations of the Human

³⁹ The Wendy’s Company, *Supply Chain Management and Responsible Sourcing*, *supra*.

⁴⁰ *Id.* While this aspect of the Proposal requests specific information only with respect to *third-party* auditors/audits, the Proposal more generally asks for a report that addresses the Code and “the extent to which **Wendy’s Quality Assurance audits** and **third-party reviews** effectively protect workers...” (emphasis added).

⁴¹ Code at 17.

⁴² *Id.*

Rights Expectations and/or Protocols; and (ii) if so, the required procedures, the number of grievances filed by employees of the Company's meat and produce Suppliers, and the outcomes of all such grievances. While this aspect of the Proposal requests specific and detailed disclosure regarding the Company's supply chain, we believe that the underlying objective of the Proponent is to seek information regarding the Company's role with respect to a grievance mechanism for the employees of its meat and produce Suppliers. As described in more detail below, the Company believes that its Code and Public Disclosures compare favorably with the information requested by this aspect of the Proposal.

The Company maintains a robust reporting process that enables any workforce member, whether employed by the Company or a Supplier, to raise or inquire about any issue concerning our business, operations or supply chain. In fact, while the Proposal asks for specific information regarding a third-party grievance mechanism, the Company's standards for the reporting process and resources it expects from its Suppliers are effectively communicated in the Code. The Code requires each Supplier to have in place means for any employee to submit anonymous concerns and grievances to the Supplier's management. As part of this grievance process, Suppliers must also designate a process in which to record, file and appropriately address concerns by taking appropriate action in a confidential manner, as necessary.⁴³ We also prohibit workplace retaliation and expect Suppliers to have a no-retaliation policy that provides Supplier employees with the opportunity to speak with their leadership without fear or concern of retaliation when asking questions or raising concerns.⁴⁴ Our Code further reinforces its grievance and no-retaliation policy requirements by stipulating that Suppliers be well equipped to address and remedy many business ethics concerns and violations described in the Code that could arise in their respective organizations.⁴⁵ The Code also includes the Company's toll-free compliance hotline phone number and ethics website internet address, stating that Suppliers and their employees may use those reporting mechanisms to report business ethics concerns directly to the Company.⁴⁶

These disclosures directly address the Proposal by providing detailed and specific information regarding the framework that the Company has instilled to ensure that all of the employees of all of its Suppliers have access to a grievance mechanism, including the Company's, as disclosed by the Code.⁴⁷ As described below in greater detail in Section VI.D, while the Company does not disclose the precise number of grievances and the outcomes of all of those grievances, providing such sensitive and detailed information is not necessary for the Staff to concur that the Company has substantially implemented the Proposal. Much like in *PG&E*, the Staff has commonly permitted differences between a company's actions and a shareholder proposal if the company's actions satisfactorily address the proposal's essential objectives, even when the company did not take the exact action requested by the proponent or exercised discretion in determining how to implement the proposal and whether to implement it in full.

Based on the application of the Code and the Public Disclosures described above, and in connection with the Staff's existing precedent, the Company believes it has substantially

⁴³ Code at 15.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

implemented the underlying objective of the Proponent's request for detailed information relating to the Company's role with respect to a grievance mechanism for the employees of its meat and produce Suppliers and, therefore, believes that the Proposal should be excluded pursuant to Rule 14a-8(i)(10).

VI. RULE 14A-8(I)(7) ANALYSIS

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

Rule 14a-8(i)(7) allows for the exclusion of a shareholder proposal that "deals with a matter relating to the company's ordinary business operations." In its release accompanying the 1998 amendments to Rule 14a-8 of the Exchange Act, the Commission stated that the "ordinary business" term "refers to matters that are not necessarily 'ordinary' in the common meaning of the word" and "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *See* the 1998 Release. According to the Commission in the 1998 Release, 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 shareholder meeting."

The Commission identified "two central considerations" that underlie the ordinary business exclusion, as set forth in the 1998 Release. The first of these considerations is 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." The second consideration relates 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.* (footnote omitted).

In the 1998 Release, the Commission distinguished proposals pertaining to ordinary business matters from those "focusing on sufficiently significant social policy issues," the latter of which "generally would not be considered to be excludable" under Rule 14a-8(i)(7). *Id.* When the Staff assesses Rule 14a-8(i)(7) proposals in this regard, the Staff considers the terms of the resolution and its supporting statement as a whole. *See* SLB No. 14C. The Staff also expounded on the significant social policy exception in Staff Legal Bulletin No. 14E (October 27, 2009) ("**SLB No. 14E**"), in which the Staff indicated that "[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company". The Staff went on to note in SLB 14E that "[c]onversely, in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7)".

Notwithstanding the significant social policy exception, even when a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if the proposal seeks 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. *See, e.g., Staff Legal Bulletin Nos. 14J* (Oct. 23, 2018) (“**SLB No. 14J**”) and *14K* (Oct. 16, 2019) (“**SLB No. 14K**”).

A proposal framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See Exchange Act Release No. 20091* (Aug. 16, 1983). *See also The Wendy’s Company* (Mar. 2, 2017).

B. The Proposal is Excludable under Rule 14a-8(i)(7) Because Supplier Relationships and Decisions Regarding Such Relationships are Fundamental to the Company’s Day-to-Day Business Operations

In the 1998 Release, the Commission cited “management of the workforce, . . . decisions on production quality and quantity, and the retention of suppliers” as examples of tasks that are fundamental to management’s ability to run a company on a daily basis. The Staff has also consistently concurred that proposals involving supplier relationships related to ordinary business operations and could therefore be excluded from proxy materials under Rule 14a-8(i)(7), as described in detail below.

For example, in *Foot Locker, Inc.* (Mar. 3, 2017), a shareholder proposal requested a report outlining the steps that the company was taking, or could take, to monitor the use of subcontractors by the company’s overseas apparel suppliers (which report was requested to disclose, among other topics, the extent to which company codes of conduct were applied to apparel suppliers and subcontractors, the process and procedures for monitoring compliance with corporate codes of conduct by apparel suppliers and subcontractors and the processes and procedures that the company had in place for dealing with code non-compliance by apparel suppliers and subcontractors). In granting relief to exclude the proposal under Rule 14a-8(i)(7), the Staff determined that the proposal related “broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors.” *See also Amazon.com, Inc.* (Apr. 1, 2020) (Proposal by International Brotherhood of Teamsters General Fund and the CtW Investment Group) (proposal requesting a report on the company’s steps taken to reduce the risk of accidents, including the board’s oversight process of safety management, staffing levels, and inspection and maintenance excludable under Rule 14a-8(i)(7) because the proposal focused on workplace accident prevention, an ordinary business matter); *Kraft Foods Inc.* (Feb. 23, 2012) (proposal requesting a report detailing the ways the company would assess water risk to its agricultural supply chain and mitigate the impact of such risk excludable under Rule 14a-8(i)(7) because the proposal concerned “decisions relating to supplier relations...[which] are generally excludable under Rule 14a-8(i)(7)”; *The Southern Co.* (Jan. 19, 2011) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting that the company “strive to purchase a very high percentage” of “Made in the USA” goods and services because the proposal related to “decisions relating to supplier relationships”); *Spectra Energy Corp.* (Sept. 10, 2010, *recon. denied* Oct. 25, 2010) (concurring with Rule 14a-8(i)(7) exclusion of a proposal the same as that in *Southern Co.*, *supra*, on the same basis); *Alaska Air Group, Inc.* (March 8, 2010) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting a report on the company’s aircraft contract repair stations and the company’s procedures for overseeing maintenance performed by the contract repair stations,

as the proposal concerned “decisions relating to vendor relationships [which] are generally excludable under Rule 14a-8(i)(7)”); *Continental Airlines, Inc.* (March 25, 2009) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting a policy on contract repair stations because the proposal related to “decisions relating to vendor relationships”); *Dean Foods Co.* (Mar. 9, 2007) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested an independent committee review of the company’s standards for organic dairy product suppliers, noting that the proposal related to the company’s “decisions relating to supplier relationships”); *International Business Machines Corp.* (Dec. 29, 2006) (concurring with Rule 14a-8(i)(7) exclusion of a proposal that sought to have the company update its supplier evaluation and selection process because the proposal related to company business operations and “decisions relating to supplier relationships” specifically); and *PepsiCo, Inc.* (Feb. 11, 2004) (concurring with Rule 14a-8(i)(7) exclusion of a proposal concerning company relationships with different bottlers because the proposal related to “decisions relating to vendor relationships”).

The Company has invested significant time and resources in identifying, approving and maintaining relationships with Suppliers who exemplify our core values and ethical principles and comply with the Code and the QSCC SOA, both of which include provisions governing human rights and labor practices. Our Supplier relationships have been developed over an extensive period of time and in collaboration with QSCC on behalf of its members, and the effective processes and practices for vetting, contracting with, monitoring and auditing Suppliers are comprehensive, detailed and involve other parties in addition to the Company. Much like in *Foot Locker*, the extent to which the Company applies and enforces its Code involves decisions that are fundamental to our day-to-day operations and entails a variety of ordinary business considerations, including, but not limited to, compliance with laws, quality control, brand management, labor management, contract negotiation, resource management and the treatment of confidential information. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight, particularly when the requests are as intricately detailed and granular as in the Proposal. Accordingly, the ability to source high quality Products that meet our food safety and quality assurance standards from approximately 450 Suppliers across the Wendy’s System, and to ensure that those Suppliers meet the requirements set forth in the Code and the QSCC SOA, is an intrinsic, chief component of our central day-to-day business operations.

C. The Proposal is Excludable under Rule 14a-8(i)(7) Because It Involves Ordinary Business Matters Regardless of Whether the Proposal Touches upon a Significant Policy Issue

The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues,” the latter of which are not excludable under Rule 14a-8(i)(7) because they “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” When assessing whether the focus of the proposal is a significant social policy issue, the Staff considers the terms of the proposal and its supporting statement as a whole. *See* SLB No. 14C.

We acknowledge the Staff’s position regarding the inclusion of shareholder proposals that relate to “significant social policy issues” that “transcend day-to-day business matters of the Company” and that such proposals might not be excludable under Rule 14a-8(i)(7). *See* SLB No. 14E. Even

where a proposal touches on a significant policy issue, however, the Staff has concurred in the exclusion of proposals when such proposals broadly focus on ordinary business matters. *See Staff Legal Bulletin No. 14I* (Nov. 1, 2017). In particular, while the Staff has determined that some proposals addressing human rights issues may constitute social policy issues that might not be excludable under Rule 14a-8(i)(7), the Staff has concurred on several occasions that merely invoking or phrasing a social policy issue in a proposal does not bar an exclusion determination if the proposal does, in fact, deal with tasks that are fundamental to management's ability to run the company on a day-to-day basis and seek to micromanage the Company by probing too deeply into business decisions and relationships upon which shareholders are not adequately informed to render judgment. *See, e.g., Pilgrim's Pride Corp.* (Feb. 25, 2016) (concurring in the exclusion of a proposal requesting a report describing the company's policies, practices, performance and improvement targets related to occupational health and safety under Rule 14a-8(i)(7) for relating to workplace safety, an ordinary business matter); *Bristol-Myers Squibb Co.* (Jan. 7, 2015) (concurring with Rule 14a-8(i)(7) exclusion of a proposal regarding human rights because the proposal related to the company's ordinary business operations); *Yum! Brands, Inc.* (Jan. 7, 2015) (exclusion of a proposal the same as that in *Bristol-Myers*, *supra*, on the same basis); *Costco Wholesale Corp.* (Nov. 14, 2014) (exclusion of a proposal the same as that in *Bristol-Myers*, *supra*, on the same basis). *See also PetSmart, Inc.* (Mar. 24, 2011) (concurring with Rule 14a-8(i)(7) exclusion of a proposal that would have required suppliers to certify that they did not violate certain federal legislation and state law equivalents relating to the treatment of animals, noting that although humane treatment of animals is a significant policy issue, the scope of the laws covered by the proposal was too broad and thus too far removed from the company's control to be a proper focus of the proposal).

Here, while the Proposal implicates social policy concerns, its primary focus is on the Company's relationship with, and monitoring of, its Suppliers – a complex business matter that the Company addresses as part of its daily operations. Specifically, the Proposal requests that the Company's Board of Directors commission a report that discloses, among other items, the "number of times Wendy's has suspended one of its meat or produce suppliers...for failing to meet '[the Human Rights] Expectations' and/or 'Protocols'", "[a] list of all third-party auditors approved by Wendy's to monitor adherence," "the number of [meat and produce Supplier] locations so audited in the last year including the number of [meat and produce Supplier] workers personally interviewed at each location" and "[the] number of grievances filed by [meat and produce Supplier] employees in the last year, and outcomes of all such grievances." These requests illustrate that the Proposal is more concerned with the Company's oversight of its Suppliers and the processes and procedures by which the Company ensures compliance with the Code and QSCC SOA rather than any significant policy issue that transcends the day-to-day operations of the Company – precisely the type of day-to-day operations that the 1998 Release indicated are too impractical and too complex to subject to direct shareholder oversight. As in *Bristol-Myers*, *Yum!*, *Pilgrim's Pride* and the other precedents described above, even if certain aspects of the Company's supply chain were deemed to implicate significant policy issues, the Proposal's broad and detailed request clearly relates to the Company's ordinary business operations and does not transcend the day-to-day operations of the Company for which our management, rather than shareholders, is best equipped to evaluate.

Furthermore, the Staff has indicated that when a proposal relating to a company's ordinary business operations also raises a significant policy issue, the proposal will be excludable under

Rule 14a-8(i)(7) unless “a sufficient nexus exists between the nature of the proposal and the company.” *See* SLB No. 14E. The Company does not believe there is a sufficient nexus between the overarching policy objective of the Proposal – the protection of human rights of certain farmworkers and meat production workers – and the Company’s day-to-day business operations as a quick-service restaurant company. The Company is not directly involved in the operation of farms or meatpacking facilities – the two primary examples cited in the Proposal – and does not employ any workers at farms or meatpacking facilities. Instead, the Company contracts with independent Suppliers who process or manufacture the food items that are ultimately served in Wendy’s restaurants. Those Suppliers, in turn, contract as needed with farmers, producers and processors that grow, raise and/or harvest the products needed to make these food items. The Company is neither a producer nor a supplier of meat or produce, and the Company’s purchases of meat and produce represent a minuscule portion of the total amounts of those products supplied and sold in the United States and Canada. For instance, the Company purchases only about 1% of the total beef produced in the United States, and in Canada, the amount purchased represents an even smaller percentage of the beef produced in that country. In addition, our food manufacturing Suppliers represent less than 1% of all food manufacturing facilities in the United States. Therefore, we believe that the Company’s day-to-day operations of running a quick-service hamburger concept are far removed from any underlying policy consideration of the protection of human rights and worker safety of the country’s meat and produce Suppliers. Based on this lack of a sufficient nexus between the underlying substance of the Proposal and the Company’s operations, the Company does not believe that the Proposal relates to a policy that is sufficiently significant to the Company such that it is appropriate for a shareholder vote.

D. The Proposal is Excludable under Rule 14a-8(i)(7) Because It Seeks to Micromanage the Company by Probing Too Deeply into Complex Matters and Aspects of the Company’s Business and Operations

As described above, notwithstanding the significant social policy exception, even when a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. *See, e.g.*, SLB No. 14J and SLB No. 14K. For example, in *The Wendy’s Company* (Mar. 2, 2017), the Staff concurred with our exclusion of a proposal under Rule 14a-8(i)(7) that requested the Company “take all necessary steps to join the Fair Food Program” to support the rights and labor conditions of tomato workers, which the Company argued implicated its supplier relationships and decisions, because the proposal “sought 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”. Here, the Proposal likewise seeks to micromanage the Company’s management of complex issues upon which shareholders could not make an informed decision at our annual meeting of stockholders. SLB No. 14J and SLB No. 14K; 1998 Release.

In particular, as described in SLB No. 14J and the 1998 Release, “a proposal may probe too deeply into matters of a complex nature if it ‘involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies’” (footnote omitted). *See, e.g., Marriott International Inc.* (March 17, 2010) (proposal limiting showerhead flow to no more than 1.6 gallons per minute and requiring the installation of mechanical switches to control the level of

water flow was excludable for micromanaging despite recognition that global warming, which the proposal sought to address, is a significant policy issue); and *Duke Energy Corporation* (Feb. 16, 2001) (proposal requesting eighty percent reduction in nitrogen oxide emissions from the company's coal-fired plants and limit of 0.15 pounds of nitrogen oxide per million British Thermal Units of heat input for each boiler was excludable despite proposal's objective of addressing significant environmental policy issues). In addition, the Staff clarified in SLB No. 14K that "in considering arguments for exclusion based on micromanagement...we look to whether the proposal seeks intricate detail or imposes a specific strategy, method, action outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board" and "a proposal, regardless of its precatory nature, that prescribes specific timeframes or methods for implementing complex policies...may run afoul of micromanagement" (footnotes omitted). *See, e.g., Devon Energy Corp.* (Mar. 4, 2019) (proposal seeking annual reporting on "short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement to keep the increase in global average temperature to well below 2 degrees Celsius and to pursue efforts to limit the increase to 1.5 degrees Celsius" was excludable on the basis of micromanagement under Rule 14a-8(i)(7)).

SLB No. 14J also clarifies that the micromanagement framework "also applies to proposals that call for a study or report," noting that "a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds" and "a proposal calling for a report may be excludable if the substance of the report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies" (footnote omitted). *See, e.g., Amazon.com, Inc.* (Apr. 3, 2019) (proposal requesting human rights impact assessments for food products sold by the company that presented a high risk of adverse human rights impacts excludable under Rule 14a-8(i)(7) because the proposal "would micromanage the [c]ompany by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors"); *PayPal Holdings, Inc.* (Mar. 6, 2018) (proposal requesting a detailed and resource-intensive report regarding the feasibility of achieving "net-zero" greenhouse gas emissions by 2030 was excludable for micromanaging despite recognition that reduction of greenhouse gas emissions is a significant policy issue); *Apple Inc.* (Dec. 5, 2016) (proposal the same as that in *PayPal*, *supra*, was excluded on the same basis); and *Ford Motor Company* (Mar. 2, 2004) (concurring in the omission of a proposal seeking to dictate "the specific method of preparation and the specific information to be included in a highly detailed report").

Much like in *Amazon.com*, *PayPal* and *Apple*, the Proposal not only seeks an intricately detailed report that imposes specific methods for implementing complex policies in place of the ongoing judgment of the Company's management and Board of Directors, but, like *Ford Motor Company*, also dictates the specific method of preparation and the specific information to be included. Although the Proposal begins by requesting a report that "address[es] Wendy's Supplier Code of Conduct and the extent to which Wendy's Quality Assurance audits and third-party reviews effectively protect workers in its food supply chain from human rights violations," the Proposal goes on to dictate the specific – and highly detailed – information that must be included in the report.

In particular, the Proposal alternates between requesting (i) general information that the Company already makes publicly available, as described above in greater detail in Section V.B.ii, and (ii) voluminous and specific information that is so intricate and complex that shareholders, as a group, would not be in a position to make an informed judgment regarding such information. For example, the Proposal requests such highly specific information with respect to the Company's meat and produce Suppliers and the Code's Human Rights Expectations that it would be of little use to shareholders, including:

- the specific "content of the [COVID-19 worker safety protocols]";
- the "number of times Wendy's has suspended one of its meat or produce suppliers...for failing to meet [the Human Rights] Expectations and/or Protocols";
- a "list of all third-party auditors approved by Wendy's to monitor adherence to [the Human Rights] Expectations and/or Protocols";
- the "total number of [meat and produce Supplier] locations...audited in the last year";
- the "number of [meat and produce Supplier] workers personally interviewed at each location";
- the "required procedures" for all of the third-party grievance mechanisms of the Company's [meat and produce Suppliers] for reporting violations of the Code's Human Rights Expectations and/or the Protocols;
- the "number of grievances filed by [meat and produce Suppliers'] employees in the last year; and
- the "outcomes of all such grievances."

Not only does the management of Supplier relationships represent complicated matters that are integrally entwined in our ordinary business operations and inherent to management's ability to run the Company's operations on a day-to-day basis, but the Proposal also focuses on the Company's two largest categories of food Suppliers – meat and produce – which constitute approximately 180 of the Company's 300 food processing and manufacturing locations. Evaluating and weighing these matters involve the deliberation and expertise of professionals and experts in various disciplines who carefully evaluate, among other things, often complex and competing considerations that relate to the Company, QSCC and our Suppliers alike, such as industry and Product standards, practices and advancements, business operations and expenditures, legal and regulatory requirements and compliance. The breadth and depth of the analyses and decisions relating to the Company's diverse supply chain require multifaceted and complex decision-making processes, as well as detailed information not available to shareholders. Moreover, by substituting the Proposal for management's practices and processes, the Proponent seeks to micromanage not only the Company, but also QSCC and our Suppliers, under the guise of a report, upon which our shareholders, as a group, would not be in a position to make an informed judgment. The specific information requested by the Proposal touches upon numerous aspects of the business and operations of the Company, QSCC and our Suppliers and consequently would impinge on management's ability to run the Company and operate our business on a day-to-day basis. In addition, as the Company is not responsible for and does not control the employment policies or practices of our Suppliers, in most instances it would not be appropriate for the Company to be involved (and the Company would not expect to be involved) in complaints or grievances those independent Suppliers might receive from their employees from time to time.

In the event the employee of a Supplier (including a meat or produce Supplier) brought a concern regarding their employer to our attention via the Company's publicly available toll-free compliance hotline phone number or ethics website internet address,⁴⁸ our general process would be to direct that concern to an appropriate contact at the Supplier to investigate and address as appropriate consistent with their applicable policies and procedures. If a concern raised questions as to a Supplier's compliance with its contractual obligations to the Company or expectations as set forth in the Code, the Company might also conduct its own follow up as reasonably necessary to evaluate and address the situation, including any impact on the Company or the Company's relationship with the Supplier.

Not only would compiling a report of the type requested by the Proposal be highly impracticable and require a substantial investment of time and resources, in the event the Company were required to prepare the report requested by the Proponent, the level of detail noted above would effectively replace the judgment of the Company's management and Board of Directors in their consideration and preparation of any such report, limiting its usefulness to the Company's shareholders.

Accordingly, consistent with *Ford Motor Company*, *PayPal* and the other precedent described above, the Company believes that the Proposal may be excluded from its 2021 Proxy Materials as micromanaging the Company pursuant to Rule 14a-8(i)(7).

VII. CONCLUSION

For the reasons discussed above, the Company believes that the Proposal may be omitted from the 2021 Proxy Materials in reliance on both Rule 14a-8(i)(10) and Rule 14a-8(i)(7).

Based on the foregoing analysis, we respectfully request that the Staff concur with the Company's view and confirm that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2021 Proxy Materials.

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. Please do not hesitate to contact me by telephone at (614) 764-3220 or by email at Michael.Berner@wendys.com.

Regards,



Michael G. Berner
Vice President – Corporate & Securities Counsel
and Chief Compliance Officer, and Assistant
Secretary

⁴⁸ Code at 15.

Attachments

cc: The Franciscan Sisters of Allegany, NY
Mary Beth Gallagher (as agent for the Franciscan Sisters of Allegany, NY) (mbgallagher@iasj.org)
Craig Marcus, Ropes & Gray LLP (craig.marcus@ropesgray.com)

404837

EXHIBIT A

PROPOSAL AND PROPONENT DOCUMENTATION



Franciscan Sisters of Allegany, NY

Mailing Address:
P.O. Box W
St. Bonaventure, NY 14778-2302

December 9, 2020

E. J. Wunsch
Chief Legal Officer, Chief Compliance Officer and Secretary
The Wendy's Company
One Dave Thomas Boulevard
Dublin, Ohio 43017

Sent via mail and email to: corporate-secretary@wendys.com; heidi.krings@wendys.com;
investorrelations@wendys.com

Dear Mr. Wunsch:

The Franciscan Sisters of Allegany, NY are Catholic institutional investors committed to aligning our investments with our values as part of our mission to promote social justice and human rights. We participate in the work of Investor Advocates for Social Justice (IASJ) and the Interfaith Center on Corporate Responsibility (ICCR). We have previously engaged Wendy's through an investor letter calling on Wendy's to join the Fair Food Program (FFP). We respectfully offer the enclosed shareholder proposal on Protecting Essential Food Chain Workers' Rights During COVID-19.

The Franciscan Sisters of Allegany, NY is the beneficial owner of 160.7923 shares of Wendy's stock. The Franciscan Sisters of Allegany, NY has held stock continuously for over one year and intends to retain the requisite number of shares through the date of the Annual Meeting. A letter of verification of ownership is forthcoming.

Please address all communication regarding this proposal to Mary Beth Gallagher, Executive Director of Investor Advocates for Social Justice located at 40 South Fullerton Ave, Montclair, NJ 07042, email address: mbgallagher@iasj.org and phone number (973) 509-8800. Please also email a copy to srgloria@hotmail.com. We look forward to constructive dialogue about these concerns.

Sincerely,

Sr. Chris Treichel, OSF
Treasurer

Whereas: Wendy's has acknowledged human rights "risk factors" in its food supply chain from "the nature of agricultural work."¹

There is, indeed, a well-documented history of human rights violations in the U.S. agricultural industry, including slavery, sexual assault, and workplace safety violations. Essential workers in food supply chains—especially on farms and in meatpacking facilities—are now also at heightened risk of exposure to, and death from, COVID-19.

Wendy's claims to address human rights risks through a Supplier Code of Conduct, Quality Assurance audits, and third-party reviews of human rights and labor practices for certain produce suppliers.

But Wendy's meat suppliers have had widely-publicized COVID-19 outbreaks, disrupting Wendy's beef supply.² A Cargill plant had the largest COVID-19 outbreak linked to a single facility in North America: 1,560 cases.³ Inadequate protections at Tyson resulted in more than 11,000 employees contracting COVID-19,⁴ and a wrongful death lawsuit alleges Tyson managers bet on how many workers would get infected.⁵ COVID-19 outbreaks among farmworkers are legion⁶ and likely impact workers at Wendy's produce suppliers.

Meanwhile studies show that conventional social auditing fails to detect workplace abuses, demonstrating the importance of worker-driven mechanisms with enforcement. Yet Wendy's is the only major fast food chain that has not joined the Fair Food Program—the recognized "gold standard" for supply chain monitoring,⁷ and the only social responsibility certification known to have mandatory, enforceable COVID-19 safety protocols for farmworkers.

RESOLVED: Shareholders request the Board issue a report, at reasonable cost and omitting proprietary information, addressing Wendy's Supplier Code of Conduct and the extent to which Wendy's Quality Assurance audits and third-party reviews effectively protect workers in its food supply chain from human rights violations, including harms associated with COVID-19. This report should include:

- Whether Wendy's requires its food suppliers to implement COVID-19 worker safety protocols ("Protocols"), and, if so, the content of the Protocols, as well as the section(s)

¹ <https://www.wendys.com/supply-chain-practices>

² <https://www.nytimes.com/2020/05/05/business/coronavirus-meat-shortages.html>

³ <https://newsinteractives.cbc.ca/longform/cargill-covid19-outbreak>

⁴ <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>

⁵ <https://www.cnn.com/2020/11/19/business/tyson-coronavirus-lawsuit/index.html>

⁶ <https://www.politico.com/news/2020/09/08/farmworkers-coronavirus-disaster-409339>

⁷ https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL_.pdf

of Wendy's Quality Assurance audit instrument relating to the Protocols and/or the Code's Human Rights and Labor Practices Expectations⁸ ("Expectations");

- The number of times Wendy's has suspended one of its meat or produce suppliers ("Suppliers") for failing to meet Expectations and/or Protocols;
- A list of all third-party auditors approved by Wendy's to monitor adherence to Expectations and/or Protocols, the total number of Supplier locations, how often Wendy's requires third-party audits on-site at each Supplier location for adherence with Expectations and/or Protocols, and the number of Supplier locations so audited in the last year including the number of Supplier workers personally interviewed at each location;
- Whether Wendy's ensures Suppliers' workers have access to a third-party grievance mechanism, with the authority to order a remedy, for reporting violations of Expectations and/or Protocols, and, if so, the required procedures, number of grievances filed by Suppliers' employees in the last year, and outcomes of all such grievances.

⁸ https://www.wendys.com/sites/default/files/2018-04/2017%20Wendy%27s%20Supplier%20Code%20of%20Conduct_FINAL.pdf

From: [Freed, Kelsey](#)
To: [Berner, Michael](#); [Johnson, Mark](#)
Cc: [Lemenchick, Greg](#); [Esposito, Liliana](#); [Schauer, Heidi](#)
Subject: FW: Shareholder Participation Documents
Date: Thursday, December 10, 2020 8:47:19 AM
Attachments: [Wendy's 2021 Filing Letter from Franciscan Sisters.pdf](#)
[Wendy's 2021 Shareholder Proposal - Protecting Essential Food Chain Workers' Rights During COVID-19 FINAL.pdf](#)
[image003.png](#)

Good morning,

Please see attached for a shareholder proposal from the Franciscan Sisters of Allegany that was sent to the IR inbox.

Thanks,
Kelsey



From: Ellen Weaver <ejweaver@fsallegany.org>
Sent: Wednesday, December 9, 2020 3:35 PM
To: Corporate-Secretary <Corporate-Secretary@wendys.com>; heidi.krings@wendys.com; Investor Relations <InvestorRelations@wendys.com>
Cc: Mary Beth Gallagher <mbgallagher@iasj.org>; 'Gloria Oehl (srgloria@hotmail.com)' <srgloria@hotmail.com>
Subject: [EXT] Shareholder Participation Documents

Dear Mr. Wunsch,

Attached are two documents from the Franciscan Sisters of Allegany for your review. The hard copies of these items have been sent overnight by FedEx to your attention. A letter of verification of ownership will be forthcoming.

These items are being sent on behalf of our Treasurer, Sister Chris Treichel, OSF.

Thank you and best to you,

Ellen J Weaver

Finance Manager / Franciscan Sisters of Allegany
PO Box W, St Bonaventure, NY 14778
Phone: 716-373-0200 Ext. 3209
Fax: 716-372-5774



December 09, 2020

Questions: +1 877-594-2578 x0012036

Ellen J Weaver
P.O. Box W
Saint Bonaventure, NY 14778
US

Important Information about your account.

I am writing in response to your request for information regarding the account referenced below.

Account Number: ***

Account Registration: Margaret Mary Kimmins, Margaret Magee, Gloria Oehl, Patricia A Treichel and Ellen J Weaver, Agents for the Franciscan Sisters of Allegany NY Inc.

Account Type: Brokerage

On December 8, 2020 you held 160.7923 shares of Wendys CO. (WEN).

This letter is for informational purposes only and is not an official record. Please refer to your statements and trade confirmations as they are the official record of your transactions.

Thank you for investing with Schwab. We appreciate your business and look forward to serving you in the future. If you have any questions or if we can help in any other way, please call me or any Client Service Specialist at +1 877-594-2578 x0012036, Monday through Friday, from 9:00 a.m. to 7:00 p.m. ET.

Sincerely,

Rick Divine
Sr Specialist, Escalation Support
Rick.Divine@schwab.com
[+1 877-594-2578 x0012036](tel:+18775942578x0012036)
9800 Schwab Way
Lone Tree, CO 80124

From: [Freed, Kelsey](#)
To: [Berner, Michael](#); [Johnson, Mark](#)
Cc: [Lemenchick, Greg](#); [Esposito, Liliana](#); [Schauer, Heidi](#)
Subject: FW: Shareholder Participation - Additional Document
Date: Monday, December 14, 2020 8:00:59 AM
Attachments: [Wendy's Holdings Verification Ltr.pdf](#)
[image003.png](#)

Good morning,

The Franciscan Sisters of Allegany sent verification of share ownership through the IR inbox on Friday to go along with their proposal from a couple weeks ago.

Thanks!

Kelsey



From: Ellen Weaver <ejweaver@fsallegany.org>
Sent: Friday, December 11, 2020 7:10 PM
To: Corporate-Secretary <Corporate-Secretary@wendys.com>; heidi.krings@wendys.com; Investor Relations <InvestorRelations@wendys.com>
Cc: Mary Beth Gallagher <mbgallagher@iasj.org>; 'Gloria Oehl (srgloria@hotmail.com)' <srgloria@hotmail.com>
Subject: [EXT] Shareholder Participation - Additional Document

Mr Wunsch,

Following the shareholder proposal filing materials, please find verification of our share ownership attached.

I recognize there may need to be alternative language and am working to secure that, but want to make sure to send this alongside our proposal in the meantime.

Sincerely,

Ellen J Weaver

Finance Manager / Franciscan Sisters of Allegany

PO Box W, St Bonaventure, NY 14778

Phone: 716-373-0200 Ext. 3209

Fax: 716-372-5774

From: Ellen Weaver



The Wendy's Company
One Dave Thomas Blvd.
Dublin, OH 43017

Direct Dial (614) 764-3220
michael.berner@wendys.com

December 14, 2020

VIA ELECTRONIC DELIVERY

Mary Beth Gallagher
Executive Director
Investor Advocates for Social Justice
40 South Fullerton Ave.
Montclair, NJ 07042

RE: Rule 14a-8 Proposal (The Wendy's Company)

Dear Ms. Gallagher:

I am writing in response to a letter from Sr. Chris Treichel, OSF on behalf of the Franciscan Sisters of Allegany, NY (the "Sisters") to Mr. E. J. Wunsch, Chief Legal Officer and Secretary of The Wendy's Company (the "Company"), dated and received via email on December 9, 2020 (the "Letter"), with a stockholder proposal requesting that the Company issue a report describing the extent to which workers in the Company's food supply chain are protected from human rights violations, including harms associated with COVID-19 (the "Proposal") for inclusion in the Company's proxy materials for its 2021 Annual Meeting of Stockholders (the "Proxy Materials"). The Letter requests that the Company direct all communication regarding the Proposal to your attention.

The Letter states that "The Franciscan Sisters of Allegany, NY is the beneficial owner of 160.7923 shares of Wendy's stock [and has] held stock continuously for over one year and intends to retain the requisite number of shares through the date of the Annual Meeting" and that "[a] letter of verification of ownership is forthcoming." On December 11, 2020, the Company received a letter via email from Charles Schwab dated December 9, 2020 (the "Schwab Letter"). The Schwab Letter states that "[o]n December 8, 2020 [the Sisters] held 160.7923 shares of Wendys CO. (WEN)."

Rule 14a-8 of the Securities Exchange Act of 1934 ("Rule 14a-8") sets forth the securities ownership requirements for a proponent to properly submit a proposal, which the Schwab Letter fails to meet in two respects. First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal" (emphasis added). While the Schwab Letter confirms that the Sisters held 160.7923 shares of the Company's common stock as of December 8, 2020, the Proposal was dated and received via email on December 9, 2020, thus leaving a gap between the date of verification in the Schwab Letter and the date of the Proposal. Second, as described above, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she

has owned the requisite number of shares “continuously” and “for at least one year by the date [the shareholder] submit[s] the proposal.” While the Letter from the Sisters states that “The Franciscan Sisters of Allegany, NY is the beneficial owner of 160.7923 shares of Wendy’s stock [and has] held stock continuously for over one year and intends to retain the requisite number of shares through the date of the Annual Meeting”, the Schwab Letter speaks only to the Sisters’ holdings as of December 8, 2020 and does not contain a comparable statement regarding the continuous ownership for at least one year from December 9, 2020 (the date that the Proposal was dated and received via email). Pursuant to Rule 14a-8(b), it is the “record” owner that must verify and provide evidence that, at the time a proponent submitted a proposal, the proponent continuously held the securities for at least one year. Because the Letter states that the Sisters are beneficial owners of the Company’s common stock, then the Proposal should have been accompanied by documentation confirming that the Sisters meet the applicable securities ownership requirements, such as a written statement from the “record” holder of such common stock (*e.g.*, a broker or bank) verifying that the Sisters met such requirements at the time the Proposal was submitted.

The eligibility requirements of Rule 14a-8(b) establish that a proponent must have continuously held at least \$2,000 in market value, or one percent, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date of the proposal’s submission (the proponent must also continue to hold those securities through the date of the meeting). As indicated above, the Company has not yet received sufficient proof that the Sisters have met these requirements. Therefore, please provide revised documentation from the “record” holder demonstrating that the Sisters own and have continuously held at least \$2,000 of the Company’s common stock for at least the one-year period preceding and including December 9, 2020 (the date on which the Proposal was received electronically by the Company).

In accordance with Staff Legal Bulletin Nos. 14F and 14G published by the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “SEC”), if the Sisters’ broker or bank is not a DTC participant or an affiliate of a DTC participant, then the Company must be provided with proof of securities ownership from the DTC participant or affiliate of the DTC participant through which the Sisters’ common stock is held. In the event that the Sisters hold their common stock through a securities intermediary that is not a broker or bank, then the Company must be provided with proof of securities ownership from both (i) the securities intermediary and (ii) a DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary. For your reference, we have enclosed herewith copies of Rule 14a-8 and SEC Staff Legal Bulletin Nos. 14F and 14G.

If the Sisters have not met these Rule 14a-8(b) securities ownership requirements, or if the Sisters do not respond within 14 calendar days as described below in this paragraph, then in accordance with Rule 14a-8(f), the Company will be entitled to exclude the Proposal from the Proxy Materials. If the Sisters wish to proceed with the Proposal, then the Sisters must respond and submit adequate evidence (such as a written statement from the “record” holder of the Sisters’ common stock) verifying that the Sisters have in fact met the Rule 14a-8(b) securities ownership requirements. Such response must be postmarked or transmitted electronically no later than 14 calendar days from the date on which you received this notification letter.

In the event that it is demonstrated that the Sisters have met the eligibility requirements of Rule 14a-8(b), the Company reserves the right to exclude the Proposal if, and to submit to the SEC

Ms. Mary Beth Gallagher
December 14, 2020
Page 3

the reasons for which, in the Company's judgment, the exclusion of the Proposal from the Proxy Materials would be in accordance with SEC proxy rules.

Please direct all further correspondence with respect to this matter to my attention at the mailing address provided on the first page of this notification letter or by email to *michael.berner@wendys.com*.

Sincerely yours,



Michael G. Berner
Assistant General Counsel – Corporate and
Securities Counsel, and Assistant Secretary

Enclosures

cc: Mr. E. J. Wunsch, Chief Legal Officer and Secretary
Ms. Liliana Esposito, Chief Communications Officer

From: [Berner, Michael](#)
To: [Mary Beth Gallagher](#); [Ellen Weaver](#)
Cc: ["Gloria Oehl \(srgloria@hotmail.com\)"](#); [Johnson, Mark](#); [Wunsch, EJ](#); [Esposito, Liliana](#)
Subject: RE: Shareholder Participation Documents
Date: Monday, December 14, 2020 5:16:07 PM
Attachments: [LEGAL-#404631-v1-SH_Proposal -- The Franciscan Sisters of Allegany NY \(14a-8 Stock Ownership\) \(Dec. 2020\).pdf](#)
[Enclosures.pdf](#)

Dear Ms. Weaver and Ms. Gallagher,

This email is to confirm Wendy's receipt of the Rule 14a-8 proposal submitted by The Franciscan Sisters of Allegany, NY (the "Sisters").

Both your original email sent on 12/9 and your follow-up email sent on 12/11 indicate that the Sisters beneficially own 160.7923 shares of Wendy's stock; however, to date, Wendy's has not been provided with appropriate documentation to verify your share ownership for purposes of Rule 14a-8.

Pursuant to Rule 14a-8(b), the "record" owner of the shares must verify and provide evidence that, at the time a proponent submitted a proposal, the proponent continuously held the requisite number of shares for at least one year. Accordingly, please provide documentation from the "record" holder demonstrating that the Sisters own and have continuously held at least \$2,000 of Wendy's common stock for at least the one-year period preceding and including December 9, 2020 (the date on which your proposal was received electronically by Wendy's).

Attached is a letter, with separate enclosures, that provides additional details regarding the technical requirements of Rule 14a-8. As explained in the letter, if the Sisters have not met the Rule 14a-8(b) share ownership requirements, or if the Sisters do not respond within 14 calendar days, then Wendy's will be entitled to exclude your proposal from our proxy materials.

Please direct all further correspondence with respect to this matter to my attention.

Thank you,

Mike

From: Ellen Weaver <ejweaver@fsallegany.org>
Sent: Wednesday, December 9, 2020 3:35 PM
To: Corporate-Secretary <Corporate-Secretary@wendys.com>; heidi.krings@wendys.com; Investor Relations <InvestorRelations@wendys.com>
Cc: Mary Beth Gallagher <mbgallagher@iasj.org>; 'Gloria Oehl (srgloria@hotmail.com)' <srgloria@hotmail.com>
Subject: [EXT] Shareholder Participation Documents

Dear Mr. Wunsch,

Attached are two documents from the Franciscan Sisters of Allegany for your review.
The hard copies of these items have been sent overnight by FedEx to your attention.
A letter of verification of ownership will be forthcoming.

These items are being sent on behalf of our Treasurer, Sister Chris Treichel, OSF.

Thank you and best to you,

Ellen J Weaver

Finance Manager / Franciscan Sisters of Allegany

PO Box W, St Bonaventure, NY 14778

Phone: 716-373-0200 Ext. 3209

Fax: 716-372-5774

Wendy's Information Security Notice: This is an external email. Stop and think before you click links
or open attachments



Franciscan Sisters of Allegany, Ny

Mailing Address:
P.O. Box W
St. Bonaventure, NY 14778-2302

December 22, 2020

E. J. Wunsch
Chief Legal Officer, Chief Compliance Officer and Secretary
The Wendy's Company
One Dave Thomas Boulevard
Dublin, Ohio 43017

Sent via mail and email to: corporate-secretary@wendys.com; heidi.krings@wendys.com;
investorrelations@wendys.com

Dear Mr. Wunsch:

Pursuant to our filing of the shareholder proposal on Protecting Essential Food Chain Workers' Rights During COVID-19 on December 9, 2020, please find enclosed verification of ownership of 160.7923 shares of Wendy's stock. The Franciscan Sisters of Allegany intend to hold these shares through the Annual Shareholder Meeting.

Please address all communication regarding this matter to Mary Beth Gallagher, Executive Director of Investor Advocates for Social Justice located at 40 South Fullerton Ave, Montclair, NJ 07042, email address: mbgallagher@iasj.org and phone number (973) 509-8800. Please also email a copy to srgloria@hotmail.com. We look forward to constructive dialogue about these concerns.

Kindly confirm receipt of the verification.

Sincerely,

Sr. Chris Treichel, OSF
Treasurer



December 22, 2020

Franciscan Sisters of Allegany
P.O. Box W
Saint Bonaventure, NY 14778

Account #: ***
Questions: +1 877-561-1918
x35485

Here is the account information you requested.

Dear Ellen Weaver,

I'm writing to confirm that 160.7923 shares of Wendy's Company (symbol WEN) are held in the above referenced account for Franciscan Sister of Allegany. Gloria Oehl, Patricia Treichel, Osf, and Ellen Weaver are the authorized agents for this account.

As of the date of this letter, the shares have been continuously held in this account since the original date of purchase on 08/02/2019. The shares currently have a value of at least \$2,000.00.

This letter is for informational purposes only and is not an official record. Please refer to your statements and trade confirmations as they are the official record of your transactions.

Thank you for choosing Schwab. We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at +1 877-561-1918 x35485.

Sincerely,

Brady Richardson

Brady Richardson
Sr Specialist, Escalation Support
2423 E Lincoln Dr
Phoenix, AZ 85016-1215

From: [Ellen Weaver](#)
To: [Berner, Michael](#)
Cc: [Mary Beth Gallagher](#); [Johnson, Mark](#); [Wunsch, EJ](#); [Esposito, Liliana](#)
Subject: [EXT] RE: Shareholder Participation Documents
Date: Tuesday, December 22, 2020 8:12:49 PM
Attachments: [Wendy's 2021 Ltr with holdings verification from Franciscan Sisters.pdf](#)
[Wendy's Holdings Verification Ltr Dec 22.pdf](#)

Dear Mr. Wunsch,

Attached are two documents for your review, those being a letter from the Franciscan Sisters of Allegany and a letter of verification of holdings from Charles Schwab. Based on the number of shares and share prices throughout the period, it is known that the value of the holdings remained above \$2,000 throughout.

The verification from Charles Schwab was provided after the close of business and the close of shipping facilities on Dec 22, 2020. However, they are being forwarded by email today. The hard copies of these items will be sent overnight by FedEx to your attention upon the resumption of business on Dec 23, 2020

These items are being sent on behalf of our Treasurer, Sister Chris Treichel, OSF.

Sincerely,

Ellen J Weaver

Finance Manager / Franciscan Sisters of Allegany
PO Box W, St Bonaventure, NY 14778
Phone: 716-373-0200 Ext. 3209
Fax: 716-372-5774

From: Berner, Michael [mailto:Michael.Berner@wendys.com]
Sent: Monday, December 14, 2020 5:16 PM
To: Mary Beth Gallagher <mbgallagher@iasj.org>; Ellen Weaver <ejweaver@fsallegany.org>
Cc: 'Gloria Oehl (srgloria@hotmail.com)' <srgloria@hotmail.com>; Johnson, Mark <Mark.Johnson@wendys.com>; Wunsch, EJ <EJ.Wunsch@wendys.com>; Esposito, Liliana <Liliana.Esposito@wendys.com>
Subject: RE: Shareholder Participation Documents

Dear Ms. Weaver and Ms. Gallagher,

This email is to confirm Wendy's receipt of the Rule 14a-8 proposal submitted by The Franciscan Sisters of Allegany, NY (the "Sisters").

Both your original email sent on 12/9 and your follow-up email sent on 12/11 indicate that the Sisters beneficially own 160.7923 shares of Wendy's stock; however, to date, Wendy's has not been provided with appropriate documentation to verify your share ownership for purposes of Rule 14a-8.

Pursuant to Rule 14a-8(b), the “record” owner of the shares must verify and provide evidence that, at the time a proponent submitted a proposal, the proponent continuously held the requisite number of shares for at least one year. Accordingly, please provide documentation from the “record” holder demonstrating that the Sisters own and have continuously held at least \$2,000 of Wendy’s common stock for at least the one-year period preceding and including December 9, 2020 (the date on which your proposal was received electronically by Wendy’s).

Attached is a letter, with separate enclosures, that provides additional details regarding the technical requirements of Rule 14a-8. As explained in the letter, if the Sisters have not met the Rule 14a-8(b) share ownership requirements, or if the Sisters do not respond within 14 calendar days, then Wendy’s will be entitled to exclude your proposal from our proxy materials.

Please direct all further correspondence with respect to this matter to my attention.

Thank you,

Mike

From: Ellen Weaver <ejweaver@fsallegany.org>

Sent: Wednesday, December 9, 2020 3:35 PM

To: Corporate-Secretary <Corporate-Secretary@wendys.com>; heidi.krings@wendys.com; Investor Relations <InvestorRelations@wendys.com>

Cc: Mary Beth Gallagher <mbgallagher@iasj.org>; 'Gloria Oehl (srgloria@hotmail.com)' <srgloria@hotmail.com>

Subject: [EXT] Shareholder Participation Documents

Dear Mr. Wunsch,

Attached are two documents from the Franciscan Sisters of Allegany for your review. The hard copies of these items have been sent overnight by FedEx to your attention. A letter of verification of ownership will be forthcoming.

These items are being sent on behalf of our Treasurer, Sister Chris Treichel, OSF.

Thank you and best to you,

Ellen J Weaver

Finance Manager / Franciscan Sisters of Allegany

PO Box W, St Bonaventure, NY 14778

Phone: 716-373-0200 Ext. 3209

Fax: 716-372-5774

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or open attachments

Wendy's Information Security Notice: This is an external email. Stop and think before you click links or open attachments

EXHIBIT B

CODE OF CONDUCT FOR SUPPLIERS TO WENDY'S





Wendy's

**CODE OF CONDUCT FOR
SUPPLIERS TO WENDY'S**

Published 2017



QUALITY IS OUR RECIPE.



The Wendy's Company (Wendy's) has established this Code of Conduct (Code) for all suppliers and vendors (collectively Suppliers) that are approved to provide goods, products, equipment or services (collectively Products) to the system of restaurants and other outlets operated under the Wendy's concept in the U.S. and Canada (the System), regardless of where the Supplier operates. The term "Supplier" includes all persons, entities, companies or organizations that have entered into a written agreement with Wendy's or who have been otherwise approved by Wendy's to supply or manufacture Products to be sold to the System.

Wendy's expects Suppliers to use best practices in all aspects of their operations and to conduct business in a way that is consistent with the values of Wendy's and our franchisees, and the strong ethical principles established by our founder, Dave Thomas.

The Code is guided by Dave's Five Legacy Values:

Quality is Our Recipe

Do the Right Thing

Treat People with Respect

Profit Means Growth

Give Something Back





Table of Contents

The below links will take you to specific sections of the Code.

Scope and Application	pg4
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Human Rights and Labor Practices	pg10
Environmentally Sustainable Business Practices	pg12
Business Ethics and Integrity	pg14
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All Suppliers, and their suppliers and contractors, are expected to comply with applicable local, state/provincial and federal laws and regulatory requirements as part of responsible business operations, including but not limited to: applicable employment, immigration, civil rights, and antidiscrimination laws, food safety, animal welfare, environmental, and any other required industry standards. The Code applies specifically to Suppliers' business on behalf of Wendy's, and Suppliers are expected to affirm they have received and understand the specific outlined expectations of the Code. Suppliers with their own codes of conduct may share those with Wendy's as part of the affirmation process.



Scope and Application of the Code of Conduct

The Code represents a codification of Wendy's "way of doing business" and a pledge, with our Suppliers, to work toward continuous improvement in all aspects of our operations. Wendy's intent is to build relationships with our core Suppliers through open and honest evaluation based on mutual respect for knowledge and understanding of the process, the needs of the System, and the capabilities of our Suppliers.

Since its inception, this Code has applied to all food, paper and packaging suppliers of products to the System contractually managed by Quality Supply Chain Co-op, Inc. (QSCC). QSCC, and its wholly owned subsidiary QSCC Canada Inc., was formed to act as the sole authorized purchasing organization for Wendy's company and Wendy's franchised restaurants located in the United States and Canada. QSCC is not an affiliate of Wendy's and was organized and operates independently of Wendy's. Wendy's and most of Wendy's U.S. franchisees are shareholders of QSCC.

Wendy's supports an open, honest and transparent dialogue with its Suppliers, and the Code was developed by Wendy's with the valued input of our Supplier community. It accurately demonstrates our priority focus on Supplier responsibility across critical areas of our supply chain. The Code is updated periodically to reflect the ever-changing business environment and best practices. Through this process, we may consult with third party groups and non-governmental organizations as we establish and refine our practices with the intent of furthering our responsibility commitments and sustainability stewardship.

This Code also applies to those Suppliers that provide a significant stream of goods or services to Wendy's on an annual basis, regardless of whether they are contractually managed by QSCC. The Code's provisions apply to all suppliers. However certain sections may be inapplicable to certain suppliers. For example, Food Safety and Food Ingredients is





relevant only to those suppliers that provide food, paper or packaging services to Wendy's, and Farm Animal Health and Well-Being is relevant only to meat and protein suppliers that are included within the scope of the Wendy's animal welfare program.

The Code should not be read in lieu of, but in addition to, a Supplier's obligations as set out in any agreements between Wendy's or QSCC and the Supplier. In the event of a conflict between the Code and an agreement between Wendy's or QSCC and the Supplier, the agreement between Wendy's or QSCC and the Supplier will govern and control. The provisions of the Code are intended only to confirm the basic requirements that are expected of Suppliers to the System. This Code shall in no way be construed as conferring, or in any way granting, rights of any kind to any third party.

Wendy's and its Suppliers understand that the Code can and will continue to evolve as necessary to incorporate industry and product or process changes that may range from production practices to new technologies. It is not a punitive Code, but an engaging one, that promotes collective, aspirational thinking and partnership between Wendy's and its Suppliers encourages new learning and research that is applicable to each other's respective operations.

Suppliers are required to re-affirm annually to Wendy's Quality Assurance their receipt and understanding of this mandatory Code. This Code will continue to be expanded to include Suppliers of Wendy's that provide products outside of the U.S. and Canada and outside the QSCC relationship on a go forward basis.



Food Safety and Food Ingredients

At our heart, Wendy's is a provider of great, high-quality foods for our customers. With our Suppliers, we share the objective of assuring the ingredients in the foods we serve are safe. Regardless of which Wendy's restaurant is visited, customers need to be confident Suppliers to those restaurants adhere to our strict food safety processes and quality standards.

Our Specific Expectations

Food Safety

Wendy's understands that the safety of the foods served in our restaurants is our stock in trade – without confidence in our food, we lose trust. That trust extends to our Supplier community, and we hold our Suppliers to the food safety and quality assurance standards that are among the most stringent in the restaurant industry.



Our goal is to constantly exceed our customers' expectations – every day and in every restaurant. Wendy's continually monitors our food products and works hard to improve them. Wendy's Suppliers are expected to provide the System with the specified quality products and ingredients at all times and must immediately report to Wendy's any issues that could affect the safety or quality of our foods.



Suppliers are required to meet the extensive food safety and quality assurance guidelines set forth by both regulatory agencies and Wendy's, and to demonstrate that they have rigorous food safety and quality management systems in place in all Wendy's supply operations. Our expectation is that all foods for Wendy's are produced, packaged, held and transported under conditions that assure a safe, quality product.

To meet our customers' demand for food safety and quality, Wendy's and our Suppliers further agree to:

- Maintain strict standards for raw products and finished ingredients that meet or exceed government requirements;
- Adhere to a strict food safety testing program;
- Follow rigid food handling, hygiene and preparation procedures;
- Promptly retain any product suspected to be unsafe until a food safety review can be completed; and
- Remain vigilant: keep monitoring and improving our processes to maintain product safety.

Food Ingredients

Wendy's knows that the best food comes from the best ingredients. We also know that consumers today have greater interest than ever before about what's in their food, and we respond to that by providing customers with food sourced from safe, quality ingredients.

Suppliers are expected to:

- Source ingredients and produce finished products that adhere to and comply with Wendy's specifications;
- Demonstrate that ingredients were procured in a responsible way that is consistent with Wendy's animal welfare standards;
- Provide accurate and timely ingredient statements, allergen declarations, and nutrition profiles consistent with our commitment to transparency; and
- Ensure ingredients are safe and of the specified quality.

More about Wendy's Positions on Food Safety and Food Ingredients

Wendy's has been proactive in our food safety and food ingredient programs, including advancements toward eliminating partially hydrogenated oils, sharing food allergen information and promoting sustainability in food ingredients. To learn more about Wendy's positions, visit

www.wendys.com/en-us/nutrition-info.



Farm Animal Health and Well-Being

We are proud that for decades Wendy's has been a leader in setting and enforcing standards for the humane care of animals raised for our food as part of a responsible, safe and sustainable food supply chain.

Our public commitment to animal welfare originated in the 1990s with the establishment of comprehensive standards for farm animal care, standards that today still shape our contracting and procurement process. In 2001, we established an Animal Welfare Program to regularly review corporate policies and supplier performance, to evaluate relevant academic and scientific research, and to make recommendations as needed for improvement or updates.

We know that the manner in which animals raised for food are cared for and on-farm best management practices are important to our customers – as they are to us. While Wendy's does not own or raise livestock or poultry, our position as a leader in the restaurant industry encourages us to take a proactive, responsible role in the health and well-being of these animals.

Our Specific Expectations

Audits

Wendy's rigorous animal welfare auditing protocol for our Suppliers, which evaluates areas including, but not limited to, housing, transportation and processing, is a leader in

the restaurant industry and is led by trained internal and external auditors. We began animal handling audits in the mid-1990s, and our on-farm auditing program has strengthened





since that time to allow us to continue to affirm our Suppliers meet our high expectations for animal welfare.

Our beef, pork and chicken Suppliers are audited annually, and any who do not achieve a score of “excellent” will be audited at least twice each year to verify compliance. Audits are reviewed by external animal welfare experts as an added measure of assurance. Companies that are unable to maintain our strict guidelines face termination as approved Suppliers of Wendy’s.

Compliance with Animal Welfare Policies

We expect Suppliers to Wendy’s to comply with our robust animal welfare policies and audit processes. The Code as it relates to animal welfare is intended to be a reflection of the commitment made by Suppliers, but does not supersede Suppliers’ participation in Wendy’s Animal Welfare Program.

Our priority focus for Supplier conduct includes proper animal handling, animal welfare as a component of food safety and quality, and regular improvement. As a restaurant industry leader, we take our role in shaping this important issue very seriously.

Our animal welfare focus is on our beef, chicken and pork Suppliers, which represent approximately 40 percent of our food purchases. Outside experts in animal science and veterinary care, including the renowned Dr. Temple Grandin of Colorado State University, provide counsel and guide our decision making. Since 1998, Wendy’s also has

followed the American Meat Institute (now the North American Meat Institute) animal welfare guidelines for beef and pork production.

As a partner with our food Suppliers and the farms that supply them, Wendy’s provides the following support in animal welfare:

- Supplier collaboration and education to support an effective program and regular improvement
- Expert certification and national program participation
- Commitment by senior management
- Ongoing verification of animal welfare practices
- Continuous Improvement

Our commitment is broad, but our focus is targeted. Being informed about emerging issues in animal welfare is important to us, and our animal welfare policy and Supplier expectations will be updated as needed to reflect new learnings. We encourage our Suppliers to actively engage in industry programs and education on animal care, and to bring to Wendy’s any relevant background that will strengthen our Animal Welfare Program.

More about Wendy’s Positions on Animal Welfare

Wondering what questions we get the most when it comes to animal welfare? Visit www.wendys.com/animalwelfare for more background on how Wendy’s feels about some of the pressing issues of farm animal care, including laying hen and broiler chicken housing, gestation stalls, harvest and processing, antibiotic use and more.





Human Rights and Labor Practices

At Wendy's, we believe our success begins and ends with our people and the Supplier companies that have been thoughtfully selected to do business with us. This focus on upholding quality while adhering to a core set of values – specifically, Do the Right Thing and Treat People with Respect as it relates to human rights and labor practices – encompasses everything we do.

People are our most valuable asset. Collectively, it is the respect and dignity we hold for each individual and value we place on trusted relationships that enables our mutual success. To that end, we take all human rights and labor practices issues seriously and expect the same from our Suppliers.

Nearly 90 percent of Wendy's operations are located in the U.S., and most of Wendy's food is sourced through American farms and ranches. As such, we expect compliance with the Fair Labor Standards Act (FLSA) and other applicable laws.

For Suppliers in Canada, we expect compliance with the Employment Standards Act (ESA) and other applicable laws.

For our suppliers with international operations, our expectations for their behavior outside of the U.S. are informed by standards set forth by the United Nations in The Universal Declaration of Human Rights and the International Labor Organization (ILO), to the extent they are consistent with applicable law. We encourage our Supplier partners to respect these human rights and labor declarations as part of their business practices.

Based on an evaluation of various risk factors, Wendy's may require certain suppliers to provide additional assurance of their business practices related to Human Rights and Labor Practices.

Our Expectations

Consistent with Wendy's or QSCC's agreements with Suppliers, we expect all Suppliers to comply with applicable employment and labor laws and regulations. In particular, we expect all Suppliers to adhere to the following:

Hiring Practices. Wendy's Suppliers commit to employing only those individuals who are legally authorized to work. Suppliers are responsible for verification of age, identity and legal right to work for each employee.

Minimum Age Requirements / Child Labor. Underage child labor as defined by local, state/provincial and federal agencies is not to be tolerated by Wendy's Suppliers. Wendy's expects all Suppliers to follow the rules set forth by the FLSA/ESA and other applicable laws, which set wages, hours worked and safety requirements for minors (individuals under age 18). For suppliers internationally, we encourage adherence to standards and Conventions set forth by the ILO or similar local authority.

Healthy & Safe Work Environment. Suppliers are expected to provide a safe and healthy workplace in compliance with applicable local, state /provincial and federal laws and regulations.

Housing Conditions. In the event any Supplier provides housing for its employees, facilities must be constructed and maintained in accordance with applicable laws, regulations and housing codes.

Voluntary Employment. Our Suppliers should only employ individuals whose presence in the workplace is voluntary. Consistent with ILO Conventions and Recommendations on forced labor, our Suppliers should not utilize or engage with factories or production facilities that force work to be performed by unpaid or indentured laborers, or those who must otherwise work against their will.

Working Hours and Time Off. Our Suppliers should ensure all employees work in compliance with applicable laws and regulations and with published industry standards pertaining to the number of hours and days worked.

Wages and Benefits. Our Suppliers are expected to fairly compensate and provide wages, benefits and overtime premiums to their employees that comply with applicable laws and regulations, account for all hours worked, and match or exceed the local minimum wages and benefits in the relevant industry.

No Discrimination or Harassment. We expect every Supplier to provide equal opportunity to its employees in compliance with state/provincial and federal laws. We also expect our Suppliers to provide a work environment free of any form of discrimination or harassment.

Freedom of Association. Our Suppliers must respect any right of its employees to join legal organizations of their own choosing. Suppliers must not threaten or penalize employees as a result of any lawful efforts to organize or bargain collectively.

Labor Practices Reviews. Suppliers of certain fresh agricultural products harvested by hand or in an otherwise manually intensive way will be subject to third party human rights and labor practices reviews.



Environmentally Sustainable Business Practices

Sustainable business practices are woven into the fabric of how Wendy's operates and are the epitome of Do the Right Thing as defined in our core values. Today, perhaps more than ever, those sustainable "right things" that we do should be transparent and clearly articulated.

Being environmentally responsible serves not only as a driver for defining Wendy's sustainable business practices, but also as a positive change agent, because sustainability practices are constantly evolving and not static.

Equally important to Wendy's is that we share with our Suppliers the practices we've successfully put in place and encourage Suppliers to follow our lead when possible.

We look to our Suppliers that are leaders in sustainability and welcome their input and sharing of best practices.

By treating both our environment and our communities with respect and care, we earn the opportunity each day to contribute and make a difference.



Working Toward a Sustainable Future

Suppliers are encouraged to operate responsibly at all times with a commitment to preserving our environment for future generations. Suppliers with active sustainability initiatives are encouraged to address, document and make continuous improvement efforts with regard to the following environmental considerations:

- Water usage including wastewater management
- Soil management (specifically agricultural operations)
- Energy reduction and fossil fuel usage
- Material and food waste reduction
- Packaging and recycling
- Solid waste reduction
- Emissions from manufacturing, processing and transportation
- Responsible construction and development
- Protection of forests and high conservation value areas
- Hazardous material handling and disposal
- Responsible sourcing of raw materials



Our Specific Expectations

Suppliers are expected to comply with applicable legal environmental requirements and regulations, including securing and renewing all related permits.

In developing sustainable business practices, Wendy's encourages Suppliers to consider developing and deploying an environmental management system, based on international standards such as ISO 14001:2004, in an effort to identify, document, manage and/or mitigate any environmental issues or concerns.



Business Ethics and Integrity

The way in which we conduct business says a lot about Wendy's. Every interaction we have, decision we make and transaction we authorize has the potential to enhance or diminish our reputation.

Defining acceptable business behavior starts with adhering to applicable laws, regulations and industry standards and guidelines. However, our values, work ethic and commitment to doing the right thing have been synonymous with the Wendy's brand since its founding. It also is what we look for and expect from our supply chain partners. In order for us to succeed together, ethical behavior must be a mutual commitment.

Our Suppliers are expected to uphold the highest business ethics and demonstrate their business integrity at all times. In addition, Wendy's supports and encourages Suppliers to provide annual ethics training to all employees.

Our Specific Expectations

Gifts, Gratuities and Entertainment. Outside of customary business practices within specified limits, our Suppliers should not offer or provide any gifts, gratuities or entertainment to any individual to grant or receive a favor in return; or in an attempt to influence or gain an unfair advantage in any aspect of an existing or prospective business opportunity.

Anti-bribery and Corruption. Consistent with our stance on gifts, gratuities and entertainment, our Suppliers should not promise or imply an unfair advantage to secure or retain business. Suppliers must not pay bribes, accept any form of kickbacks, or act in any manner that would violate domestic or foreign laws or regulations.

Confidential and Proprietary Information. Throughout the course of a relationship, a Supplier may have knowledge of or access to sensitive business information that may be confidential and proprietary based on trust and/or necessity to fulfill contractual obligations and agreements. It is the responsibility of our Suppliers to protect that information by keeping it confidential at all times. Suppliers should not share confidential and proprietary information with other parties, except as specifically agreed to in writing or authorized by an officer at Wen-

dy's or when disclosure is required by law. This includes, but is not limited to, pricing, financials, products and product innovation, materials/ ingredients, and customer data.

Brand and Trademark Use. We take our brand reputation seriously. Any desired use of Wendy's trademarks, logos, domain names or other intellectual property by a Supplier must be submitted to Wendy's legal department for approval prior to use. Further, our Suppliers must respect and avoid any misuse of Wendy's intellectual property.

Conflict of Interest. Our Suppliers are expected to report any existing or prospective business situation and/or relationship that may appear as a conflict of interest in relation to its role as a Supplier to Wendy's. Suppliers also should disclose if any officers or employees have material or economic interests with others that may suggest a conflict of interest in relation to its role as a Supplier to Wendy's. Any questions regarding prospective conflicts of interest should be directed to Supplier's primary Wendy's representative for clarification.

Data Security. Wendy's is focused on protecting the information of our employees, customers, and partners. We expect our

partners to be equally focused on securing data that is sensitive, regulated or could impact the System. At a minimum, Suppliers are expected to comply with applicable laws and regulations in the jurisdictions in which they operate and apply information security and business continuity practices that adequately protect their businesses and conform to the industry standard. Wendy's reserves the right to audit or examine a Supplier's data security practices where relevant to the System and the Products provided to Wendy's. In the event a supplier's data regarding Wendy's Products becomes compromised, Wendy's will engage with appropriate representatives of the supplier to determine if further action should be taken.

Grievance. Our Suppliers should have in place means for any employee to submit anonymous concerns and grievances to Supplier's management. Suppliers should also designate a process in which to record, file and appropriately address concerns by taking appropriate action in a confidential manner, as necessary.

No Retaliation. Employees of our Suppliers must have the opportunity to speak with their leadership without fear or concern of retaliation when asking questions or raising concerns. It is expected that our Suppliers have a no retaliation policy.

Reporting Business Ethics Violations. With both a grievance and no retaliation policy in place, Suppliers should be well equipped to address and remedy many business ethics concerns and violations described in this section of the Code that could arise in their organizations. Suppliers and their employees also can report business ethics concerns to Wendy's toll-free, 24-hour compliance hotline at 1-800-256-8595 or the ethics website at www.wendys.ethicspoint.com.

More about Wendy's Code of Business Conduct and Ethics

For more information about our Code of Business Conduct and Ethics, visit:

<http://ir.wendys.com/phoenix.zhtml?c=67548&p=irol-govconduct>





Compliance with the Code of Conduct

As a condition of doing business with the System, each of our Suppliers is expected to comply with the provisions outlined in the Code and to re-affirm annually to Wendy's Quality Assurance their receipt and understanding of the applicable provisions of the Code. Suppliers are also expected to require similar standards of doing business from their suppliers and contractors, as applicable. Non-compliance by a supplier or contractor of a Supplier may have direct consequences to the Supplier's relationship with Wendy's.

Where necessary, Suppliers should interpret the Code broadly. Our intent is that Suppliers commit not only to the "letter" but also the "spirit" of the Code.



Accountability and Verification

Each Supplier of food, paper and packaging related products should conduct audits and inspections to ensure its compliance with the Code and applicable legal and contractual standards, and Suppliers are expected to document the results of those audits.

Wendy's may monitor a Supplier's compliance with the Code, and has the right to conduct, or have its designee conduct, unannounced inspections of a Supplier's facilities and records.

Verification of a Supplier's compliance with the Code may be demonstrated through a number of methods, including, but not limited to, the following:

- Certification by third-party organizations
- Submission of materials, such as existing sustainability or annual reports, audits or supplier contracts
- Compliance with local, state/provincial or national regulatory programs
- Wendy's Quality Assurance or Wendy's Animal Welfare Program audits
- Participation in national or international programs focused on continuous improvement of business conduct, as applicable





Compliance with the Code of Conduct

Continuous Improvement

Wendy's recognizes the important role that continuous improvement plays in advancing conduct within its Supplier organizations. As such, the relationship between Wendy's and its Suppliers is a journey based on mutual trust and transparency, and Wendy's strongly advocates that Suppliers work toward improvement of policies, practices, processes and best talent.

Wendy's expects Suppliers to work toward continuous improvement in:

- Implementation – basic compliance with the applicable provisions of the Code
- Enhanced practices – doing more than what is required within the Code
- Best practices – exceeding industry expectations consistently in one or more areas of the Code

Wendy's plans on recognizing Suppliers who go above and beyond, as it relates to continuous improvement, and looks forward to celebrating the successes of its Suppliers.





Non-Compliance

In addition to any contractual rights of Wendy's or QSCC, should a Supplier be found to be in non-compliance with the applicable provisions of the Code, Wendy's expectations for response and successful resolution may include any of the following:

- Immediate implementation of corrective measures by the Supplier under a plan approved by Wendy's;
- Initiation of a probationary period before a return to in-compliance status;
- Development of a continuous improvement program; or
- Performance of and completion of a satisfactory re-audit.

On occasion when unintended violations do occur, despite Suppliers' demonstrated good-faith attempts to adhere to the Code, Wendy's will work collaboratively with Suppliers to correct issues of non-compliance.

Actions and/or issues of repeat non-compliance are inconsistent with our way of doing business and may be cause for immediate termination.

If successful resolution of non-compliance cannot be achieved to the satisfaction of Wendy's, or if it is determined that the Supplier is no longer in a position to uphold the core values and ethical principles of Wendy's, then termination of the relationship with Wendy's will likely proceed.



A Mutual Commitment

ABOVE ALL, WENDY'S EXPECTS ITS SUPPLIERS TO CONSIDER AT ALL TIMES WHAT IS RIGHT AND RESPONSIBLE.

Our core values were created by our founder Dave Thomas more than 40 years ago:

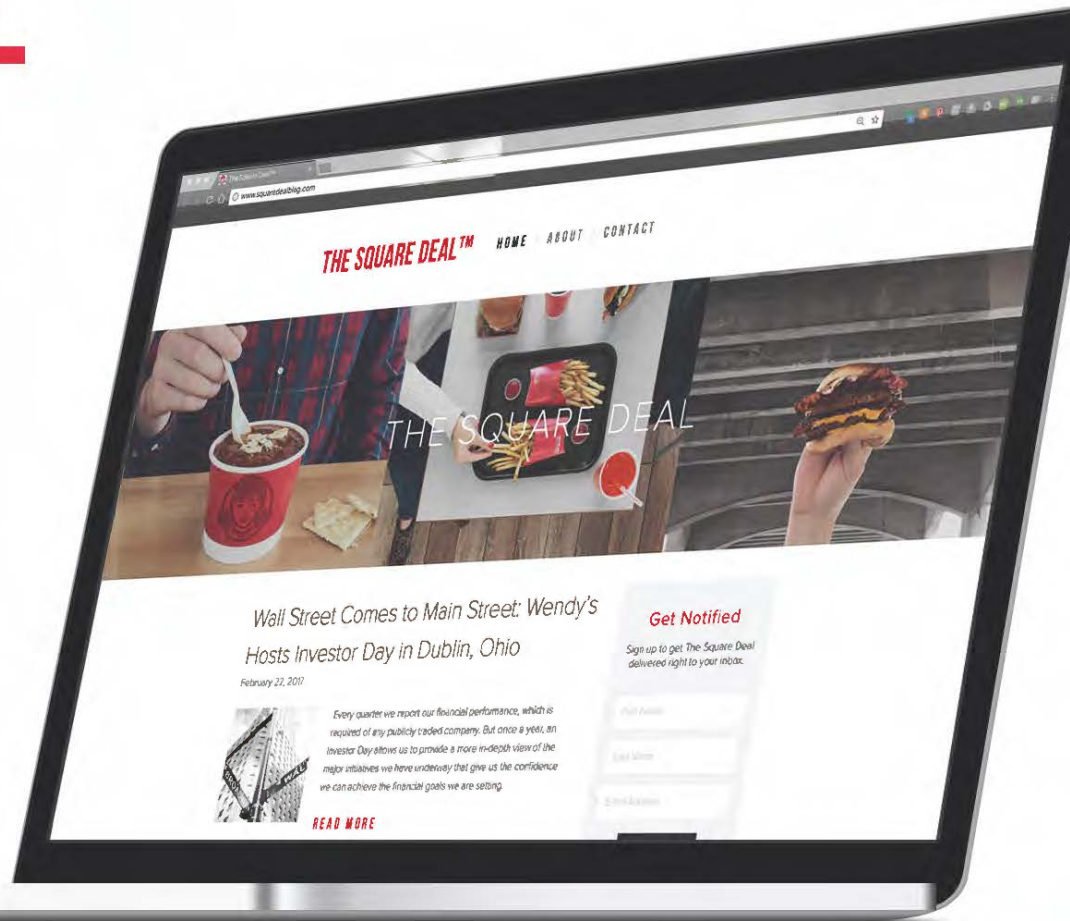
- Quality is Our Recipe
- Do the Right Thing
- Treat People With Respect
- Profit Means Growth
- Give Something Back

They are timeless guideposts for the Wendy's family – including our Supplier community.



THE SQUARE DEAL™ BLOG

STAY UP TO DATE WITH WENDY'S
CORPORATE SOCIAL
RESPONSIBILITY INITIATIVES AT
WWW.SQUAREDEALBLOG.COM







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