



Deere & Company  
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Todd E. Davies  
Associate General Counsel & Corporate Secretary  
Global Law Services Group

November 9, 2021

**VIA EMAIL** ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

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

Re: *Shareholder Proposal to Deere & Company by The Green Century Funds*

Ladies and Gentlemen:

In our letter, dated October 15, 2021 (the “No-Action Request”), we requested that the Staff of the Division of Corporation Finance of the Securities and Exchange Commission concur with our view that Deere & Company (“Deere”) could exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Green Century Funds (the “Proponent”) from the proxy materials to be distributed by Deere in connection with its 2022 annual meeting of shareholders.

Attached is a letter, dated November 8, 2021 (“Proponent’s Withdrawal Letter”), from the Proponent to Deere withdrawing the Proposal. In reliance on the Proponent’s Withdrawal Letter, we hereby withdraw the No-Action Request, and we will exclude the Proposal from our proxy materials.

If you have any question with respect to this matter, please feel free to contact me at (309) 765-5161 or by email at [DaviesToddE@JohnDeere.com](mailto:DaviesToddE@JohnDeere.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Todd E. Davies".

Todd E. Davies  
Corporate Secretary  
Deere & Company

CC:

Hilary Stubben  
Deere & Company  
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Enclosures: Letter from the Proponent



November 8, 2021

Todd E. Davies  
Corporate Secretary  
Deere & Company  
One John Deere Place  
Moline, Illinois 61265-8098

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Mr. Davies,

Green Century Capital Management, Inc. is the investment advisor, agent, manager and representative of the Green Century Funds, and we are writing to withdraw our proposal for Deere's annual shareholder meeting in 2022.

Right-to-Repair issues continue to be an area of concern for our firm and the investors we represent. To that end, we look forward to continued dialogue to better understand the Company's position in light of the mounting regulatory, legal, and public pressure surrounding this particular topic.

With kind regards,

Leslie Samuelrich  
President  
Green Century Capital Management

cc: U.S. Securities and Exchange Commission via email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)



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Todd E. Davies  
Associate General Counsel & Corporate Secretary  
Global Law Services Group

October 15, 2021

**VIA EMAIL** ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

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

Re: *Shareholder Proposal to Deere & Company by The Green Century Funds*

Ladies and Gentlemen:

This letter is submitted on behalf of Deere & Company, a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a shareholder proposal and related supporting statement (the “Proposal”) submitted by The Green Century Funds (the “Proponent”), from its proxy materials for its 2022 Annual Meeting of Shareholders (the “2022 Proxy Materials”). The Company received the Proposal on September 7, 2021. For the reasons set forth below, we request confirmation that the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2022 Proxy Materials in reliance on the provisions of Rule 14a-8(i)(10) and Rule 14a-8(i)(7) under the Exchange Act, as described below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), this letter and its attachments are being e-mailed to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). As required by Rule 14a-8(j), this letter and its attachments are concurrently being sent to the Proponent as notice of the Company’s intent to omit the Proposal from its 2022 Proxy Materials no later than eighty (80) calendar days before the Company currently intends to file its definitive 2022 Proxy Materials with the Commission. Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we hereby notify the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff in response to this letter, a copy of that correspondence should be concurrently provided to the undersigned on behalf of the Company.

## THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at the 2022 Annual Meeting of Shareholders:

Resolved: Shareholders request that the Board issue a report, at reasonable cost and omitting proprietary information, on the emerging state and federal Right to Repair legislation and the Company's explanation of underlying issues giving rise to those policy proposals.

In addition, the supporting statement thereto ("Supporting Statement") states that "[t]he report should, at Board discretion, assess, among other issues:

- The benefits or harms of making all dealership repair materials available to customers and independent mechanics;
- Implications of state and federal Right to Repair laws for the company's finances and operations;
- Reputational risks associated with customer dissatisfaction giving rise to the legislation."

A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

## BASES FOR EXCLUSION

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2022 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Proposal already has been substantially implemented; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

## ANALYSIS

### **I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because It Already Has Been Substantially Implemented**

The Proposal requests that the Board issue a report that (1) describes "the emerging state and federal Right to Repair legislation," and (2) explains "the underlying issues giving rise to those policy proposals." The objective of the Proposal is to provide investors with insight into the status and motivations behind proposed--but not-yet-enacted--right to repair legislation and the benefits or harms of making all dealership repair materials available to customers and independent mechanics. As explained in more detail below, publicly available sources on the Company's website and other public disclosures contain information sufficient to substantially implement the essential objective of the Proposal.

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

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 shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976). “[A] determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 6, 1991, *recon. granted* Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed the proposal’s underlying concerns and its essential objective, but it does not require that the concerns and objective be addressed in the exact way, or using the exact means, requested by the shareholder proponent. *See, e.g., PG&E Corporation* (avail. Mar. 10, 2010) (concurring with the exclusion of a proposal seeking a “semiannual report disclosing specific information concerning the company’s charitable contributions” where the company’s existing disclosures on its website and corporate charitable contributions program substantially implemented the proposal, and the Staff noted that the company’s “policies, practices and procedures compare[d] favorably with the guidelines of the proposal”); *see also Wal-Mart Stores, Inc.* (AFL-CIO Reserve Fund et al.) (avail. Mar. 30, 2010) (concurring with the exclusion of a proposal under Rule 14a-8(i)(10) where “Wal-Mart’s policies, practices and procedures compare favorably with the guidelines of the proposal and that Wal-Mart has, therefore, substantially implemented the proposal”).

As particularly relevant here, the Staff consistently has concurred with the exclusion of shareholder proposals requesting reports where the company has already publicly disclosed the subject matter or contents of the requested report on its website. *See, e.g., Entergy Corp.* (avail. Feb. 14, 2014) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal calling for a report “on policies the company could adopt to take additional near-term actions to reduce its greenhouse gas emissions” where the company already provided environmental sustainability disclosures on its website and in a separate report).

Moreover, for a proposal to be omitted under this exclusion, the action or event rendering it substantially implemented need not be originated or caused by the company. Commission statements and Staff precedent under Rule 14a-8(i)(10) confirm that the standard for determining whether a proposal has been “substantially implemented” is not dependent on the means by which implementation is achieved. For example, when it initially adopted the predecessor to Rule 14a-8(i)(10), the Commission specifically determined not to require that the substance of a proposal be implemented “by action of management” to support exclusion, acknowledging that “mootness can be caused for reasons other than the actions of management, such as statutory enactments, court decisions, business changes and supervening corporate events.” Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 34-12999 (Nov. 22, 1976).

B. *The Proposal Already Has Been Substantially Implemented Through Prior Statements, Publications, and Disclosures by the Company and/or Third Parties*

1. Third Parties Already Report on Proposed State and Federal Right to Repair Legislation and Explanations for the Proposed Legislation

As an initial matter, much of what the Proposal requests, a description of proposed state and federal “right to repair” legislation and an explanation of the underlying issues related to the proposals, are widely available to the public in the form of publications by third parties. For example, organizations such as R2RSolutions<sup>1</sup>, The Repair Coalition<sup>2</sup>, the Northeast Equipment Dealers Association<sup>3</sup>, and U.S. PIRG<sup>4</sup> provide information regarding legislation introduced in various states. Some of these publications also describe the policy justifications offered by the authors and proponents of various proposed right to repair legislation, including the underlying issues giving rise to the proposals. *See, e.g.*, [https://www.repair.org/policy\\_and https://uspig.org/feature/usp/right-repair](https://www.repair.org/policy_and_https://uspig.org/feature/usp/right-repair).

The Staff has noted that a determination that the company has substantially implemented the proposal depends upon whether the method of substantial implementation “compares favorably with the guidelines of the proposal.” *See, e.g., Walgreen Co.* (avail. Sept. 26, 2013). The third-party sources noted above are examples of publicly available information that compares favorably with the guidelines of the proposal, and directly address the proposal’s underlying concerns and its essential objective. Therefore, an investor desiring information about the status and underlying issues of right to repair initiatives already has access to that information, without the need for any further action from the Company.

2. The Company Already Has Published or Disclosed Its Assessment of Underlying Issues Related to Right to Repair Proposals

The Company also has previously provided its own assessment of underlying issues related to right to repair proposals in statements on its website and in other public disclosures, including the Company’s strong commitment to its customers’ right to repair their equipment and an explanation of the harms to the Company, its customers, and the public that the Company seeks to avoid by limiting access to its embedded software code. The Company’s website newsroom<sup>5</sup> contains information directed to investors, customers, and the general public about the Company’s stance regarding ownership and reparability of its products. On that page, the Company explains that “John Deere supports a customer’s right to safely maintain, diagnose and repair their own equipment,” that to facilitate repair, the Company “provides the tools, parts, information guides, training videos and manuals needed for farmers to work on their machines, including remote access for technicians to provide long-distance help.” The Company further explains on that page, however, that it “does not support the right to modify embedded software due to risks associated with the safe operation of the equipment, emissions compliance and engine performance.”

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1 <https://r2rsolutions.org/news/update-tracking-right-repair-legislation-across-50-states/>

2 <https://www.repair.org/legislation>

3 <https://www.ne-equip.org/legislative-update/>

4 <https://uspig.org/blogs/blog/usp/half-us-states-looking-give-americans-right-repair>

5 <https://www.deere.com/en/our-company/news-and-announcements/newsroom/right-to-safely-repair/>

Further, the Company has a dedicated Repair web page<sup>6</sup> to help its customers “repair [their] own equipment in [their] own shop, and on [their] own time.” On this page the Company explains that its equipment is different from a cell phone, that “[its] combines can weigh 15 tons or more and are manufactured with over 18,500 parts” and that “[t]he same software that drives improved productivity, efficiency, and sustainability, also controls important safety and environmental features” which is “why modifying software in [its] equipment is a no-go for [the Company] — and why [its] dealer network, and its highly skilled technicians, provide additional tools and resources when needed.”

The page also provides links to a video of “a conversation on right to repair with Julian Sanchez,” the Company’s Director of Emerging Technology, and an interview with Chief Technology Officer, Jahmy Hindman, regarding the Company’s position on right to repair and an assessment of how an unfettered right to modify could affect customer safety, the environment, and regulatory compliance. These interviews are easily accessible by any interested investor. In the interview with Mr. Hindman<sup>7</sup>, Mr. Hindman emphasized that the Company “ha[s] and remain[s] committed to enabling customers to repair the products that they buy” and that the “reality is that 98 percent of the repairs that customers want to do on John Deere products today, they can do.” Further, he confirmed that the Company “make[s] the service manuals available” and “make[s] the parts available.” Mr. Hindman acknowledged two percent of repairs that involve software and used the diesel engine as examples where, if modified, the characteristics of the emissions of the engine, a regulated device, could have a negative consequence of the environmental emissions that the engine produces.

Additionally, in its July 18, 2021 letter to Chair Lina Khan of the Federal Trade Commission (“FTC”), which is publicly available on the FTC website at [ftc.gov](https://www.ftc.gov)<sup>8</sup> and is attached hereto as Exhibit B, the Company provided information regarding its assessment of right to repair issues, including:

- That the Company “fully support[s] [its] customers’ right to maintain, diagnose, and repair their equipment and avoid unanticipated, unproductive, and costly downtime”;
- That “Deere customers and independent service organizations today can acquire service parts, operating and repair manuals, product guides, service demonstrations, fleet management information, on-board diagnostics, and electronic field diagnostic tools from a vast network of over 2000 authorized John Deere dealers”;
- That, in the Company’s view, the “enormous variety of manufactured consumer and capital goods, their diverse uses and applications, the extent of intellectual property incorporated, the variety of distribution and service models in place, and the range of potential risks

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<sup>6</sup> <https://www.deere.com/en/our-company/news-and-announcements/newsroom/repair/>

<sup>7</sup> Interview available at: <https://www.theverge.com/22533735/john-deere-cto-hindman-decoder-interview-right-to-repair-tractors>.

<sup>8</sup> Available at: [https://www.ftc.gov/system/files/documents/public\\_events/1591782/july\\_21\\_comments\\_combined.pdf](https://www.ftc.gov/system/files/documents/public_events/1591782/july_21_comments_combined.pdf) (See pp. 108–110)

associated with use and misuse, all support a deliberate policy approach that accounts for these product-specific considerations”;

- That, “[w]hile Deere supports its customers’ right to repair their equipment, Deere does not support the right to modify the embedded software code in machines,” as “[a]llowing access to embedded software code – the ‘right to modify’ – would create significant environmental and safety risks to operators and bystanders, through illegal tampering and unauthorized hacking of safety controls, engine performance, and emissions controls required for Clean Air Act (“CAA”) compliance”;
- That an “unfettered right to modify the embedded software code in equipment would ... encourage the unlawful circumvention of long-established copyright and intellectual property protections”; and
- That “access to software for purposes of reprogramming is needed in less than two percent of all repairs” and, because of the continually evolving nature of the technology, “software reprogramming, when required, can increasingly be done remotely,” alleviating “the need for an authorized technician to manually perform the reprogramming in person.”

These public disclosures address the Proposal’s underlying concerns and its essential objectives by providing the Company’s own assessment of the underlying issues raised by proposed right to repair legislation, as well as the benefits of providing customers with the tools, knowledge, and assistance needed to conduct their own repairs and the costs of any proposed requirement mandating that the Company open its embedded software code to modification.

The Staff has consistently permitted exclusion of shareholder proposals seeking reports where the company’s disclosures contain comparable, albeit not identical, information to that requested by a proponent. For example, in *Exelon Corp.* (avail. Feb. 26, 2010), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a proposal that requested a report on different aspects of the company’s political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided “an up-to-date view of the [c]ompany’s policies and procedures with regard to political contributions”. Also, in *Wal-Mart Stores, Inc.* (avail. Mar. 30, 2010), the Staff concurred with the company’s exclusion of a shareholder proposal where the company’s existing Global Sustainability Report, which was available on the company’s website, substantially implemented the proposal’s request for the company to adopt six principles for national and international action to stop global warming, even though the Global Sustainability Report set forth only four principles. *See also Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the company’s exclusion of a shareholder proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives). Just as in those cases, the Company’s publicly available statements, publications, and disclosures together with the third-party sources have directly addressed the Proposal’s essential objective, even if it is addressed in a different manner than specified in the Proposal.

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

In addition to being excludable because it has been substantially implemented, the Proposal may be excluded under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business. The Proposal asks the Board to provide a report on subjects relating to customer and mechanic access to repair materials, which is a clear example of a proposal that may be excluded because it concerns the Company's day-to-day management. Further, the Proposal asks the Board to conduct routine legal analysis of the potential risks posed by proposed, but not-yet-enacted, state and federal legislation, a matter which could not, as a practical matter, be the subject of direct shareholder oversight. In addition, despite the Proponent's attempt to frame the Proposal as related to an issue that has received some media and legislative attention, the subject matter of that issue is the access to repair materials, a matter directly related to the Company's relationship with its customers, which does not transcend the Company's ordinary business operations. Finally, the Proposal seeks to micromanage the Company because it probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

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

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations." According to the Commission, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word; instead, the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first 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 is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The Proposal implicates both of these considerations.

### *B. The Proposal May Be Excluded Because It Relates to the Company's Customer Relationships and Routine Legal Analysis and Risk Assessment*

The Proposal relates to the extent to which the Company makes repair materials available to its customers and independent mechanics servicing customer equipment, a matter squarely implicating the Company's relationships with its customers. The Staff has consistently concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7), where, as here, they relate to a company's customer relationships. *See, e.g., JPMorgan Chase & Co.* (Feb. 21, 2019) (concurring

with the exclusion of a proposal under Rule 14a-8(i)(7) that requested the company to report on the impact of the company's overdraft policies to its customers); *AT&T Inc.* (Dec. 28, 2016) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) that requested the company provide free tools to customers to block robocalls); *Ford Motor Co.* (Feb. 13, 2013) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal that requested removal of dealers that provided poor customer service, noting that “[p]roposals concerning customer relations are generally excludable under rule 14a-8(i)(7)”; *The Coca-Cola Co.* (Jan. 21, 2009, *recon. denied* Apr. 21, 2009) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) that requested a report on how the company could provide information to customers regarding the company's products, noting that the proposal “relat[ed] to Coca-Cola's ordinary business operations (i.e., marketing and consumer relations)”). Moreover, a shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has long held that a proposal requesting the preparation of a report may be excludable under Rule 14a-8(i)(7) where the subject matter of the report involves the ordinary business of the issuer. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983).

In addition, the Proposal requests an analysis of the financial, regulatory, legal and reputational risks facing the Company from proposed right to repair legislation. Such routine legal and risk analysis, part of management's day-to-day responsibilities, is not a proper subject for shareholder oversight. For example, in *McDonald's Corp.* (avail. Mar. 22, 2019) (“McDonald's 2019”), the Staff concurred with the exclusion of a proposal asking the company to “disclose the economic risks” it faced from “campaigns targeting the [c]ompany over concerns about cruelty to chickens” because the proposal “focuse[d] primarily on matters relating to the [c]ompany's ordinary business operations.” *See also, e.g., FedEx Corp.* (July 14, 2009) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) seeking a report on compliance with state and federal laws regarding the classification of employees and independent contractors as relating to the company's “ordinary business operations (i.e., general legal compliance program)”; *Amazon.com, Inc.* (Oxfam America, Inc.) (avail. Apr. 3, 2019) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) urging the company's board of directors to conduct human rights impact assessments for certain food products that the company sells that purportedly present a high risk of adverse human rights impacts); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) requesting the board to prepare a report on “environmental, social, and economic challenges associated with the oil sands,” as involving ordinary business matters for an oil company).

The Staff also has repeatedly concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking an assessment of the impact of proposed and current government regulation on a company's ordinary business matters. For example, in *General Electric Co.* (avail. Jan. 30, 2007), the proposal requested a report on legislative initiatives affecting the company, including the company's plans to “reduc[e] the impact on the [c]ompany of: unmeritorious litigation (lawsuit/tort reform); unnecessarily burdensome laws and regulations (e.g., Sarbanes-Oxley reform); and taxes on the [c]ompany (i.e., tax reform).” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7) because it involved evaluating the impact of government regulation on the company. *See also Yahoo! Inc.* (avail. Apr. 5, 2007) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) calling for an evaluation of the impact on the company of expanded government regulation of the Internet).

Similar to the proposals in the cited letters, the Proposal seeks an assessment of risks posed by, and the impact of state and federal legislation on, ordinary business matters; thus, it should be considered excludable.

*C. The Proposal Does Not Have a Sufficient Nexus to a Significant Policy Issue that Transcends the Company's Ordinary Business Operations*

The Proposal does not have a sufficient nexus to a significant policy issue that transcends the Company's ordinary business operations. Staff Legal Bulletin No. 14E (Oct. 27, 2009) states 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 reaffirmed this position in Note 32 of Staff Legal Bulletin No. 14H (Oct. 22, 2015), explaining that "[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations," and later stated in Staff Legal Bulletin No. 14K (Oct. 16, 2019) that it "believe[s] the focus of an argument for exclusion under Rule 14a-8(i)(7) should be on whether the proposal deals with a matter relating to that company's ordinary business operations or raises a policy issue that transcends that company's ordinary business operations." ("SLB 14K").

The Staff has made clear that the mere fact that a proposal is framed to invoke issues that, in different contexts, have been found to implicate significant policy issues is not sufficient to render a proposal non-excludable. For example, in *McDonald's 2019*, the Staff concurred with the exclusion of a proposal that referred to the humane treatment of animals but was focused on the economic risks associated with any decreased sales of chicken and the related customer relations efforts. Similarly, in *Walmart Inc.* (avail. Mar. 6, 2020) ("Walmart 2020"), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report "on the use of contractual provisions requiring employees of Walmart to arbitrate employment-related claims" where the proposal's supporting statement raised issues including discrimination, sexual harassment, and wage theft. The company argued that the proposal's invocation of such issues was insufficient to preclude exclusion given the proposal's focus on the company's management of its workforce. *See also Walmart Inc.* (avail. Apr. 8, 2019) ("Walmart 2019") (concurring in the exclusion of a proposal under Rule 14a-8(i)(7) requesting a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness because it related "generally to the [c]ompany's management of its workforce, and [did] not focus on an issue that transcends ordinary business matters"); *JPMorgan Chase & Co.* (avail. Mar. 9, 2015) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) requesting the company to amend its human rights-related policies "to address the right to take part in one's own government free from retribution" because the proposal related to the company's "policies concerning its employees").

Despite the Proponent's attempt to frame the Proposal as related to an issue that has received some media and legislative attention, the subject matter of that issue is the access to repair materials that agricultural equipment manufacturers, such as the Company, must provide to

customers and independent mechanics, a matter directly related to the Company's relationship with its customers. That does not transcend the Company's ordinary business operations--it is the Company's ordinary business operations. As such, this Proposal is even less focused on a significant policy issue than the proposals deemed excludable in *McDonald's 2019*, *Walmart 2020* and *JPMorgan Chase & Co.*, which invoked policy issues --such as the animal welfare, discrimination, and human rights-- that were not entirely rooted in company business choices.

The Staff has found that when a proposal does not have a sufficient nexus to a company's business, the proposal is excludable under Rule 14-8(i)(7) even if it does focus on a significant policy issue. *See, e.g., Viacom Inc.* (December 18, 2015) (concurring in exclusion of a proposal requesting that the company issue a report assessing the company's policy responses to public concerns regarding linkages of food and beverage advertising to impacts on children's health). In Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("SLB 14J"), the Staff provided non-exclusive factors that could be analyzed to determine whether an issue is sufficiently significant in relation to the company. Those factors include, among others, (i) whether the company has already addressed the issue in some manner, including the differences – or the delta – between the proposal's specific request and the actions the company has already taken, and an analysis of whether the delta presents a significant policy issue for the company, and (ii) the extent of shareholder engagement on the issue and the level of shareholder interest expressed through that engagement.

As noted above, the Company is strongly committed to its customers' right to repair the equipment that they have purchased. To that end, the Company has taken extensive steps to make parts, instructions, and additional repair materials available to customers and mechanics and to facilitate independent repairs. The Company's Repair website<sup>9</sup> provides information with multiple options to secure parts for tractors, lawn mowers, agricultural equipment and more, including John Deere genuine parts, remanufactured parts and alternative parts; operator manuals including safety, operating, and service information; technical manuals outlining service and repair information; component technical manuals describing component removal and installation; step-by-step DIY maintenance videos; and information sheets on how to maintain, service or repair equipment. The Company also makes diagnostic codes visible on equipment displays so that customers can see the cause of the issue. As a result, customers can conduct approximately 98% of repairs without the need for licensed dealer assistance. Moreover, the Company already has explained, publicly and in detail, the legal, regulatory, safety, and intellectual property reasons why it does not support a right to modify embedded software. These steps have greatly diminished the significance of the policy issue raised by the Proposal to the Company's business.

*D. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks to Micro-Manage the Company*

In addition to interfering with management's day-to-day operations, 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." *See* 1998 Release. The 1998 Release states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific

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<sup>9</sup> Available at: <https://www.deere.com/en/our-company/news-and-announcements/newsroom/repair/>

time-frames or methods for implementing complex policies.” In addition, SLB 14K clarified that in considering arguments for exclusion based on micromanagement, the Staff looks to see “whether the proposal...imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” Furthermore, the Staff noted that if a proposal “potentially limit[s] the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” *Id.*

Here, the Proposal attempts to supplant the judgment of the Board and of management related to its assessment and oversight of financial, operational, “regulatory, legal, and reputational risks” to the Company by requesting that the Board prepare a report that would require a survey of proposed legislation introduced in at least 24 states and in the U.S. Congress, as well as of legislative materials, press reports, and statements from third parties regarding “underlying issues giving rise to” proposed legislation that would impact only 2% of repairs of equipment that customers cannot conduct independently. As noted previously, the Company is strongly committed to its customers’ right to repair their equipment, and as a result, customers can conduct approximately 98% of repairs independently. Repairs that cannot be conducted independently involve modification of embedded software, which would create significant environmental and safety risks to operators and bystanders, through illegal tampering and unauthorized hacking of safety controls, engine performance, and emissions controls required for CAA compliance.

In addition, the Proposal concerns matters that cannot be properly evaluated without an extremely complex and interrelated assessment of legal and regulatory issues, product safety, quality, and reliability, software integrity, environmental concerns, the Company’s intellectual property protection needs, and strategic decisions. *See* Part I.B.2, *supra*. Such a complex assessment is the province of management and the Board, not shareholders. In Staff Legal Bulletin No. 14J (Oct. 23, 2018), the Staff explained that micromanagement may apply to proposals that call for a study or report and that it would consider the underlying substance of the matters addressed by the study or report to determine whether a proposal involves intricate detail, or seeks to impose specific timeframes or methods for implementing complex policies.

Therefore, the Proposal unduly limits the ability of management and the Board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to the Company’s shareholders and is excludable under the micromanagement prong of Rule 14a-8(i)(7).

## CONCLUSION

For the reasons discussed above, we believe that the Company may properly omit the Proposal from its 2022 Proxy Materials under Rule 14a-8(i)(7) and Rule 14a-8(i)(10). As such, we respectfully request that the Staff concur with our view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2022 Proxy materials. Should the

Staff have any questions regarding this matter, please feel free to contact me at (309) 765-5161 or by email at [DaviesToddE@JohnDeere.com](mailto:DaviesToddE@JohnDeere.com).

Sincerely,



Todd E. Davies, Corporate Secretary  
Deere & Company

CC:

Hilary Stubben  
Deere & Company  
Email: [StubbenHilaryA@JohnDeere.com](mailto:StubbenHilaryA@JohnDeere.com)

Robert M. Hayward, P.C.  
Kirkland & Ellis LLP  
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Ana Sempertegui  
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Andrea Ranger, Shareholder Advocate  
Green Century Capital Management, Inc.  
Email: [aranger@greencentury.com](mailto:aranger@greencentury.com)

Enclosures: Exhibit A  
Exhibit B

**EXHIBIT A**



September 2, 2021

Todd E. Davies  
Corporate Secretary  
Deere & Company  
One John Deere Place  
Moline, Illinois 61265-8098

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Mr. Davies,

Green Century Capital Management, Inc. (Green Century) is the investment advisor, agent, manager and representative of the Green Century Funds. Green Century Capital Management Inc. is filing the enclosed shareholder proposal on behalf of the Green Century Balanced Fund (the "Proposal") to be included in the proxy statement of Deere & Company (DE) (the "Company") for its 2022 annual meeting of shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

Per Rule 14a-8, the Green Century Balanced Fund is the beneficial owner of at least \$25,000 worth of Deere's stock. We have held the requisite number of shares for over one year, and we will continue to hold sufficient shares in the Company through the date of the Company's 2022 annual shareholders' meeting. Verification of ownership from a DTC participating bank is enclosed.

We are available to meet with the Company via teleconference September 16, 17, and 20 between 12 p.m. 3 p.m. or on September 22 between 9 a.m. and 12 p.m. All times listed are in the Central Time Zone.

Due to the importance of the issue and our need to protect our rights as shareholders, we are filing the enclosed proposal for inclusion in the proxy statement for a vote at the next shareholders' meeting.

We welcome the opportunity to discuss the subject of the enclosed proposal with company representatives. Please direct all correspondence to Andrea Ranger, Shareholder Advocate at Green Century Capital Management. She may be reached at [aranger@greencentury.com](mailto:aranger@greencentury.com) and 617-482-0800.

We would appreciate confirmation of receipt of this letter via email.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Samuelrich". The signature is written in a dark ink and is positioned below the word "Sincerely,".

Leslie Samuelrich  
President  
The Green Century Funds  
Green Century Capital Management, Inc.



September 2, 2021

Leslie Samuelrich  
President, Green Century Capital Management, Inc.  
President, Green Century Funds  
[114 State Street, Suite 200, Boston, MA 02109](https://www.greencentury.com/114-State-Street-Suite-200-Boston-MA-02109)

This letter is to confirm that as of September 2, 2021, UMB Bank, N.A. 2450, a DTC participant, in its capacity as custodian, held 8,712 shares of Deere & Company (DE) Stock on behalf of the Green Century Balanced Fund. These shares are held in the Bank's position at the Depository Trust Company registered to the nominee name of Cede & Co.

Further, this is to confirm that the position in Deere & Company (DE) Stock held by the bank on behalf of the Green Century Balanced Fund has been held continuously for a period of more than one year, including the period commencing prior to September 2, 2020 and through September 2, 2021. During that year prior to and including September 2, 2021 the holdings continuously exceeded \$25,000 in market value.

Sincerely,

Mandee Crawford  
Vice President  
UMB Bank, NA

**UMB Bank, n.a.**

928 Grand Boulevard  
Kansas City, Missouri 64106

[umb.com](https://www.umb.com)

Member FDIC

Whereas: Deere & Company (“Deere”) customers rely heavily on timely equipment repair to be successful agricultural producers. Yet according to a wide range of media reports, farmer testimony, and research and analysis, Deere restricts access to certain repair materials, which can result in costly downtime for customers and lead to material risks for the Company.

These restrictions to independent repair may cause Deere to be exposed to increased regulatory risks from growing support for “Right to Repair ” legislation, which requires agricultural equipment manufacturers to provide access to diagnostic software, parts, instructions, and additional repair materials in order to ensure competition and choice in repair markets. In 2021, a total of 24 states debated Right to Repair legislation, and similar legislation, called the Fair Repair Act, was introduced in Congress.

Additionally, new rulemaking by the Federal Trade Commission (FTC) on anti-competitive repair practices may expose Deere to serious legal risks. In July 2021, President Biden signed an executive order calling for the FTC to develop rules on “unfair anticompetitive restrictions on third-party repair... imposed by powerful manufacturers that prevent farmers from repairing their own equipment.” Should the FTC determine that Deere’s repair policies are anticompetitive, it could choose to bring a lawsuit. Because of the size of Deere’s market share, the Company could also be subject to lawsuits on tying arrangements.

Withholding certain repair materials from farmers and independent repair businesses has generated negative media coverage in a wide range of high-profile outlets. Stories in the Wall Street Journal, National Public Radio, CBS Sunday Morning and many other leading outlets have critiqued Deere’s stance, and given voice to customers who feel mistreated by the Company.

Company representatives argue that Deere provides materials to support almost all equipment repairs, yet the regulatory, legal, and reputational risks posed to the Company continue to escalate. Investors seek insight into the value of limiting access to the remaining repair materials versus the risks that the Company is incurring by withholding them.

Resolved: Shareholders request that the Board issue a report, at reasonable cost and omitting proprietary information, on the emerging state and federal Right to Repair legislation and the Company's explanation of underlying issues giving rise to those policy proposals.

Supporting Statement: The report should, at Board discretion, assess, among other issues:

- The benefits or harms of making all dealership repair materials available to customers and independent mechanics;
- Implications of state and federal Right to Repair laws for the company’s finances and operations;
- Reputational risks associated with customer dissatisfaction giving rise to the legislation.

**EXHIBIT B**



Deere & Company World Headquarters  
One John Deere Place, Moline, IL 61265 USA

Cory J. Reed  
President, Worldwide Agriculture & Turf Division  
Production & Precision Ag  
Regions 3 & 4

18 July 2021

The Honorable Lina Khan  
Chair  
U.S. Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, DC 202580

RE: Right to Repair and July 21 Open Commission Meeting

Dear Chair Khan:

On behalf of Deere & Company (“Deere”), I am pleased to submit the following comments in response to the Federal Trade Commission’s (“the Commission”) consideration of whether to issue a statement of policy on “repair restrictions.”

For 184 years, Deere has demonstrated its commitment to customers by providing high-quality equipment, technologies, and solutions that enhance productivity. This commitment includes fully supporting our customers’ right to maintain, diagnose, and repair their equipment and avoid unanticipated, unproductive, and costly downtime.

In the FTC’s May 2021 report (“report”) titled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, the Commission noted that it intends to work to “ensure that consumers and independent repair shops have appropriate access to replacement parts, instructions, and diagnostic software.” Through our extensive offerings of repair materials, diagnostic tools, and parts, Deere is already meeting this goal.

In fact, Deere customers and independent service organizations (“ISO”) today can acquire service parts, operating and repair manuals, product guides, service demonstrations, fleet management information, on-board diagnostics, and electronic field diagnostic tools from a vast network of over 2000 authorized John Deere dealers.

The Commission’s *Nixing the Fix* report also acknowledges the wide disparity among categories of capital goods and consumer products and devices that could be affected by new policy in this area. The report concluded that it is “unlikely that there is a one-size-fits-all approach that will adequately address this issue.” Deere agrees with the Commission. The enormous variety of manufactured consumer and capital goods, their diverse uses and applications, the extent of intellectual property incorporated, the variety of distribution and service models in place, and the range of potential risks associated with use and misuse, all support a deliberate policy approach that accounts for these product-specific considerations.

Deere urges the Commission to consider the following critical points as it contemplates whether to issue a new right to repair policy statement:

### **Repair vs. Software Modification**

While Deere supports its customers’ right to repair their equipment, Deere does not support the right to modify the embedded software code in machines. Allowing access to embedded software code – the “right to modify” – would create significant environmental and safety risks to operators and bystanders, through illegal tampering and unauthorized hacking of safety controls, engine performance, and emissions controls required for Clean Air Act (“CAA”) compliance. Moreover, access to software for purposes of reprogramming is needed in less than two

percent of all repairs. It is also important to note that technology continues to evolve such that software reprogramming, when required, can increasingly be done remotely. This alleviates the need for an authorized technician to manually perform the reprogramming in person.

### **Clean Air Act Emissions Controls**

Section 203(a)(3) of the CAA and Section 1068.101(b) of Title 40, Code of Federal Regulations prohibit tampering with the emissions controls that non-road equipment manufacturers are required to install on their products. In a December, 2020 enforcement alert, the Environmental Protection Agency (“EPA”) noted how disabling or removing emissions controls from vehicles harms air quality and presents a threat to public health.<sup>1</sup> This is particularly concerning in light of a 2019 survey of 770 equipment dealers across the United States that found that 33 percent of dealers had observed unauthorized modifications of equipment brought into their dealership for service in the previous 24 months.<sup>2</sup> Of those, 45 percent responded that the modifications they observed included those that removed, impaired, or disabled EPA-mandated emissions controls. In addition to the environmental and safety concerns that such modifications present, dealers can also be held liable for CAA violations if the emissions tampering is not recognized and reversed.

### **Intellectual Property Interests**

The FTC’s report notes in footnote 18 that manufacturers’ intellectual property considerations were outside the scope of that report and therefore were not addressed. Yet Congress, through the Digital Millennium Copyright Act and amendments, has recognized these important rights and has tasked the U.S. Copyright Office with defining the circumstances in which exceptions to the prohibition on accessing software code embedded in equipment would apply. The Copyright Office, through its triennial review process, regularly considers petitions from the public to expand or limit this exception. The Copyright Office regulations have balanced these varied interests by consistently holding that the exception should extend only to “lawful” modifications that do not undermine federal emissions controls, jeopardize operator safety, or infringe upon legitimate intellectual property rights.<sup>3</sup> An unfettered right to modify the embedded software code in equipment would disrupt this balance and encourage the unlawful circumvention of long-established copyright and intellectual property protections.

### **Safety**

Software modification also has significant implications for equipment operator and bystander safety. Authorized John Deere dealers are contractually required to ensure that all machines sold or repaired are done so with the highest level of safeguarding for the end user and public. Requiring equipment manufacturers to provide unfettered access to embedded software code would enable and encourage modification of software in a way that bypasses certain safety protocols, while also potentially creating unsafe equipment as a byproduct. This is particularly problematic because such modifications can be untraceable, and in some cases, irreparable. In any case, they would be detectable only after injury or harm has occurred. It is not an overstatement to say that multi-ton construction and agricultural equipment pose far higher safety risks to users and bystanders than does a mobile phone or other consumer device.

### **Service Parts**

Through Deere’s extensive network of more than 2,000 dealer locations across the United States, customers and ISOs already have access to service parts so they can conduct the vast majority of repairs they may choose to undertake on their own. Equipment owners and ISOs today can purchase Deere service parts directly from John Deere dealers, as can any retail customer. In fact, Deere dealers today sell more parts through the retail parts counter than through their service bays. In addition, customers and ISOs may purchase home maintenance kits and other maintenance parts directly from Deere through the online John Deere Store.

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<sup>1</sup> *Aftermarket Defeat Devices and Tampering are Illegal and Undermine Vehicle Emissions Controls*, EPA Office of Enforcement and Compliance Assurance, December 2020

<sup>2</sup> *Modifications to Safety and Emissions Features in Off-Road Equipment*, Equipment Dealers Association, April 2019

<sup>3</sup> §201.40(b)(9) of Title 37, Code of Federal Regulations

## Conclusion

As the FTC considers policies to ensure the rights of owners and ISOs to repair heavy equipment, the Commission must recognize the substantial public and private interests already addressed in federal law that may be affected. Any contemplated changes to FTC policy should be subject to rigorous and transparent public review and comment that reflects all these interests. And any new policy must recognize the critical distinction between repair and modification. Deere opposes a right to modify embedded software code. However, we support our customers' right to repair their own equipment, and we work every day to provide the tools, materials, and guidance that allow our customers to reduce downtime and increase productivity.

Sincerely,

A handwritten signature in black ink, appearing to read "C. J. Reed". The signature is written in a cursive, slightly slanted style.

**Cory J. Reed**  
President, Worldwide Agriculture & Turf Division  
Production & Precision Ag  
Regions 3 & 4