

July 12, 2021

**VIA E-MAIL**

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

Re: *Brinker International, Inc.*  
*Shareholder Proposal of The Humane Society of the United States*  
*Securities Exchange Act of 1934 (“Exchange Act”) - Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Brinker International, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof received from The Humane Society of the United States (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 2

## THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders ask that Brinker International develop and adopt a policy, and amend its governing documents as necessary, to ensure that moving forward, its annual and special shareholder meeting will be held either in whole or in part through virtual means (i.e., webcast or other on-line system) and that virtual attendance be allowed. This policy should be formally adopted within six months of the 2021 annual meeting and take effect immediately thereafter.

A copy of the Proposal and its supporting statements is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations, specifically the Company's determination of whether to hold annual meetings in person, the location and conduct of the Company's shareholder meetings and the Company's communications with shareholders.

## ANALYSIS

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

#### *A. Background On The Ordinary Business Standard*

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

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

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 3

considerations that underlie this policy. As relevant here, one consideration 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.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

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.” *Id.* Examples of the ordinary business tasks cited by the Commission include “management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” *Id.* When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

As discussed below, the Proposal is excludable because it attempts to regulate the Company’s determination of whether to hold annual meetings in person, the location and conduct of the Company’s shareholder meetings and the Company’s communications with shareholders. These issues are fundamental to management’s ability to run the Company and involve a consideration of multiple and complex factors that are impracticable for shareholders to decide. As such, the Proposal may be omitted under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

*B. The Proposal May Be Excluded Because It Relates To The Company’s Determination Of Whether To Hold Annual Meetings In Person*

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations because it relates to the Company’s determination of whether to hold annual meetings in person.

The Proposal requests a corporate policy requiring that future meetings of the Company’s shareholders “be held either in whole or in part through virtual means.” In other words, the Proposal seeks to require that future shareholder meetings be conducted using either a virtual approach (virtual-only meeting) or a hybrid approach (in-person meeting combined with a virtual meeting). As a result, the Proposal seeks to prohibit the Company from holding

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 4

solely in-person meetings, as the Company has done for many years prior to the 2020 Annual Meeting of Shareholders.<sup>1</sup>

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals like the Proposal for similar reasons. For example, in *Comcast Corp.* (avail. Feb. 28, 2018), the Staff concurred that a proposal requesting that the company's board adopt a policy "affirming the continuation of in-person annual meetings in addition to internet access to the meeting" was excludable under Rule 14a-8(i)(7) because it related "to the determination of whether to hold annual meetings in person." *See also American Outdoor Brands, Corp.* (avail. June 25, 2019) (same); *Frontier Communications Corp.* (avail. Feb. 19, 2019) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal seeking "to require . . . a face-to-face meeting to replace the current 'remote' or 'virtual' meeting" of shareholders because it related "to the determination of whether to hold annual meetings in person"); *Alaska Air Group, Inc.* (avail Jan. 25, 2017) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting adoption of a policy "to initiate or restore in-person annual meetings" because it related "to the determination of whether to hold annual meetings in person"); *HP Inc.* (avail. Dec. 28, 2016) (same); and *EMC Corp.* (avail. Mar. 7, 2002) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting adoption of a corporate governance policy "affirming the continuation of in-person annual meetings").

The Proposal's attempt to mandate that the Company hold only hybrid or virtual shareholder meetings—and not in-person meetings—is similar to the attempts by the proposals in *Comcast* and *American Outdoor Brands, Corp.* to mandate hybrid shareholder meetings and in *Frontier Communications, Alaska Air Group, HP* and *EMC* to mandate in-person meetings. The Proposal and its supporting statements also raise similar concerns to those raised in the proposals excluded in the foregoing precedent. For example, in *Comcast*, the proposal asserted that "in-person stockholder meetings play[] an important role in holding management accountable to its investors" and "allow for an unfiltered dialogue between shareholders and management." The *Comcast* proposal also cited various reasons why the requested meeting format was preferable and raised concerns regarding costs, meeting efficiencies, governance, shareholder attendance, and the ability of shareholders to ask questions and interact with management and the board of directors. Similar issues are raised in the Proposal and supporting statements in support of the requested meeting virtual-only or hybrid format. Consistent with the Staff's decision to exclude the proposal in *Comcast*, the Proposal—which raises similar concerns and seeks to mandate a particular shareholders' meeting format—is also excludable.

---

<sup>1</sup> As noted in its 2020 proxy statement, the Company's 2020 Annual Meeting was held in a virtual meeting format with no physical location in light of the COVID-19 pandemic.

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 5

Moreover, the determination of whether to hold an in-person meeting is exactly the type of matter that the Commission contemplated in the 1998 Release as being in management's purview. In determining whether to hold shareholder meetings in-person, virtually or using a hybrid format, the Company must take into account a myriad of factors, including the associated costs, the availability of the appropriate management and staffing resources, security concerns, the availability and technological capabilities of providers that allow shareholders (including record and beneficial owners) the ability to access and participate in a virtual or hybrid meeting, and shareholder preferences (including that some prefer in-person meetings). These are complex factors, as evidenced by the fact that during the most recent proxy season, some virtual meeting platforms were not fully viewable or functional on every type of electronic device, and there continued to be complex considerations regarding the virtual meeting platforms providing access to street name versus beneficial shareholders. For these reasons, the Company is in the best position to make informed decisions as to the appropriate location (whether in-person, virtual, or hybrid) for the Company's shareholder meetings. Thus, consistent with the precedent discussed above, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business determination of whether to hold shareholder meetings in person.

*C. The Proposal May Be Excluded Because It Relates To The Conduct Of Shareholder Meetings*

The Proposal seeks to regulate the conduct of the Company's shareholder meetings by seeking to require that "annual and special shareholder meetings . . . be held either in whole or in part through virtual means . . . and that virtual attendance be allowed."

The Staff has routinely permitted the exclusion under Rule 14a-8(i)(7) of proposals concerning the conduct of a company's shareholder meetings. For example, in *Target Corp.* (avail. April 9, 2021), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a shareholder proposal that sought to require the company to use a "zoom type format in which all participants can be heard and seen" for shareholder meetings when it is not possible to "meet in-person." In arguing for exclusion, the company demonstrated that the proposal sought to "impose . . . detailed requirements as to the format and logistics" of its annual meetings, which the Staff had long held concerned a company's ordinary business operations. See also *USA Technologies, Inc.* (avail. Mar. 11, 2016) (concurring with the exclusion of a proposal that sought a bylaw amendment to include rules of conduct at all meetings of shareholders); *Servotronics, Inc.* (avail. Feb. 19, 2015) (concurring with the exclusion of a proposal "concerning the conduct of shareholder meetings" where the proposal requested that "a question-and-answer period be included in conjunction with [the company's] [a]nnual [s]hareholder [m]eetings"); *Bank of America Corp.* (avail. Dec. 22, 2009) (concurring with the exclusion of a proposal recommending that all shareholders be entitled to attend and speak at all annual meetings because "[p]roposals concerning the

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 6

conduct of shareholder meetings generally are excludable under rule 14a-8(i)(7)"); and *Exxon Mobil Corp.* (avail. Mar. 2, 2005) (concurring in the exclusion of a proposal seeking to set aside time "at each annual meeting for shareholders to ask questions, and receive replies directly from, the non-employee directors").

Just as with the proposals in the precedent cited above, the Proposal seeks to manage how the Company conducts shareholder meetings, including the methods for allowing shareholders to ask questions and otherwise "participate in annual meetings." For example, like the proposal in *Target*, which stressed the importance of shareholder meetings as a place where "ideas, information, [and] opinions are to be exchanged," the Proposal asserts in the supporting statements that virtual meetings "promote wider engagement between the company and shareholders." In *Target*, the proposal also addressed the importance of shareholder meetings as a venue for allowing "shareholders who wish to ask questions [to] speak their questions directly" and the opportunity "to be seen as well as heard," all of which the proposal asserted could be facilitated by the specific Zoom format requested in the proposal. Similarly, the Proposal advocates for a virtual means of accessing future shareholder meetings because "shareholders should be allowed to attend meetings and exercise their rights." This demonstrates that, like the proposal in *Target*, the Proposal's attempt to require a specific type of format for future meetings makes it fundamentally about how the Company conducts its shareholder meetings. Thus, by dictating that the Company adopt a policy to use a "webcast or other on-line system . . . and that virtual attendance be allowed" at all shareholder meetings, the Proposal, consistent with the Staff's recent decision in *Target* and other above-cited precedent, improperly seeks to regulate the conduct of the Company's shareholder meetings and thus is excludable under Rule 14a-8(i)(7).

*D. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Relates To The Company's Communications With Shareholders*

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to ordinary business operations because it relates to the Company's communications with shareholders. A company's methods for communicating with its shareholders—whether at or outside of shareholder meetings—involve complex considerations of effectiveness, investor relations matters, and associated costs—all of which the company is best positioned to consider compared to shareholders.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to how companies use webcasts and electronic media and communications technology to communicate with shareholders in connection with shareholder meetings. *See, e.g., Con-way, Inc.* (avail. Jan. 22, 2009) (concurring with the exclusion of a proposal requesting that the company broadcast future annual meetings over the Internet using webcast technology, since the proposal involved "shareholder relations and the conduct of

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 7

annual meetings”); *Commonwealth Energy Corp.* (avail. Nov. 15, 2002) (concurring with the exclusion of a proposal requesting that, among other things, the company make audio or video recordings of its annual meetings as relating to “shareholder relations and the conduct of annual meetings”); and *Irvine Sensors Corp.* (avail. Jan. 2, 2001) (concurring with the exclusion of a proposal requesting that the company webcast its annual meetings since the proposal related to “procedures for establishing regular communications and updates with shareholders”).

More generally, Staff precedent demonstrates that proposals concerning the manner in which companies communicate with their shareholders, whether at shareholder meetings or otherwise, are excludable under Rule 14a-8(i)(7). *See, e.g., ARIAD Pharmaceuticals, Inc.* (avail. June 1, 2016) (concurring with the exclusion of a proposal requesting that the board respond to questions specified in the proposal, where the company argued it related to “shareholder relations and communications”); *Peregrine Pharmaceuticals, Inc.* (avail. Jul. 16, 2013) (concurring with the exclusion of a proposal requesting that management respond to shareholder questions on public company conference calls because the proposal related to “the ability of shareholders to communicate with management”); *Citigroup Inc.* (avail. Feb. 7, 2013) (concurring with the exclusion of a proposal requesting “a reasonable amount of time before and after the annual meeting for shareholder dialogue” with directors); and *Ford Motor Co.* (avail. Mar. 1, 2010) (concurring with the exclusion of a proposal relating to how the company distributes restated financial statements to shareholders since “[p]roposals concerning the methods used by a company to distribute or present information to its shareholders are generally excludable under rule 14a-8(i)(7)”).

Consistent with the precedent discussed above, the Proposal concerns the methods by which the Company communicates with its shareholders because it seeks to “promote wider engagement between the company and shareholders” by requesting that the Company amend its governing documents to *require* adoption of the Proponent’s preferred communication method: electronic access via a virtual-only or hybrid format. The Proposal’s supporting statements further demonstrate that aspect of the Proposal by asserting that electronic access would “promote wider engagement” and that “[s]hareholders support [the electronic access] format and seek to ensure virtual meetings and [electronic] attendance continue into the future.” By focusing on the Company’s shareholder communications, including the format of such communications, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations consistent with the precedent discussed above.

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 8

*E. The Proposal Does Not Raise A Policy Issue Of Significance To The Company For Purposes Of Rule 14a-8(i)(7)*

The Proposal does not raise a policy issue that is significant to the Company for purposes of Rule 14a-8(i)(7), and thus the Proposal does not transcend the Company's ordinary business operations. The Proposal is focused on how the Company conducts its shareholder meetings, specifically requesting that virtual attendance be allowed at all future annual and special shareholder meetings. Additionally, each paragraph of the Proposal's supporting statements is dedicated to rationalizing why, in the Proponent's view, providing a means for virtual attendance is desirable or advantageous. The reasons cited in the Proposal include that virtual attendance would: "add convenience and reduce time and expenses for shareholders, management, and board members;" promote attendance; "further an inclusive company culture;" and "provide an environmental benefit to the [C]ompany's ESG practices." While the supporting statements also mention factors related to the COVID-19 pandemic, the policy change requested by the Proposal is not limited to when a pandemic has been declared, and the health and safety of attendees are one of a myriad of considerations raised in the supporting statements in defense of the requested policy. In fact, the policy requested by the Proposal is intended to apply regardless of whether actual public health and safety risks impacting in-person attendance may exist at the time. Thus, the Proposal is not focused on or limited to policy issues relating to public health or any other issues of significance to the Company for purposes of Rule 14a-8(i)(7).

Instead, as discussed above, the Proposal and the supporting statements relate to a myriad of ordinary business considerations regarding the conduct of the Company's shareholder meetings. While the Company's 2021 Annual Meeting of Shareholders was held through virtual means, and while the Company may determine to hold future shareholder meetings in whole or in part through virtual means, the Company's decision of where and how to conduct such meetings and the manner in which it communicates with its shareholders are fundamentally ordinary business decisions that the Company's Board of Directors and management are best suited to make. Because the Proposal does not transcend the Company's ordinary business operations, consistent with the similar proposals discussed above, it is properly excludable under Rule 14a-8(i)(7).

## CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2021 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(7).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter



# GIBSON DUNN

Office of Chief Counsel  
Division of Corporation Finance  
July 12, 2021  
Page 9

should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Daniel Fuller, the Company's Senior Vice President, General Counsel and Secretary, at [Dan.Fuller@brinker.com](mailto:Dan.Fuller@brinker.com).

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Daniel Fuller, Brinker International, Inc.  
Matthew Prescott, The Humane Society of the United States

**EXHIBIT A**



**THE HUMANE SOCIETY  
OF THE UNITED STATES**

May 26, 2021

Dan Fuller  
SVP, General Counsel & Secretary  
Brinker International  
3000 Olympus Blvd.  
Dallas, TX 75019

And via email: [Dan.Fuller@brinker.com](mailto:Dan.Fuller@brinker.com)

Dear Mr. Fuller,

Enclosed with this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2021 annual meeting and a letter from The Humane Society of the United States' (HSUS) brokerage firm, BNY Mellon, confirming ownership of Brinker common stock. The HSUS has continuously held at least \$2,000 in market value for the one-year period preceding and including the date of this letter and will hold at least this amount through and including the date of the 2021 shareholder meeting.

Please e-mail me to confirm receipt of this proposal.

And if the company will attempt to exclude any portion of this proposal under Rule 14a-8, please advise me within 14 days. Thank you for your assistance.

Sincerely,

Matthew Prescott  
Senior Director of Food and Agriculture  
The Humane Society of the United States  
240-620-4432  
[mprescott@humanesociety.org](mailto:mprescott@humanesociety.org)

## **Shareholder Proposal Regarding Virtual Meetings**

**Resolved:** Shareholders ask that Brinker International develop and adopt a policy, and amend its governing documents as necessary, to ensure that moving forward, its annual and special shareholder meetings will be held either in whole or in part through virtual means (i.e., webcast or other on-line system) and that virtual attendance be allowed. This policy should be formally adopted within six months of the 2021 annual meeting and take effect immediately thereafter.

### **Supporting Statement:**

In 2020, Brinker held its annual shareholder meeting via virtual webcast. Shareholders support this format and seek to ensure virtual meetings and attendance continue into the future. Please consider the following:

The COVID-19 pandemic has highlighted for many companies the need to ensure continuity of business operations through virtual or remote means. Countless employees have been expected (or even required) to work remotely. Business travel has been dramatically curtailed as the U.S. Centers for Disease Control and Prevention (CDC) has issued health and safety warnings related to air travel. And meetings of all types have been held virtually in greater numbers than ever before.

Yet under its current by-laws, the company may choose to only hold its annual and special shareholder meetings in-person, requiring attendance to be physical, even in circumstances where the CDC recommends against, or when unexpected conditions prevent, travel.

To put it simply, this is unfair and unnecessary: it increases the health risks for any shareholder who may wish to present a proposal, ask a question, or even just attend such a meeting; for company executives and other employees who may be required to attend; for board members; and for support staff at meeting venues.

It also likely deters attendance by forcing shareholders to choose between protecting their health or risking illness in order to exercise their basic shareholder rights.

The advantages of virtual meetings are significant: they add convenience and reduce time and expenses for shareholders, management, and board members; and they promote wider engagement between the company and shareholders.

Further, virtual meetings contribute to various company social and sustainability policies. They further an inclusive company culture by enabling all shareholders an equal opportunity to participate in annual meetings, regardless of financial, physical, or other barriers. And removing the necessity of all shareholders to travel would provide an environmental benefit to the company's ESG practices.

The COVID-19 pandemic has fundamentally changed the way companies think about and hold meetings. In addition to the business advantages virtual meetings provide, it is fundamental that shareholders should be allowed to attend meetings and exercise their rights without putting themselves and others at increased risk. And corporate executives and employees, as well as board members, should be allowed to do the same. For this reason, you are encouraged to vote FOR this proposal.



Stacy Stout  
Vice President  
Client Service Manager

BNY Mellon Wealth Management  
Family Office  
500 Grant Street, Floor 38  
Pittsburgh, PA 15258

T 412.236.1775  
[stacy.stout@bnymellon.com](mailto:stacy.stout@bnymellon.com)

May 26, 2021

Dan Fuller  
SVP, General Counsel & Secretary  
Brinker International  
3000 Olympus Blvd.  
Dallas, TX 75019

And via email: [Dan.Fuller@brinker.com](mailto:Dan.Fuller@brinker.com)

Dear Mr. Fuller,

BNY Mellon National Association, custodian for The Humane Society of the United States, verifies that The HSUS has continuously held at least \$2,000.00 in market value of Brinker common stock for the one-year period preceding and including the date of this letter. Thank you.

Sincerely,

*Stacy L. Stout*

Stacy Stout  
Vice President, Client Service Manager  
BNY Mellon Wealth Management  
Family Office Group  
500 Grant Street, 38th Floor/Suite 3840/151-3840  
Pittsburgh, PA 15258  
T (412) 236-1775 | F (866) 230-4247  
[bnymellonwealth.com](http://bnymellonwealth.com)