

# Corporate Governance

*CorpGov.net: improving accountability through democratic corporate governance since 1995*

VIA EMAIL: shareholderproposals@sec.gov  
Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

August 10, 2021

Re: Microsoft (MSFT) Rebuttal

To Whom It May Concern:

This is in response to the July 23, 2021, letter from Allison C. Handy of Perkins Coie LLP, acting on behalf of Microsoft Corporation (MSFT).

## **Substantially Same Subject Matter Rule 14a-8(i)(12)(ii)**

According to Ms. Handy, the proposal may be excluded under rule 14a-8(i)(12)(ii) because the proposal “deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company’s proxy materials” ... “for any meeting held within 3 calendar years of the last time it was included if the proposal received ... [l]ess than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years.”

Ms. Handy makes arguments based on several “precedents,” which appear to conflate subject matter with ultimate goals. No-action decisions do not set precedents. The SEC used to include language in its no-actions like the following:

Staff’s advice on contested proposals is informal and nonjudicial in nature, it does not have precedential value with respect to identical or similar proposals submitted to other issuers in the future.

See also *Pargas, Inc. v. Empire Gas Corp.*, 423 F. Supp. 199, 239 (D. Md. 1976) (stating that pure no-action letters do not “reflect the opinions of the SEC” and that “citation of those letters as precedent for interpreting the federal securities laws ... is inappropriate” (quoting SEC letter to court)), *affd*, 546 F.2d 25 (4th Cir. 1976).

I ask Staff to review the clear language of rule 14a-8(i)(12), which applies “if the proposal addresses substantially the same *subject matter* as a proposal, or proposals, previously included in the company’s proxy materials.” (my emphasis)

The clear subject matter of my proposal is the *initial list of directors candidates*. I am asking the Nominating, Governance, and Corporate Responsibility Committee to include (but not limit) its ‘Initial List’ of director candidates to current or past non-management employees.

In contrast, the subject matter of both prior proposals cited by Ms. Handy request the Board of Directors to prepare a report to shareholders. The subject of the proposals is quite different, even if the objective is similar.

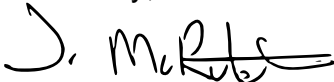
Ms. Handy's reading of the rule is too broad. Taken to its logical conclusion all proposals with the objective of raising shareholder value, for example, would be banned for a number of years if any proposal with that objective, regardless of subject matter, failed vote(s).

## **Conclusion**

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Staff must deny the no-action request.

I would be pleased to respond to Staff questions or to negotiate with Microsoft mutually agreeable terms for withdrawing the Proposal. You can reach me directly by e-mailing [jm@corpgov.net](mailto:jm@corpgov.net).

Sincerely,



James McRitchie  
Shareholder Advocate

cc: John Chevedden, PII  
Peter Kraus, Peter.Kraus@microsoft.com  
Allison C. Handy, AHandy@perkinscoie.com

July 23, 2021

**VIA EMAIL**

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

Email Address: *shareholderproposals@sec.gov*

**Re: Shareholder Proposal Submitted by James McRitchie Pursuant to Rule 14a-8 Under the Securities Exchange Act of 1934, as Amended**

Ladies and Gentlemen:

This letter is to inform you that our client, Microsoft Corporation (the “*Company*” or “*Microsoft*”), intends to omit from its proxy statement and form of proxy for its 2021 Annual Shareholders Meeting (collectively, the “*2021 Proxy Materials*”) a shareholder proposal (the “*Proposal*”) and statements in support thereof received from James McRitchie (the “*Proponent*”).

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

- submitted this letter to 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 Commission 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 proponent elects to submit to the Commission or the staff of the Division of Corporation Finance (the “*Staff*”). Accordingly, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal sets forth the following resolution to be included in Microsoft's 2021 Proxy Materials, to be voted on by shareholders at the 2021 Annual Shareholders Meeting:

Resolved: Microsoft Corporation shareholders urge the board to empower its workers by establishing a 'Policy' of promoting significant representation of employee perspectives among directors. That Policy should require the Nominating, Governance, and Corporate Responsibility Committee to include (but not limit) its 'Initial List' of director candidates to current or past non-management employees. The Policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates.

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

## BASIS FOR EXCLUSION OF THE PROPOSAL

The Company respectfully requests that the Staff concur in the Company's view that the Proposal may be excluded from the 2021 Proxy Materials in reliance on Rule 14a-8(i)(12)(ii) because the Proposal deals with substantially the same subject matter as two other proposals that have been included in the Company's proxy materials within the preceding five calendar years, the most recent of which did not receive the support necessary for resubmission.

## ANALYSIS

### **Microsoft May Exclude the Proposal Pursuant to Rule 14a-8(i)(12)(ii).**

Rule 14a-8(i)(12)(ii), as in effect as of the date hereof with respect to annual meetings to be held prior to January 1, 2022, provides that a proposal that "deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years" may be excluded from a company's proxy materials "for any meeting held within 3 calendar years of the last time it was included if the proposal received ... [l]ess than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years."

### **The Proposal Deals with Substantially the Same Subject Matter as Shareholder Proposals Included in the Company's 2019 and 2020 Proxy Materials.**

The requirement under Rule 14a-8(i)(12) that prior shareholder proposals have dealt with "substantially the same subject matter" as a current proposal in order to exclude the current proposal does not require that the prior proposals be the same as the current proposal. In adopting changes to the rules regarding shareholder proposals in 1983, the Commission opted to revise the prior requirement for exclusion under the predecessor rule that the proposals be

“substantially the same” proposal. In the adopting release for the revised rule (Exchange Act Release No. 34-20091), the Commission explained:

[T]his change is necessary to signal a clean break from the strict interpretive position applied to the existing provision. The Commission is aware that the interpretation of the new provision will continue to involve difficult subjective judgments, but anticipates that those judgments will be based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns. The Commission believes that by focusing on substantive concerns addressed in a series of proposals, an improperly broad interpretation of the new rule will be avoided.

The Staff has consistently interpreted Rule 14a-8(i)(12) not to require that prior and current shareholder proposals or their subject matter be identical for a company to exclude the current proposal. In considering whether proposals deal with substantially the same subject matter, the Staff has focused on the “substantive concerns” raised by the proposals rather than on the specific language of the proposals or action proposed to be taken. For example, in *Apple Inc.* (Nov. 19, 2018), the Staff concurred that the company could exclude a proposal requesting that management review its policies related to human rights to assess the need to adopt additional policies and report on its findings where two prior proposals focused on the same substantive concerns in requests that the company establish a human rights committee of its board. While the action requested by the new proposal was different from that requested by the prior proposals (management review of policies in the new proposal and establishment of a board-level human rights committee in both prior proposals), the substantive concerns regarding the company’s impact on human rights, particularly in relation to the company’s operations in China, were the same. *See also, Exxon Mobil Corp.* (Mar. 23, 2012) (concurring that a proposal requesting that the board create a policy articulating the company’s commitment to the human right to water dealt with substantially the same subject matter as prior proposals, one of which requested that the board report on how the company ensures that it is accountable for environmental impacts in communities where it operates); *The Coca-Cola Company* (Jan. 18, 2017) (concurring that a proposal requesting that the company *prepare a report* charting the number of Arab and non-Arab employees by job category in Israel and Palestine dealt with substantially the same subject matter as a proposal requesting that the board *make all possible lawful efforts to implement* certain equal opportunity employment principles for corporations in Israel and Palestine); and *JPMorgan Chase & Co.* (Jan. 27, 2017) (concurring that a proposal requesting *a public study* regarding whether divestiture of the company’s non-core banking business segments would enhance shareholder value dealt with substantially the same subject matter as a proposal requesting the board to *appoint an independent committee of the board* to address whether divestiture of non-core banking business segments would enhance shareholder value).

These precedents underscore that, in order for a company to exclude a proposal under Rule 14a-8(i)(12), the current proposal need not be the same as prior proposals, or even request the same action by the company. The critical question instead is whether the proposals address the same underlying substantive concerns.

The Proposal raises the same substantive concerns and relates to substantially the same subject matter as shareholder proposals included in the Company's proxy materials in 2019 and 2020. The prior proposals are:

- The Company included in its 2020 proxy materials a proposal urging “the Board of Directors to prepare a report to shareholders describing options for the company to encourage the inclusion of non-management employee representation on the Board” (the “*2020 Proposal*”). A copy of the 2020 Proposal is attached hereto as Exhibit B.
- The Company included in its 2019 proxy materials a proposal urging “the Board of Directors to prepare a report to shareholders describing opportunities for the company to encourage the inclusion of non-management employee representation on the Board” (the “*2019 Proposal*”). A copy of the 2019 Proposal is attached hereto as Exhibit C.

The 2019 Proposal and 2020 Proposal differ from one another by only a single word and request a report on the same concern addressed directly by the Proposal, namely actions the Company might take to encourage representation of non-management employees on the Company's board of directors.

The subject matter of all three proposals is evident from the language of the resolution paragraphs alone. The Proposal calls for “promoting significant representation of employee perspectives among directors” while each of the prior proposals addresses ways the Company can “encourage the inclusion of non-management employee representation on the Board.”

In addition, other statements outside the resolution paragraphs point to many of the same underlying concerns and examples, including references to the Accountable Capitalism Act proposed in the U.S. Senate in 2018, observations that some European companies have laws addressing employee representation on boards, and, in the Proposal and the 2020 Proposal, references to the Business Roundtable's Statement on the Purpose of a Corporation. The Proposal emphasizes that “Employee representation grows long-term value,” while each of the 2019 Proposal and 2020 Proposal states that adoption of the proposal “can advance long-term value creation” through a “board that includes non-management employee representation.”

The fact that the 2019 Proposal and 2020 Proposal requested that the board prepare a report regarding representation of non-management employees on the board while the current Proposal requests that the board take one particular action to achieve this end does not change the fact that the subject matter of all three proposals is the same.

### **The 2020 Proposal Did Not Receive Shareholder Support Necessary to Permit Resubmission.**

Rule 14a-8(i)(12)(ii) permits a proposal dealing with substantially the same subject matter as prior included proposals to be excluded from a company's proxy materials “for any meeting held within 3 calendar years of the last time it was included if the proposal received ... [l]ess than 6% of the vote on its last submission to shareholders if proposed twice previously within the

preceding 5 calendar years.” As discussed above, proposals with substantially the same subject matter as the Proposal have been proposed twice within the preceding 5 calendar years and the most recent inclusion was in the company’s 2020 proxy materials, which is within 3 calendar years of the 2021 Proxy Materials. The Staff clarified in Staff Legal Bulletin 14 (Jul. 13, 2001) that the vote calculation for purposes of Rule 14a-8(i)(12) should include only votes “for” and “against” the proposal, and that abstentions and broker non-votes are not counted. As reported in the Company’s Current Report on Form 8-K filed with the Commission on December 4, 2020, attached hereto as Exhibit D, the 2020 Proposal received 268,964,933 votes “for” and 4,957,295,213 votes “against,” representing approval by 5.15% of votes cast.

Because the Proposal deals with substantially the same subject matter as the 2019 Proposal and 2020 Proposal and the 2020 Proposal received less than 6% of the shareholder vote, Microsoft believes that the Proposal is excludable under Rule 14a-8(i)(12)(ii).

### CONCLUSION

Based upon the foregoing analysis, Microsoft respectfully requests that the Staff concur that it will take no action if Microsoft excludes the Proposal from its 2021 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to AHandy@perkinscoie.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (206) 359-3295.

Sincerely,



Allison C. Handy  
Partner  
Perkins Coie LLP

Enclosures

cc: Peter Kraus, Assistant General Counsel and Assistant Secretary  
Microsoft Corporation

John Chevedden, agent of the Proponent

**Exhibit A**

**Proposal and Related Correspondence**



# Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

9295 Yorkship Court  
Elk Grove, CA 95758

Microsoft Corporation  
Office of the Corporate Secretary  
One Microsoft Way  
Redmond, Washington 98052-6399.  
Via email to [askboard@microsoft.com](mailto:askboard@microsoft.com)

Dear Corporate Secretary,

I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting to request the **Add Value Through Employee Representation**.

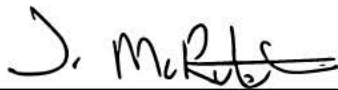
The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. I pledge to continue to hold the required stock until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden [REDACTED] PII

[REDACTED] PII to facilitate prompt communication. Please identify James McRitchie as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. ***I am open to negotiating changes to the proposal and/or withdrawal. I expect to forward a broker letter soon. Therefore, if you simply acknowledge my proposal in an email message to [REDACTED] PII, it may not be necessary for you to request such evidence of ownership.***

Sincerely,



James McRitchie

June 16, 2021

Date

cc: Peter Kraus [Peter.Kraus@microsoft.com](mailto:Peter.Kraus@microsoft.com)

[MSFT: Rule 14a-8 Proposal, 6-16-2021]  
[This line and any line above it – *Not* for publication.]  
**Proposal 4\* - Add Value Through Worker Representation**



**Resolved:** Microsoft Corporation shareholders urge the board to empower its workers by establishing a 'Policy' of promoting significant representation of employee perspectives among directors. That Policy should require the Nominating, Governance, and Corporate Responsibility Committee to include (but not limit) its 'Initial List' of director candidates to current or past non-management employees. The Policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates.

**Whereas:** Employees on corporate boards can contribute to long-term corporate sustainability. Having companies run exclusively to benefit shareholders contributes to "stagnant wages, runaway executive compensation, and underinvestment in research and innovation."<sup>1</sup> The Business Roundtable indicates investing in employees and communities offers "the most promising way to build long-term value."<sup>2</sup>

The Council of Institutional Investors surveyed employee access to boards at S&P100 companies. They found growing support for explicit policies that encourage director interaction with employees as a way for boards to understand and oversee corporate culture. More than one-third (36%) of the companies detailed some process by which boards interact with employees.<sup>3</sup>

Employee representation grows long-term value in several ways. The National Bureau of Economic Research finds giving workers formal control rights increases female board representation and raises capital formation.<sup>4</sup> Employees are also often more diverse than boards in terms of race, gender, and wealth. The German "co-determination" model of shared governance provides a check against short-term capital allocation practices.<sup>5</sup>

The 2018 UK Corporate Governance Code encourages boards to establish methods for gathering workforce views. Options include a director appointed from the workforce, a formal workforce advisory panel, and designating a director to liaise with workers.<sup>6</sup>

Senators Baldwin and Warren introduced legislation codifying employee representation on corporate boards, noting corporate governance should include accountability to employees.<sup>7</sup> Polling demonstrates bipartisan public support (53%) for employee representation.<sup>8</sup> Firms with empowered workers produce nine percent higher returns for shareholders and invest twice as much as firms without workers on boards.<sup>9</sup>

<sup>1</sup> <https://www.nytimes.com/2019/01/06/opinion/warren-workers-boards.html>

<sup>2</sup> <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>

<sup>3</sup> <https://www.ciiref.org/board-employee-interaction>

<sup>4</sup> <http://economics.mit.edu/files/17273>

<sup>5</sup> [https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI\\_Policies-for-Worker-Representation-on-Corporate-Boards-Working-Paper-201910.pdf](https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Policies-for-Worker-Representation-on-Corporate-Boards-Working-Paper-201910.pdf) and <https://ssrn.com/abstract=3684690>

<sup>6</sup> <https://assets.kpmg/content/dam/kpmg/uk/pdf/2018/07/designated-NED.pdf>

<sup>7</sup> <https://www.wsj.com/articles/companies-shouldnt-be-accountable-only-to-shareholders-1534287687>

<sup>8</sup> <https://www.dataforprogress.org/blog/2018/12/14/employee-governance>

<sup>9</sup> <https://www.baldwin.senate.gov/imo/media/doc/Reward%20Work%20Not%20Wealth%20Baldwin%20Staff%20Report%203.26.19.pdf>

James McRitchie of CorpGov.net

The unique perspective of hourly workers could better equip our Board to respond to worker concerns, including workplace safety, gender discrimination, sexual harassment, and other issues. Shareholder benefits include reduced turnover, as employees are more empowered to influence firm-specific investments, better-informed decision-making because employees have specialized knowledge, better monitoring of management with increased information channels, and reduced myopia since employees often take a longer-term view.<sup>10</sup> High sexual harassment scores are associated with declines in return on equity of 10.9 percent and increased labor costs of 7 percent.<sup>11</sup>

While our Board satisfies independence requirements and strives for a culture of participation, it lacks formal representation from non-management employees, who bring a different understanding of operations than typical directors. Shareholder rights and worker rights should work together.

The Policy we propose resembles the Rooney Rule, which requires National Football League teams to interview minority candidates for head coaching and senior operations openings.

Add Value Through Employee Representation  
Vote For Proposal [4\*]

[This line and any below, *except for footnotes*, are *not* for publication]  
Number 4\* to be assigned by MSFT

The 'Add Vale' graphic above is intended to be published with the rule 14a-8 proposal. The graphic should be the same size as the largest management graphic (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2021 proxy. The graphic is to be published immediately after the bold title line of the proposal. We will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

- No management graphic or highlighted text in connection with the proposal in the proxy or ballot.
- No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.
- No ballot electioneering text repeating the management recommendation.
- Management will give me the opportunity to correct any typographical errors.
- Management will give me advance notice if it does a special solicitation that mentions this proposal.

Reference: SEC Staff Legal Bulletin No. 14I (CF)[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white. Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: *Sun Microsystems, Inc.* (July 21, 2005).

Please acknowledge this proposal promptly by email to PII

<sup>10</sup> <https://www.corpgov.net/2020/04/kokkinis-and-sergakis-employee-participation-in-uk-companies/>

<sup>11</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3437444](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437444)



June 30, 2021

**VIA EMAIL**

James McRitchie  
c/o John Chevedden

PII

Dear Messrs. McRitchie and Chevedden,

On June 16, 2021, Microsoft Corporation (the "Company") received via electronic mail a letter from you regarding a purported shareholder proposal (the "Proposal") requesting that the Company establish a policy of promoting significant representation of employee perspectives among directors.

This letter notifies you that the Proposal contains procedural deficiencies, which the Company is required to bring to your attention within a specified period of time pursuant to U.S. Securities and Exchange Commission ("SEC") regulations.

No Proof of Ownership. The Company has not received proof that you have complied with the ownership requirements of SEC Rule 14a-8(b). Shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value or 1% of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. As clarified in SEC Staff Legal Bulletin No. 14G (Oct. 16, 2012), the date of submission is the date the proposal is postmarked or transmitted electronically, which for the Proposal was June 16, 2021 (the date the Proposal was transmitted electronically).

To remedy this defect, you must submit sufficient proof of your beneficial ownership of the requisite number of the Company's shares covering the one-year period preceding and including the date the Proposal was submitted from the record holder of the shares.

As explained in Rule 14a-8(b), sufficient proof of beneficial ownership by a proponent who is not a registered holder may be in the form of:

- A written statement from the record holder of the proponent's shares (usually a broker or a bank) verifying that the proponent continuously held the requisite number of the company's shares for at least one year as of the date the proponent submits the proposal; or
- If the proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the proponent's ownership of the requisite number of the company's shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the proponent continuously held the requisite number of the company's shares for the one-year period.

SEC Staff Legal Bulletin No. 14F (Oct. 18, 2011) provides the following sample language to include in a proof of ownership letter that would satisfy the requirements of Rule 14a-8(b):

As of [the date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].

If you use a written statement from the record holder of your shares as proof of ownership, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a security depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. Therefore, you will need to obtain proof of ownership from the DTC participant through which the securities are held. You can confirm whether your broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

If the broker or bank that holds your shares is not on DTC's participant list, you should be able to find out the identity of the DTC participant through which your shares are held by asking your broker or bank. If the DTC participant is not able to confirm your individual holdings but knows the holdings of the applicable broker or bank, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of securities were continuously held for at least one year—one from your broker or bank confirming your ownership, and the other from the DTC participant confirming the broker or bank's ownership.

Word Count Exceeds 500. The Proposal does not satisfy the requirement under Rule 14a-8(d) that the Proposal and any accompanying supporting statement may not exceed 500 words. We believe that your Proposal submission contains more than 500 words. To remedy this defect, you must revise the Proposal and supporting statement so that, together, they do not exceed 500 words.

Your response must be postmarked or transmitted electronically, including any appropriate documentation of ownership, within 14 days of receipt of this letter, the response timeline imposed by Rule 14a-8(f). For your reference, copies of Rule 14a-8, SEC Staff Legal Bulletin No. 14F and SEC Staff Legal Bulletin No. 14G are attached as exhibits to this letter.

Please address any response to me at Microsoft Corporation, 1 Microsoft Way, Redmond, WA 98052. Alternatively, you may transmit any response by email to [peter.kraus@microsoft.com](mailto:peter.kraus@microsoft.com).

Sincerely,

Peter A. Kraus  
Assistant General Counsel and Assistant Secretary



07/09/2021

James McRitchie  
9295 Yorkship Ct  
Elk Grove, CA 95758

Re: Your TD Ameritrade Account Ending in **PII**

Dear James McRitchie,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously for at least 13 months, 100 common shares of Microsoft Corp (MSFT) in an account ending in **PII** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

William Pieper  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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[MSFT: Rule 14a-8 Proposal, 6-16-2021]

REVISED 02 JULY 2022

[This line and any line above it – Not for publication.]

**Proposal 4\* - Add Value Through Worker Representation**



**Resolved:** Microsoft Corporation shareholders urge the board to empower its workers by establishing a 'Policy' of promoting significant representation of employee perspectives among directors. That Policy should require the Nominating, Governance, and Corporate Responsibility Committee to include (but not limit) its 'Initial List' of director candidates to current or past non-management employees. The Policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates.

**Whereas:** Employees on corporate boards can contribute to long-term corporate sustainability. Having companies run exclusively to benefit shareholders contributes to "stagnant wages, runaway executive compensation, and underinvestment in research and innovation."<sup>1</sup> The Business Roundtable indicates investing in employees and communities offers "the most promising way to build long-term value."<sup>2</sup>

The Council of Institutional Investors surveyed employee access to boards at S&P100 companies. They found growing support for explicit policies that encourage director interaction with employees as a way for boards to understand and oversee corporate culture. More than one-third (36%) detailed some process by which boards interact with employees.<sup>3</sup>

Employee representation grows long-term value in several ways. The National Bureau of Economic Research finds giving workers formal control rights increases female board representation and raises capital formation.<sup>4</sup> Employees are also often more diverse than boards in terms of race, gender, and wealth. The German "co-determination" model of shared governance provides a check against short-term capital allocation practices.<sup>5</sup>

The 2018 UK Corporate Governance Code encourages boards to establish methods for gathering workforce views. Options include a director appointed from the workforce, a formal workforce advisory panel, and designating a director to liaise with workers.<sup>6</sup>

Senators Baldwin and Warren introduced legislation codifying employee representation on corporate boards, noting corporate governance should include accountability to employees.<sup>7</sup> Polling demonstrates bipartisan public support (53%) for employee representation.<sup>8</sup> Firms with empowered workers produce nine percent higher returns for shareholders and invest twice as much as firms without workers on boards.<sup>9</sup>

<sup>1</sup> <https://www.nytimes.com/2019/01/06/opinion/warren-workers-boards.html>

<sup>2</sup> <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>

<sup>3</sup> <https://www.ciiref.org/board-employee-interaction>

<sup>4</sup> <http://economics.mit.edu/files/17273>

<sup>5</sup> [https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI\\_Policies-for-Worker-Representation-on-Corporate-Boards-Working-Paper-201910.pdf](https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Policies-for-Worker-Representation-on-Corporate-Boards-Working-Paper-201910.pdf) and <https://ssrn.com/abstract=3684690>

<sup>6</sup> <https://assets.kpmg/content/dam/kpmg/uk/pdf/2018/07/designated-NED.pdf>

<sup>7</sup> <https://www.wsj.com/articles/companies-shouldnt-be-accountable-only-to-shareholders-1534287687>

<sup>8</sup> <https://www.dataforprogress.org/blog/2018/12/14/employee-governance>

<sup>9</sup> <https://www.baldwin.senate.gov/imo/media/doc/Reward%20Work%20Not%20Wealth%20Baldwin%20Staff%20Report%203.26.19.pdf>

James McRitchie of CorpGov.net

The unique perspective of hourly workers could better equip our Board to respond to worker concerns, including workplace safety, gender discrimination, sexual harassment, and other issues. Shareholder benefits include reduced turnover, as employees are more empowered to influence firm-specific investments, better-informed decision-making because employees have specialized knowledge, better monitoring of management with increased information channels, and reduced myopia since employees often take a longer-term view.<sup>10</sup> High sexual harassment scores are associated with declines in return on equity of 10.9 percent and increased labor costs of 7 percent.<sup>11</sup>

While our Board satisfies independence requirements and strives for a culture of participation, it lacks formal representation from non-management employees, who bring a different understanding of operations than typical directors.

The Policy we propose resembles the Rooney Rule, which requires National Football League teams to interview minority candidates for head coaching and senior operations openings.

Add Value Through Employee Representation

Vote For Proposal [4\*]

[This line and any below, *except for footnotes*, are *not* for publication]

Number 4\* to be assigned by MSFT

The 'Add Vale' graphic above is intended to be published with the rule 14a-8 proposal. The graphic should be the same size as the largest management graphic (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2021 proxy. The graphic is to be published immediately after the bold title line of the proposal. We will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

No management graphic or highlighted text in connection with the proposal in the proxy or ballot.

No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.

No ballot electioneering text repeating the management recommendation.

Management will give me the opportunity to correct any typographical errors.

Management will give me advance notice if it does a special solicitation that mentions this proposal.

Reference: SEC Staff Legal Bulletin No. 14I (CF)[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white. Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(1)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: *Sun Microsystems, Inc.* (July 21, 2005).

<sup>10</sup> <https://www.corpgov.net/2020/04/kokkinis-and-sergakis-employee-participation-in-uk-companies/>

<sup>11</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3437444](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437444)



## **Exhibit B**

### **2020 Proposal**

#### **Employee Representation on the Board of Directors**

**WHEREAS:** Our employees are crucial to our ability to offer shareholders continued return on their investment. A 2018 Forbes article emphasized the need for retaining top employees by “focus[ing] on excellence in engagement”;

In 2018, the Accountable Capitalism Act was introduced into the U.S. Congress to combat “America’s fundamental economic problems” such as companies’ failure to reinvest proceeds in their operations, including employees. The Act would require that “boards ... include substantial employee participation ... ensur[ing] that no fewer than 40% of [a board’s] directors are selected by the corporation’s employees”;

In 2019, the Business Roundtable, an association of chief executive officers of America’s leading companies, issued a new Statement on the Purpose of a Corporation which emphasized “a fundamental commitment to all of our stakeholders.” Coupled with a worldwide increased interest in environmental and social considerations, this new focus on “stakeholder capitalism” can be understood to imply that a company’s fiduciaries must address or reflect the interests of all stakeholders;

In 2020, the World Economic Forum explained that “[i]ssues that were previously considered secondary for CEOs and boards—matters once handled by companies’ stakeholder-relations, philanthropy, and information-technology departments—have become important determinants of firms’ capacity to create and sustain economic value ... The talent and motivation of a firm’s workforce, an innovative corporate culture, individual know-how, and data all are becoming increasingly important sources of value”;

Shareholders believe that allowing employee representation on boards of directors will support continued company growth within stakeholder capitalism. Several European countries require employee representation on boards.

Academic analysis of one such policy stated that it “offer[s] advantages for technical efficiency, skill development and knowledge generation through its protection of specific human capital investments”;

Employee commitment to the long-term growth of our company, especially during the COVID-19 crisis and recovery, will be vital to our company’s success. Shareholders believe that our company can advance long-term value creation through a board that includes non-management employee representation.

**RESOLVED:** Shareholders of Microsoft urge the Board of Directors to prepare a report to shareholders describing options for the company to encourage the inclusion of non-management employee representation on the Board.

**SUPPORTING STATEMENT:** The report should be prepared within one year, at reasonable cost and excluding proprietary and privileged information. The Board is encouraged to assess:

1. Any legal, technical, practical, or organizational impediments to non-management employees gaining board seats;
2. Potential benefits and efficiencies associated with board membership of non-management employees;
3. Procedures through which non-management employees could gain nomination to the board, such as allocation of board slots, special nomination process, building upon existing proxy access provision, and/or changes to corporate bylaws that might help accomplish such changes;
4. Options for employees to participate in governance through other structures such as employee councils, joint labor-management committees, or labor unions.

For purposes of this proposal, “non-management employees” should be understood to be employees that are neither management nor company executives.

## Exhibit C

### **2019 Proposal**

#### **Employee Representation on the Board of Directors**

WHEREAS:

Our company's employees, including management and top performing engineers, are crucial to our ability to offer shareholders continued return on their investment. A 2018 Forbes article emphasized the need for retaining top employees by "focus[ing] on excellence in engagement";

However, in the past two years relations with our Company's employees have been strained:

- Microsoft employees protested the company's alleged failure to curtail gender discrimination and sexual harassment. They reported sexual harassment and threats, as well as a pattern of women being unfairly passed over for promotions;
- During the recent controversial separation of immigrant children from their families, over 300 employees wrote an open letter denouncing Microsoft's connection to Immigration and Customs Enforcement;
- A group of employees argued that Microsoft "crossed the line into weapons development" when they publicly dissented against Microsoft's military contract to develop augmented reality headsets for soldiers;

Shareholders fear that these examples illustrate deficient responsiveness to employee concerns and low satisfaction at the company. A news story on the employee letter related to the ICE contract, quoted an employee stating that "in a week they managed to wipe away all the goodwill...";

In 2018, the Accountable Capitalism Act was introduced into the U.S. Congress to combat "America's fundamental economic problems" such as companies' failure to reinvest proceeds in their operations, including employees;

The Act would require that "boards ... include substantial employee participation ... ensur[ing] that no fewer than 40% of [a board's] directors are selected by the corporation's employees";

Several European countries require employee representation on boards. Academic analysis of one such policy indicated a positive effect, stating that it "offer[s] advantages for technical efficiency, skill development and knowledge generation through its protection of specific human capital investments";

A recent poll found that a majority of Americans "would support allowing employees at large companies to elect representatives to those companies' boards of directors...";

Shareholders believe that our company can advance long-term value creation through a diverse board that includes non-management employee representation.

RESOLVED: Shareholders of Microsoft urge the Board of Directors to prepare a report to shareholders describing opportunities for the company to encourage the inclusion of non-management employee representation on the Board.

SUPPORTING STATEMENT: The report should be prepared within one year, at reasonable cost and excluding proprietary and privileged information. The Board is encouraged to assess:

1. Any legal, technical, practical, or organizational impediments to non-management employees gaining board nomination;
2. Benefits and challenges associated with board membership by non-management employees;
3. Opportunities or procedures through which non-management employees could gain nomination to the board, such as allocation of board slots for non-management employees, special board nomination processes for non-management employees, potential for building upon the company's existing proxy access provision, and any needed changes to corporate governance documents to accomplish such changes.

**Exhibit D**

**Microsoft Current Report on Form 8-K  
Filed with the Commission on December 4, 2020**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported) **December 2, 2020**

**Microsoft Corporation**

**Washington**  
(State or Other Jurisdiction  
of Incorporation)

**001-37845**  
(Commission  
File Number)

**91-1144442**  
(IRS Employer  
Identification No.)

**One Microsoft Way, Redmond, Washington**

**98052-6399**

**(425) 882-8080**  
[www.microsoft.com/investor](http://www.microsoft.com/investor)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of exchange on which registered
<b>COMMON STOCK, \$0.0000625 par value per share</b>	<b>MSFT</b>	<b>NASDAQ</b>
<b>2.125% Notes due 2021</b>	<b>MSFT</b>	<b>NASDAQ</b>
<b>3.125% Notes due 2028</b>	<b>MSFT</b>	<b>NASDAQ</b>
<b>2.625% Notes due 2033</b>	<b>MSFT</b>	<b>NASDAQ</b>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## Item 5.07. Submission of Matters to a Vote of Security Holders

On December 2, 2020, Microsoft Corporation (the “Company”) held its 2020 Annual Shareholders Meeting (the “Annual Meeting”). There were 7,562,826,058 shares of common stock entitled to be voted at the Annual Meeting, of which 6,566,836,176 were voted in person or by proxy. The results for each item submitted for a vote of shareholders are as follows. The shareholders:

- (1) Voted to elect each of the twelve (12) nominees for director.
- (2) Approved, on an advisory basis, the compensation of the Company’s named executive officers.
- (3) Voted to ratify the appointment of Deloitte & Touche LLP as the Company’s independent registered public accounting firm for fiscal year 2021.
- (4) Rejected a shareholder proposal concerning a report on employee representation on the Board of Directors.

The Company’s inspector of election certified the following vote tabulations:

### Election of Directors

Director	Vote Results	% Votes For	For	Against	Abstain	Broker Non-Votes
Reid G. Hoffman	Re-elected	99.52%	5,215,758,348	25,314,092	8,400,114	1,317,363,622
Hugh F. Johnston	Re-elected	99.62%	5,221,269,096	19,816,684	8,386,774	1,317,363,622
Teri L. List-Stoll	Re-elected	99.35%	5,205,028,542	34,076,281	10,367,731	1,317,363,622
Satya Nadella	Re-elected	99.89%	5,237,186,585	5,546,598	6,739,371	1,317,363,622
Sandra E. Peterson	Re-elected	98.89%	5,183,197,017	58,262,215	8,013,322	1,317,363,622
Penny S. Pritzker	Re-elected	99.80%	5,228,709,230	10,536,931	10,226,393	1,317,363,622
Charles W. Scharf	Re-elected	99.11%	5,194,031,476	46,902,053	8,539,025	1,317,363,622
Arne M. Sorenson	Re-elected	99.88%	5,234,800,897	6,336,694	8,334,963	1,317,363,622
John W. Stanton	Re-elected	99.85%	5,233,415,375	7,605,399	8,451,780	1,317,363,622
John W. Thompson	Re-elected	99.10%	5,194,357,510	46,935,033	8,180,011	1,317,363,622
Emma N. Walmsley	Re-elected	99.73%	5,227,399,222	13,970,088	8,103,244	1,317,363,622
Padmasree Warrior	Re-elected	99.74%	5,227,546,888	13,598,261	8,327,405	1,317,363,622

### Advisory Vote to Approve Named Executive Officer Compensation

Vote result	% Votes For	For	Against	Abstain	Broker Non-Votes
Approved	94.72%	4,956,043,006	276,520,958	16,908,590	1,317,363,622

### Ratification of Appointment of Independent Auditor

Vote result	% Votes For	For	Against	Abstain	Broker Non-Votes
Approved	96.05%	6,296,749,497	258,680,123	11,406,556	N/A

### Shareholder Proposal Concerning Report on Employee Representation on Board of Directors

Vote result	% Votes For	For	Against	Abstain	Broker Non-Votes
Rejected	5.15%	268,964,933	4,957,295,213	23,212,408	1,317,363,622



**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MICROSOFT CORPORATION  
(Registrant)

Date: December 4, 2020

\_\_\_\_\_  
/s/ KEITH R. DOLLIVER

Keith R. Dolliver  
Assistant Secretary