



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 22, 2022

John C. Ericson
Simpson Thacher & Bartlett LLP

Re: Best Buy Co., Inc. (the "Company")
Incoming letter dated February 4, 2022

Dear Mr. Ericson:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the board to take the steps necessary to permit removal of directors by a majority vote of shareholders or directors with or without cause.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures substantially implement the Proposal. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(10). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

Simpson Thacher & Bartlett LLP

425 LEXINGTON AVENUE
NEW YORK, NY 10017-3954

TELEPHONE: +1-212-455-2000
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+1 (212) 455-3520

E-mail Address
jericsn@stblaw.com

VIA E-MAIL

February 4, 2022

Re: Best Buy Co., Inc. – 2022 Annual Meeting of Shareholders, Omission of Shareholder Proposal Submitted by John Chevedden; Securities Exchange Act of 1934, Section 14(a); Rule 14a-8

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

Ladies and Gentlemen:

We are filing this letter on behalf of Best Buy Co., Inc., a Minnesota corporation (“Best Buy” or the “Company”), in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, with respect to the shareholder proposal and supporting statement (together, the “Shareholder Proposal”) submitted by Mr. John Chevedden (the “Proponent”) in a letter dated December 5, 2021 for inclusion in the proxy materials to be distributed by Best Buy in connection with its 2022 annual meeting of shareholders (the “2022 Proxy Materials”). A copy of the Shareholder Proposal and related correspondence is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against Best Buy if Best Buy omits the Shareholder Proposal in its entirety from the Proxy Materials.

Best Buy intends to file the definitive proxy statement for its 2022 annual meeting of shareholders (the “Annual Meeting”) more than 80 days after the date of this letter. In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), this letter is

being submitted by email to shareholderproposals@sec.gov in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j), and the undersigned has included his name and telephone number both in this letter and in the cover email accompanying this letter. In addition, pursuant to Rule 14a-8(j), a copy of this letter is also being sent simultaneously by email to the Proponent as notice of Best Buy's intent to omit the Shareholder Proposal from the 2022 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send to the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Shareholder Proposal, the Proponent must concurrently furnish a copy of that correspondence to Best Buy. Similarly, the Company will promptly forward to the Proponent any response received from the Staff or Commission related to this request that the Staff or Commission transmits only to Best Buy.

I. The Shareholder Proposal

The Shareholder Proposal states:

Shareholders ask our Board of Directors to take the steps necessary to permit removal of directors by a majority vote of shareholders or directors with or without cause.

A copy of the full text of the Shareholder Proposal and related correspondence, including the Proponent's supporting statement, is attached to this letter as Exhibit A.

II. Bases for Exclusion

The Company hereby respectfully requests that the Staff concur in its view that the Shareholder Proposal may be properly excluded from the 2022 Proxy Materials pursuant to the following provisions of Rule 14a-8:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Shareholder Proposal; and
- Rule 14a-8(i)(3) and Rule 14a-9 because the Shareholder Proposal is vague and indefinite, rendering the Shareholder Proposal in violation of the proxy rules.

III. Analysis

A. *The Shareholder Proposal may be excluded under Rule 14a-8(i)(10) because the Company has substantially implemented the Shareholder Proposal.*

1. *Background*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. Interpreting the predecessor to Rule 14a-8(i)(10), the Commission stated that the rule was “designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management . . .” SEC Release No. 34-12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were “fully effected” by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. *See* SEC Release No. 34-20091 (August 16, 1983). Therefore, in 1983, the Commission adopted a revision to the rule to permit the omission of proposals that had been “substantially implemented,” which, as a standard, does not require implementation in full or exactly as presented by the proponent. *See* SEC Release No. 34-40018 (May 21, 1998, n. 30 and accompanying text); SEC Release No. 34-20091 (August 16, 1983).

The Staff has stated that, in determining whether a shareholder proposal has been substantially implemented, it will consider whether a company’s particular policies, practices and procedures “compare favorably with the guidelines of the proposal.” *See The Goldman Sachs Group, Inc.* (avail. Feb. 12, 2014); *Medtronic, Inc.* (avail. June 13, 2013); and *Texaco, Inc.* (avail. Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed both the proposal’s underlying concerns and its essential objective. *See, e.g., Exelon Corp.* (avail. Feb. 26, 2010) (“*Exelon*”); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. Jul. 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *The Talbots Inc.* (avail. Apr. 5, 2002); and *Masco Corp.* (avail. Mar. 29, 1999). When a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has consistently concurred that the proposal has been “substantially implemented” and may be excluded. *See, e.g., The Brink’s Company* (avail. February 5, 2015); *Visa, Inc.* (avail. November 14, 2014); *Exelon*; and *Exxon Mobil Corp.* (avail. Mar. 23, 2009).

A company need not take the exact action requested, and the company may exercise discretion in implementation without losing the right to exclude the proposal. *See Goldman Sachs*; and *Medtronic, Inc.* (avail. June 13, 2013). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has satisfied the “essential objective” of the proposal, even if the company (i) did not take the exact action requested by the proponent, (ii) did not implement

the proposal in every detail, or (iii) exercised discretion in determining how to implement the proposal. *See, e.g., Walgreen Co.* (avail. Sept. 26, 2013) (allowing exclusion of a shareholder proposal requesting an amendment to the company's organizational documents that would eliminate all supermajority vote requirements, where such company eliminated all but one such requirement for which the requisite shareholder approval was not obtained). In these cases, the Staff has concurred with the company's determination that the proposal was substantially implemented in accordance with Rule 14a-8(i)(10) when the company had taken actions that included modifications from what was directly contemplated by the proposal, including in circumstances when the company had policies and procedures in place relating to the subject matter of the proposal, or the company had otherwise implemented the essential objective of the proposal. *See, e.g., Medtronic.* Accordingly, even if a company has not implemented every detail of a proposal, the proposal still may be excluded provided that the company has "substantially implemented" it.

2. *The Existing Amended and Restated By-Laws of the Company Substantially Implements the Proposal*

Best Buy's Amended and Restated By-Laws (the "By-Laws"), effective June 12, 2018, provide for director removal procedures in accordance with Minnesota Law. In relevant part, Article III, Section 5 of the By-Laws provides that "[a] director may be removed from office, (a) for cause, by the affirmative vote of a majority of the remaining directors, or the affirmative vote of the holders of a majority of the voting stock in attendance at a duly convened meeting of the shareholders; or (b) as otherwise permitted by Chapter 302A [of the Minnesota Statutes]."

With respect to removal of directors by shareholders, the referenced Chapter 302A of the Minnesota Statutes ("Chapter 302A") provides in relevant part that except for corporations with cumulative voting, "any one or all of the directors may be removed at any time, *with or without cause*, by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote at an election of directors; provided that, if a director has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of that class or series entitled to vote at an election of that director." MINN. STAT. § 302A.223, subd. 3 (emphasis added). For convenience, Section 223 of Chapter 302A is attached as Exhibit B. Because Best Buy does not have any separate class or series of shares outstanding with the right to elect a director, the foregoing proviso does not apply, and a director may be removed by the affirmative vote of the holders of a majority of the Company's common stock. In addition, although Chapter 302A provides an exception for corporations with cumulative voting, this exception is not relevant to the Company, as Article VII of Best Buy's Amended and Restated Articles of Incorporation provides that no shareholder is entitled to any cumulative voting rights.

With respect to removal of directors by directors, the By-Laws expressly provide that a director may be removed for cause by the affirmative vote of the remaining directors. In

addition, Chapter 302A provides that a “director may be removed at any time, *with or without cause*, if (a) the director was named by the board to fill a vacancy; (b) the shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and (c) a majority of the remaining directors present affirmatively vote to remove the director.” MINN. STAT. § 302A.223, subd. 2 (emphasis added). Article III, Section 6 of the By-Laws of the Company provides that a vacancy on the board of directors may be filled by the affirmative of a majority of the remaining directors. Once a vacancy has been filled in this manner, that director may be removed with or without cause either (1) by the remaining directors under the circumstances described above or (2) by the shareholders as described in the preceding paragraph.

After a director has been elected by the shareholders (whether or not the director was initially appointed by a majority of the remaining directors to fill a vacancy), the director may be removed at any time by the shareholders in accordance with Minnesota law and consistent with the Shareholder Proposal. Although the By-Laws do not permit a director who has been elected by the shareholders to be removed without cause by the remaining directors, the Company believes that permitting removal by the remaining directors without cause under those circumstances would detract from the authority of the Company’s shareholders to elect directors and remove them with or without cause and would be inconsistent with the intent of the Shareholder Proposal.

In summary, by referencing Chapter 302A in the By-Laws, Best Buy already allows for director removal by the affirmative vote of a majority of shareholders with or without cause. Similarly, the Company allows director removal by affirmative vote of a majority of directors with cause, and also provides for director removal without cause when the shareholders have yet to vote on that director. The Shareholder Proposal calls for the Board to take steps necessary to permit removal of directors by a majority vote of shareholders or directors with or without cause, but the Board need not take any action to permit such removal because the By-Laws, as written, already specifically and directly address the underlying concern and essential objectives of the Shareholder Proposal. Inclusion of the Shareholder Proposal in the 2022 Proxy Materials would thus be superfluous. Accordingly, the Shareholder Proposal has been substantially implemented by the Company and may be excluded from the Company’s 2022 Proxy.

B. The Shareholder Proposal may be excluded under Rule 14a-8(i)(3) because it is vague and indefinite, rendering it in violation of the proxy rules.

1. Background

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a registrant’s proxy materials “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” As described below, exclusion of the Shareholder Proposal is warranted because the inclusion of the proposed resolution contained in the Shareholder Proposal

in the Company's forthcoming Proxy Materials would result in the Company's filing a proxy statement with misleading statements.

The Commission has explained that exclusion of a proposal may be appropriate where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004); *see also Cisco Systems, Inc.* (avail. Oct. 7, 2016) (concurring in the exclusion of a proposal, as vague and indefinite, that requested that the board of directors not take any action whose primary purpose was to prevent the effectiveness of a shareholder vote without a compelling justification); and *Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (concurring in the exclusion of a proposal, as vague and indefinite, that requested amendments to governing documents to require that management strictly honor alleged shareholders' rights in communications to its shareholders). The Staff has concurred in a registrant's exclusion on vague and indefinite grounds of a proposal requesting that the board of directors "implement a policy of improved corporate governance," where the registrant and its shareholders might interpret the proposed resolution differently such that actions taken by the registrant could significantly differ from the action intended by the shareholders voting on the proposal. *See, e.g., Puget Energy Inc.* (avail. Mar. 7, 2002) (citing, among others, *Occidental Petroleum Corp.* (Apr. 4, 1990)). Recently, the Staff concurred in the exclusion of a shareholder proposal that sought to "improve guiding principles of executive compensation," noting that such proposal "lack[ed] sufficient description about the changes, actions or ideas for the Company and its shareholders to consider that would potentially improve [such] guiding principles." *Apple Inc.* (avail. Dec. 6, 2019). Additionally, courts have ruled on cases involving vague proposals, finding that "shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" and that a proposal may be excluded when "it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail." *New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

2. *The Shareholder Proposal is vague and indefinite so as to be misleading*

As with the proposals in the precedents cited above, and as discussed further below, the Shareholder Proposal is so vague and indefinite that neither Best Buy nor its shareholders would know with any reasonable certainty exactly what actions or measures the Shareholder Proposal requires. The Shareholder Proposal asks Best Buy's Board of Directors to "take the steps necessary to permit removal of directors by a majority vote of shareholders or directors with our without cause." The Shareholder Proposal states the Company's "preset [sic?] rule can give job security to a director who clearly needs to be removed but the director insists with finding fault with the evidence" and that the Company's "preset [sic?] rule can give job security to a director accused of domestic violence with overwhelming evidence." These statements are false and misleading because a Company director may always be removed by shareholders pursuant to the

terms of the Company's governing documents, with or without cause, as explained in Section II.A. of this letter. A director may also be removed for cause by the affirmative vote of a majority of the remaining directors, and the applicable provisions of the By-Laws do not condition this ability on an evaluation of the evidence by the director in question. Indeed, there is no guarantee of "job security" for any director, particularly one who would engage in such activity. When viewed in the context of the director removal rights that shareholders already possess, the Shareholder Proposal creates the false impression that shareholders are at the mercy of a director who may question the evidence for his or her removal when, in fact, no evidence is even required for the shareholders to remove a director from office.

Further, the Shareholder Proposal is unclear in its ambiguous use of the word "preset" in the two instances quoted above. Although we understand that the word "present" may have been intended, the use of the word "preset" could be interpreted by shareholders as suggesting that the Company has "preset" the director removal provisions of its governing documents to protect directors who may have engaged in domestic violence or other illegal or immoral behavior. The cryptic wording of the Shareholder Proposal compounds its vague and misleading nature and renders the Shareholder Proposal excludable under Rule 14a-8(i)(3).

In light of the foregoing, Best Buy would face substantial uncertainty in implementing the Shareholder Proposal if it were adopted, and it is highly unlikely that Best Buy would be able to implement the Shareholder Proposal in a manner consistent with the understanding of each shareholder, or even a majority of the shareholders, who voted for it. For the foregoing reasons, the Shareholder Proposal is misleading because it is vague and indefinite and, therefore, violates Rule 14a-9.

IV. Conclusion

On behalf of the Company and based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its 2022 Proxy Materials.


If the Staff disagrees with the Company's conclusions regarding omission of the Shareholder Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission

-8-

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-3520 or jericsen@stblaw.com.

Very truly yours,



John C. Ericson

Enclosures

cc: Todd G. Hartman, Best Buy Co., Inc.
John Chevedden

Exhibit A

Copy of the Shareholder Proposal and Related Correspondence

From: John Chevedden <[REDACTED]>
Sent: Sunday, December 5, 2021 8:59 AM
To: Hartman, Todd <[REDACTED]>; Olson, Hannah <[REDACTED]>; Johnson, Paige <[REDACTED]>; Eric Halverson <[REDACTED]>
Subject: [CAUTION! EXTERNAL] Rule 14a-8 Proposal (BBY)``

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Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED].



Dear Mr. Hartman,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Please confirm receipt.

Sincerely,

John Chevedden

Mr. Todd Hartman
General Counsel, Chief Risk & Compliance Officer and Secretary
Best Buy Co., Inc. (BBY)
7601 Penn Avenue South
Richfield, Minnesota 55423

Dear Mr. Hartman,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting.

I intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,

John Chevedden

Date

December 5, 2021

cc: Hannah Olson
Paige Johnson
Eric Halverson

[BBY – Rule 14a-8 Proposal, December 5, 2021]
[This line and any line above it is not for publication.]
Proposal 4 –Right to Remove Directors without Cause

Shareholders ask our Board of Directors to take the steps necessary to permit removal of directors by a majority vote of shareholders or directors with or without cause.

Our preset rule can give job security to a director who clearly needs to be removed but the director insists with finding fault with the evidence.

Our preset rule can give job security to a director accused of domestic violence with overwhelming evidence.

Please vote yes:

Right to Remove Directors without Cause – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

“Proposal 4” stands in for the final proposal number that management will assign.

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).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The color version of the below graphic is to be published immediately after the bold title line of the proposal.

Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

No management graphic in connection with the rule 14a-8 proposals 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 negative 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.



From: Olson, Hannah <[REDACTED]@bestbuy.com>
Sent: Tuesday, January 25, 2022 3:23 PM
To: John Chevedden
Cc: Crist, Jodie
Subject: RE: [CAUTION! EXTERNAL] Rule 14a-8 Proposal (BBY) blb

Mr. Chevedden,

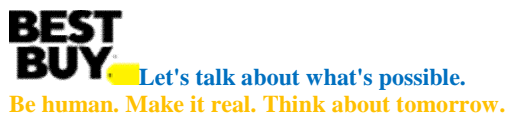
After further review of your proposal and our current Bylaws, we would be interested in scheduling a time to discuss with you the objective of the proposal. If this is something you are willing to do, we have the following times available:

Friday, 1/28 at 12pm or 2pm CT
Tuesday, 2/1 at 2pm CT
Wednesday, 2/3 at 3:00pm CT
Thursday, 2/4 at 11:00 am CT

Please let me know if you are interested in a conversation with us and what, if any, of the times above might work with your schedule.

Regards,
Hannah

[Hannah G. Olson](#) | Senior Corporate Counsel, Corporate & Securities
[REDACTED]



From: John Chevedden <[REDACTED]>
Sent: Thursday, December 16, 2021 9:22 PM
To: Olson, Hannah <[REDACTED]@bestbuy.com>; Johnson, Paige <[REDACTED]@bestbuy.com>; Crist, Jodie <[REDACTED]@bestbuy.com>; Hartman, Todd <[REDACTED]@bestbuy.com>
Subject: [CAUTION! EXTERNAL] Rule 14a-8 Proposal (BBY) blb

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Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED].

Dear Ms. Olson,
Please see the attached broker letter.
Please confirm receipt.
John Chevedden

From: John Chevedden <[REDACTED]>
Sent: Tuesday, January 25, 2022 10:06 PM
To: Olson, Hannah; Crist, Jodie
Subject: [CAUTION! EXTERNAL] (BBY) 31

Follow Up Flag: Follow up
Flag Status: Flagged

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Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED].

Available for an off the record telephone meeting with one company employee:

Jan 31 7:00 am PT

Feb 01 7:00 am PT

John Chevedden
[REDACTED]

From: Olson, Hannah <[REDACTED]@bestbuy.com>
Sent: Friday, January 28, 2022 11:36 AM
To: John Chevedden; Crist, Jodie
Subject: RE: [CAUTION! EXTERNAL] (BBY) 31

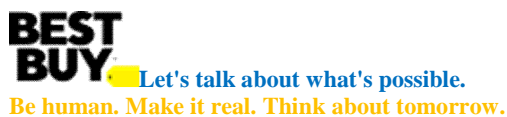
Mr. Chevedden,

Thank you for your willingness to meet with us. It is our policy to have a minimum of two company representatives on such calls. Jodie Crist, our Deputy General Counsel, and I would be the ones on the call. We are happy to meet on February 1, at 7am PT, 9am CT for an off the record conversation.

Please confirm and we will send you a meeting invitation.

Regards,
Hannah

[Hannah G. Olson](#) | Senior Corporate Counsel, Corporate & Securities
[REDACTED]



From: John Chevedden <[REDACTED]>
Sent: Tuesday, January 25, 2022 9:06 PM
To: Olson, Hannah <[REDACTED]@bestbuy.com>; Crist, Jodie <[REDACTED]@bestbuy.com>
Subject: [CAUTION! EXTERNAL] (BBY) 31

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Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED].

Available for an off the record telephone meeting with one company employee:

Jan 31 7:00 am PT

Feb 01 7:00 am PT

John Chevedden
[REDACTED]

From: John Chevedden <[REDACTED]>
Sent: Monday, January 31, 2022 9:01 PM
To: Olson, Hannah
Cc: Crist, Jodie
Subject: [CAUTION! EXTERNAL] (BBY)

 **This message is from an external sender and could be a phish.** 

Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED].

Okay

[REDACTED]
[REDACTED]#

Phone Conference ID: [REDACTED]#

Exhibit B

Chapter 302A.223 of the Minnesota Statutes

Subdivision 1. Modification.

The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 302A.457.

Subd. 2. Removal by directors.

A director may be removed at any time, with or without cause, if:

- (a) the director was named by the board to fill a vacancy;
- (b) the shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
- (c) a majority of the remaining directors present affirmatively vote to remove the director.

Subd. 3. Removal by shareholders.

Except as provided in subdivision 4, any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote at an election of directors; provided that, if a director has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of that class or series entitled to vote at an election of that director.

Subd. 4. Exception for corporations with cumulative voting.

In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.

Subd. 5. Election of replacements.

New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding officer at any time prior to the election of new directors of intent to cumulate the votes of the shareholder, the presiding officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in section 302A.215, subdivision 1, clause (b).

JOHN CHEVEDDEN

February 4, 2022

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

1 Rule 14a-8 Proposal
Best Buy Co., Inc. (BBY)
Right to Remove Directors without Cause
John Chevedden

Ladies and Gentlemen:

This is in regard to the February 4, 2022 no-action request.

Management makes a shaky claim that directors can be removed without cause in 2 out of the 3 scenarios that it describes, therefore 2 out of 3 counts for 100%. And one of the 2 scenarios is a blue moon scenario.

The resolved statement does not call for exceptions. Management is not taking any new action in response to the rule 14a-8 proposal.

Management was told during the February 1, 2022 telephone meeting that "preset" was intended to be "present." It is sad that management did not give full disclosure of the February 1, 2022 telephone meeting concerning a word in the proposal.

Plus the February 1, 2022 telephone meeting was a special accommodation for management following the management waiver of a meeting:

"We acknowledge receipt of your offer to engage, as well as your statement that you have no need for a meeting. As such, we agree there isn't a need to schedule a meeting at this time."

"Olson, Hannah" <[REDACTED]@[REDACTED]>

December 16, 2021

Management did not provide any purported precedent of an excluded proposal due to a misspelling. If management refuses the opportunity to correct the word to "present" the proponent is willing to correct it in a Notice of Exempt Solicitation.

Sincerely,


John Chevedden

cc: Todd G. Hartman

[BBY – Rule 14a-8 Proposal, December 5, 2021]
[This line and any line above it is not for publication.]
Proposal 4 –Right to Remove Directors without Cause

Shareholders ask our Board of Directors to take the steps necessary to permit removal of directors by a majority vote of shareholders or directors with or without cause.

Our preset rule can give job security to a director who clearly needs to be removed but the director insists with finding fault with the evidence.

Our preset rule can give job security to a director accused of domestic violence with overwhelming evidence.

Please vote yes:

Right to Remove Directors without Cause – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

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+1 (212) 455-3520

E-mail Address
jericsen@stblaw.com

VIA E-MAIL

February 23, 2022

Re: **Best Buy Co., Inc. – 2022 Annual Meeting of Shareholders, Omission of Shareholder Proposal Submitted by John Chevedden; Securities Exchange Act of 1934, Section 14(a); Rule 14a-8**

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

Ladies and Gentlemen:

We are filing this letter on behalf of Best Buy Co., Inc., a Minnesota corporation (“Best Buy” or the “Company”), with respect to the shareholder proposal and supporting statement (together, the “Shareholder Proposal”) submitted by Mr. John Chevedden (the “Proponent”) in a letter dated December 5, 2021 for inclusion in the proxy statement and form of proxy to be distributed by the Company in connection with its 2022 Annual Meeting of Stockholders (the “2022 Proxy Materials”). The Shareholder Proposal requested that the Board of Directors of the Company (the “Board”) “take the steps necessary to permit removal of directors by a majority vote of shareholders or directors with or without cause.”

On February 4, 2022, we submitted a letter (the “No Action Request”) to the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) requesting that the Staff not recommend any enforcement action against the Company if it omits the Shareholder Proposal in its entirety from the 2022 Proxy Materials. The No Action Request indicated the Company’s belief that the Shareholder Proposal could be excluded from the 2022 Proxy Materials in reliance on:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Shareholder Proposal; and

- Rule 14a-8(i)(3) and Rule 14a-9 because the Shareholder Proposal is vague and indefinite, rendering the Shareholder Proposal in violation of the proxy rules.

On February 4, 2022, the Proponent submitted a letter to the Staff responding to the No Action Request (the “Proponent’s Response Letter”). The Proponent’s Response Letter and accompanying correspondence from the Proponent is attached as Exhibit A hereto.

The Company wishes to respond to certain of the assertions made in the Proponent’s Response Letter and reiterate and expand upon some of the reasons that the Company believes that it may omit the Shareholder Proposal in its entirety from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(3) and Rule 14a-9 and pursuant to Rule 14a-8(i)(10) under the Exchange Act.

Pursuant to Rule 14a-8(j) under the Exchange Act, we are simultaneously providing the Proponent with a copy of this submission. The Company will promptly forward to the Proponent any response received from the Staff to this request that the Staff transmits by email or fax only to the Company.

I. The Shareholder Proposal is vague and indefinite and may be excluded under Rule 14a-8(i)(3) and Rule 14a-9

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a registrant’s proxy materials “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” As described in the No Action Request, exclusion of the Shareholder Proposal is warranted because the inclusion of the proposed resolution contained in the Shareholder Proposal in the Company’s forthcoming 2022 Proxy Materials would result in the Company filing a proxy statement with false and misleading statements.

The Company’s argument that the Shareholder Proposal is vague and misleading does not hinge on the use of the word “preset” as opposed to “present.” The Company would be willing to accommodate the Proponent and use the word “present” in each place to the extent the Staff does not concur in the exclusion of the Shareholder Proposal from the 2022 Proxy Materials. Even if the typographical error were corrected, however, the Shareholder Proposal is fundamentally misleading in suggesting that the Company’s Amended and Restated By-Laws (the “By-Laws”) “can give job security to a director who clearly needs to be removed but the director insists on finding fault with the evidence” and “can give job security to a director accused of domestic violence with overwhelming evidence.” It is this reference to “job security” that is misleading because Company directors may always be removed by shareholders, with or without cause, pursuant to the terms of the Company’s governing documents and Minnesota law. As the No Action Request explains, the Shareholder Proposal also creates the misleading impression that

director removal is contingent upon the presentation of evidence and the weight of that evidence. On the contrary, all Company directors are subject to removal by shareholders with or without cause (*i.e.*, even for no reason at all). If the shareholders wish to remove a director for any reason, the director cannot block that removal by “finding fault with the evidence.”

The Company’s *present* organizational documents do not in fact provide for absolute “job security” for directors. The Shareholder Proposal suggests, without any basis, that the removal of a director requires a weighing of evidence that can entrench a director that has been accused of crimes or immoral behavior. With or without a typographical error, the Shareholder Proposal is vague and misleading and may be excluded under Rule 14a-8(i)(3) and Rule 14a-9.

II. The Proponent’s Response Letter does not address the fact that the Company has substantially implemented the Shareholder Proposal

As noted in the No Action Request, Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. When a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has consistently concurred that the proposal has been “substantially implemented” and may be excluded.

The Proponent’s Response Letter disparages the No Action Request as a “shaky claim” but does not actually engage with the Company’s arguments regarding substantial implementation. First, Best Buy’s By-Laws provide for the shareholder protection being sought, *i.e.*, the removal of directors by shareholders at any time with or without cause. Second, the No Action Request explains that the By-Laws, through their reference to Chapter 302A of the Minnesota Statutes, also provide that a director may be removed with or without cause by a majority of the remaining directors if that director was named by the board of directors to fill a vacancy and the shareholders have not elected directors between the time of that appointment and the removal of the director. That is, during any period between the appointment of a director to fill a vacancy and an election of directors by the shareholders, the remaining directors can remove a director for any reason, whether for misconduct or otherwise. This removal power is not the “blue moon scenario” the Proponent describes but, in fact, enables the remaining directors to remove a director when it is in the interest of the Company not to wait until a shareholder meeting to do so. In any other circumstance, shareholders can simply remove a director, with or without cause, including pursuant to a special meeting of shareholders called in accordance with the By-Laws. To the extent the Shareholder Proposal seeks to empower shareholders to remove directors with or without cause, the By-Laws already grant shareholders that power, and the Shareholder Proposal is excludable under Rule 14a-8(i)(10) because it has been substantially implemented.

Although the Proponent's Response Letter indicates that the Proponent also wishes directors to have the authority to remove a director who has been elected by the shareholders, this desire appears inconsistent with the Shareholder Proposal's request that this power be granted to the shareholders. If the Proponent truly desires that the Shareholder Proposal be interpreted to empower directors to remove other directors that shareholders have duly elected, then it is unclear how the Shareholder Proposal is to be implemented without fundamentally altering the rights of shareholders to elect and remove directors. The Shareholder Proposal provides no details on whether it proposes any limits on the power of directors to remove other directors. For example, on its face, the Shareholder Proposal would appear to enable the remaining directors to remove a director, for no reason at all, promptly after the shareholders have elected that director. In its extreme, this aspect of the Shareholder Proposal appears to interfere with the Shareholder Proposal's request that shareholders themselves have the power to remove directors. These potentially conflicting strands of the Shareholder Proposal render it vague and indefinite and excludable under Rule 14a-8(i)(3) and Rule 14a-9 in addition to the reasons described in Section I above.

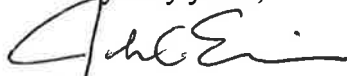
III. Conclusion

For the reasons discussed above, the Company respectfully reiterates its request that the Staff express its intention not to recommend enforcement action if the Shareholder Proposal is excluded from the Company's 2022 Proxy Materials in reliance on Rule 14a-8(i)(3), Rule 14a-9 and Rule 14a-8(i)(10).

If the Staff disagrees with the Company's conclusions regarding omission of the Shareholder Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-3520 or jericson@stblaw.com.

Very truly yours,



John C. Ericson

Enclosures

cc: Todd G. Hartman, Best Buy Co., Inc.
John Chevedden

Exhibit A

Copy of Proponent's Response Letter and Accompanying Correspondence

From: John Chevedden <[REDACTED]>
Sent: Friday, February 4, 2022 6:26 PM
To: Office of Chief Counsel
Cc: Hartman, Todd
Subject: [CAUTION! EXTERNAL] #1 No Action Request Counterpoint `(BBY)
Attachments: 04022022_3.pdf

 **This message is from an external sender and could be a phish.** 

Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED]@bestbuy.com.

Ladies and Gentlemen,
Please see the attached no action request counterpoint.

Sincerely,
John Chevedden

JOHN CHEVEDDEN

February 4, 2022

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

1 Rule 14a-8 Proposal
Best Buy Co., Inc. (BBY)
Right to Remove Directors without Cause
John Chevedden

Ladies and Gentlemen:

This is in regard to the February 4, 2022 no-action request.

Management makes a shaky claim that directors can be removed without cause in 2 out of the 3 scenarios that it describes, therefore 2 out of 3 counts for 100%. And one of the 2 scenarios is a blue moon scenario.

The resolved statement does not call for exceptions. Management is not taking any new action in response to the rule 14a-8 proposal.

Management was told during the February 1, 2022 telephone meeting that "preset" was intended to be "present." It is sad that management did not give full disclosure of the February 1, 2022 telephone meeting concerning a word in the proposal.

Plus the February 1, 2022 telephone meeting was a special accommodation for management following the management waiver of a meeting:

"We acknowledge receipt of your offer to engage, as well as your statement that you have no need for a meeting. As such, we agree there isn't a need to schedule a meeting at this time."

"Olson, Hannah" <[REDACTED]@[REDACTED]>

December 16, 2021

Management did not provide any purported precedent of an excluded proposal due to a misspelling. If management refuses the opportunity to correct the word to "present" the proponent is willing to correct it in a Notice of Exempt Solicitation.

Sincerely,

[REDACTED]
John Chevedden

cc: Todd G. Hartman

[BBY – Rule 14a-8 Proposal, December 5, 2021]
[This line and any line above it is not for publication.]
Proposal 4 –Right to Remove Directors without Cause

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Our preset rule can give job security to a director accused of domestic violence with overwhelming evidence.

Please vote yes:

Right to Remove Directors without Cause – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

JOHN CHEVEDDEN

February 28, 2022

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

2 Rule 14a-8 Proposal
Best Buy Co., Inc. (BBY)
Right to Remove Directors without Cause
John Chevedden

Ladies and Gentlemen:

This is in regard to the February 4, 2022 no-action request.

Purported implementation seems to be an argument that turns against itself. Management seems to say that it is so close to full implementation that it is in favor of stopping on the one-yard line and retreating to the locker room.

Management seems to say that 100% adoption of this proposal would have zero impact on director job security.

Management seems to say that it is important to have a loophole to facilitate a non-performing director or a director engaged in financial fraud or a director who is charged with domestic violence to remain in office for the full length of his term.

Management seems to say that remaining in office for the full length of a director's term is the Holy Grail of good corporate governance.

Sincerely,


John Chevedden

cc: Todd G. Hartman

JOHN CHEVEDDEN

March 14, 2022

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

3 Rule 14a-8 Proposal
Best Buy Co., Inc. (BBY)
Right to Remove Directors without Cause
John Chevedden

Ladies and Gentlemen:

This is in regard to the February 4, 2022 no-action request.

The no action request can at least be called ambitious compared to *Laantheus Holdings, Inc.* (March 11, 2022). Laantheus took action after receiving a rule 14a-8 proposal and still did not receive no action relief.

Best Buy failed to take any action after receiving a rule 14a-8 proposal.

Plus Best Buy acknowledges that there is still room for management to take action in regard to the rule 14a-8 proposal.

Best Buy should at least acknowledge in its proxy under the "Shareholder Engagement" heading that its concept of shareholder engagement is to be aggressive in opposing rule 14a-8 proposals. Or that Best Buy is in favor of a brand of shareholder engagement that excludes its shareholder from voting on well-established rule 14a-8 proposal topics.

Sincerely,


John Chevedden

cc: Todd G. Hartman



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 11, 2022

Stacie S. Aarestad
Foley Hoag LLP

Re: Lantheus Holdings, Inc. (the "Company")
Incoming letter dated December 28, 2021

Dear Ms. Aarestad:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by James McRitchie for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board take the steps necessary to enable shareholders, without limits on group size, to aggregate their shares to equal 3% of the Company's stock owned continuously for three years to enable shareholder proxy access, with such shareholders entitled to nominate a total of 25% of the number of authorized directors rounded down to the nearest whole number.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). We note that after receiving the Proposal, the board amended the Company's bylaws to adopt a new proxy access provision. Due to the differences in the new provision and the Proposal, however, in our view the board's action has not substantially implemented the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

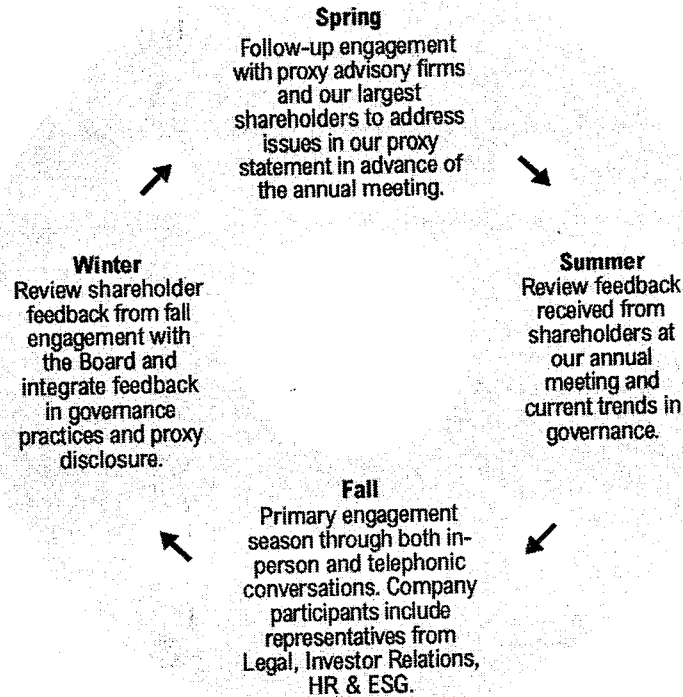
Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

Shareholder Engagement

A key part of our corporate governance program is our annual shareholder engagement process. We regularly engage with our shareholders on a variety of topics throughout the year to ensure we are addressing their questions and concerns, to seek input and to provide perspective on Company policies and practices. Our typical engagement follows a seasonal cycle, as outlined below.



We have taken several actions in prior years in consideration of shareholder feedback elicited during this process, including: the elimination of the supermajority shareholder vote requirements in our Articles, adoption of proxy access, declassification of our Board, the determination to hold the advisory vote on our executive compensation on an annual basis, adjustments to the director appointments on our Board committees, and the development of our corporate social responsibility program and reporting. We also continue to facilitate direct shareholder communication with management and members of our Board and the ability to easily access and obtain information regarding our Company on our website at www.investors.bestbuy.com. Please see the *Executive and Director Compensation — Introduction* section for more information regarding actions taken as a result of shareholder feedback received regarding our prior year's executive compensation decisions.

Environment, Social & Governance

We strive to be a good corporate citizen in all of our interactions with stakeholders, including customers, employees, vendor partners, shareholders, the environment and communities in which we operate. Here are a number of ways that we reflect this approach in the management of the Company's corporate responsibility initiatives:

Company Strategy. We have anchored our strategy around a clear purpose of enriching people's lives through technology. We believe that having our employees focused on our Company's purpose and finding ways to connect it to their individual purpose is a key driver of both performance and sustainability.

COVID-19 Safety Response. In response to the pandemic, the safety of our employees and customers became a top priority. We proactively closed stores at the beginning of the pandemic and then implemented a contactless, curbside-only operating model, and we continue to offer curbside pickup at most stores today. When customers