



DIVISION OF
CORPORATION FINANCE

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

March 12, 2022

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: PepsiCo, Inc. (the "Company")
Incoming letter dated January 3, 2022

Dear Ms. Ising:

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

The Proposal requests that the Company annually issue a transparency report on global public policy and political influence, disclosing company expenditures and activities outside of the United States, including company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations for the preceding year.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(c). In our view, the Proponent has submitted only one 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 C. Harrington
Harrington Investments, Inc.

January 3, 2022

VIA E-MAIL

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

*Re: PepsiCo, Inc.
Shareholder Proposal of John C. Harrington
Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, PepsiCo, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder submission (the “Submission”) and statements in support thereof (the “Supporting Statement”) received from John C. Harrington (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

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THE SUBMISSION

The Submission requests the Company prepare an annual “transparency report on the *global public policy and political influence*, disclosing company expenditures and activities outside of the United States” (emphasis added).

The Submission instructs that the requested disclosure should include both “company funding and in-kind support directed to candidates or electioneering, lobbying, [and] scientific advocacy” as well as “charitable donations.” The disclosure further instructs that the disclosure should report “the Company’s membership in or payments to nongovernmental organizations including trade and business associations [and] scientific or academic organizations” as well as “charities.”

A copy of the Submission and the Supporting Statement, as well as related correspondence with the Proponent, is attached hereto as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Submission may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(c) because the Submission consists of multiple proposals, and, despite proper notice, the Proponent has failed to correct this deficiency.

ANALYSIS

The Submission May Be Excluded Under Rule 14a-8(c) Because The Submission Consists Of Multiple Proposals

A. Submission Background

On November 22, 2021, the Proponent submitted the Submission to the Company via overnight mail, which the Company received on November 24, 2021. After reviewing the Submission, the Company sent a letter to the Proponent (the “Deficiency Notice”) on December 7, 2021, which was within 14 days of the date on which the Submission was received by the Company, notifying the Proponent of the Company’s belief that the Submission contained more than one shareholder proposal in violation of Rule 14a-8(c) and of the Proponent’s obligation to “indicat[e] which proposal [the Proponent] would like to submit and which proposal [the Proponent] would like to withdraw.” A copy of the Deficiency Notice is attached to this letter as Exhibit B.

Specifically, the Deficiency Notice explained that “while parts of the [Submission] relate[] to the Company’s political activities and contributions outside of the United States, we believe

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that the requests in the [Submission] related to the Company's charitable donations and related activities outside of the United States address a separate proposal." See Exhibit B. As of the date of this letter, the Company has not received any correspondence in response to the Deficiency Notice regarding this procedural deficiency.¹

B. Analysis

The Submission may be omitted pursuant to Rule 14a-8(c) because the Proponent has combined two separate and distinct matters into a single proposal in violation of Rule 14a-8(c). The Submission requests that the Company "annually issue a transparency report on global public policy and political influence." Although the Submission is phrased to suggest that the requested disclosure would constitute a single report and requests the same level of disclosure regarding the unrelated topics addressed in the Submission, the Resolved clause of the Submission actually requests two separate reports on two distinct and unrelated topics: (1) a report on the Company's political and lobbying activities and contributions outside of the United States (the "Political Activities Report"); and (2) a report on the Company's "charitable donations" outside of the United States (the "Charitable Contributions Report"). The Company's political and lobbying activities are entirely unrelated to the Company's charitable giving program and policies and its charitable contributions thereunder. Moreover, the Company timely provided the Deficiency Notice stating that the Submission consisted of two proposals and instructing how the Proponent could cure the deficiency. See Exhibit B. Despite receiving the Company's timely and proper Deficiency Notice, the Proponent failed to limit the Submission to a single proposal. Accordingly, the Submission may be excluded under Rule 14a-8(c).

Rule 14a-8(c) provides that a shareholder "may submit no more than one proposal to a company for a particular shareholders' meeting." The Staff has consistently recognized that Rule 14a-8(c) permits the exclusion of proposals combining separate and distinct elements that lack a single well-defined unifying concept, even if the elements are presented as part of a single program and relate to the same general subject matter. For example, in *Textron Inc.* (avail. Mar. 7, 2012, *recon. denied* Mar. 30, 2012), the Staff concurred with the exclusion of a proposal to allow stockholders to make board nominations that would be included in the company's proxy statement. Despite the proponent's framing of the Textron proposal as a list of requirements intended to facilitate stockholder nomination of directors, the Staff concurred that the proposal contained two distinct proposals. The Staff explained that the collateral provision that addressed whether operation of the nomination process would constitute a change of control of the company "constitute[d] a separate and distinct matter

¹ On December 16, 2021, a representative of the Proponent responded to the Company's email containing the Deficiency Notice, but did not respond to or otherwise address the procedural deficiency identified in the Deficiency Notice. See Exhibit C.

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from the proposal relating to the inclusion of [shareholder] nominations for director in Textron’s proxy materials,” and accordingly that the submission was excludable under Rule 14a-8(c). Similarly, in *PG&E Corp.* (avail. Mar. 11, 2010), the Staff concurred with the exclusion of a submission asking that, pending completion of certain studies of a specific power plant site, the company: (i) mitigate potential risks encompassed by those studies; (ii) defer any request for or expenditure of public or corporate funds for license renewal at the site; and (iii) not increase production of certain waste at the site beyond the levels then authorized. Notwithstanding the proponent’s argument that the steps in the proposal would avoid circumvention of state law in the operation of the specific power plant, the Staff specifically noted that “the proposal relating to license renewal involves a separate and distinct matter from the proposals relating to mitigating risks and production level.” *See also General Motors Corp.* (avail. Apr. 9, 2007, *recon. denied* May 15, 2007) (concurring with the exclusion of a submission requesting that the board “seek shareholder approval for the restructuring of the [company]” and detailing several transactions that the restructuring plan should entail, where the company argued that the transaction entailed distinct steps and a variety of elements that are “intended to be independent”).

The Staff has concurred with exclusion of shareholder proposals under Rule 14a-8(c) even in cases where the shareholder’s submission was phrased in terms of a series of specific but separate actions that related to a common theme. For example, in *Parker-Hannifin Corp.* (avail. Sept. 4, 2009), the Staff concurred with the exclusion of a proposal that sought to create a “Triennial Executive Pay Vote” program that consisted of three elements: (i) a triennial executive pay vote to approve the compensation of the company’s executive officers; (ii) a triennial executive pay vote ballot that would provide shareholders an opportunity to register their approval or disapproval of three components of the executives’ compensation; and (iii) a triennial forum that would allow shareholders to comment on and ask questions about the company’s executive compensation policies and practices. The Staff’s response specifically noted that the third part of the proposed program was a “separate and distinct matter” from the first and second parts and, therefore, that all of the proposals could be excluded. *See also American Electric Power Company, Inc.* (avail. Jan. 2, 2001) (concurring with the exclusion of a shareholder proposal that sought to: (i) limit the term of director service; (ii) require at least one board meeting per month; (iii) increase the retainer paid to the company’s directors; and (iv) hold additional special board meetings when requested by the chairman or any other director, where the Staff found that the proposal constituted multiple proposals despite the proponent’s argument that all of the actions were about the “governance of [the company]”); *Duke Energy Corp.* (avail. Feb. 27, 2009) (concurring with the exclusion of a shareholder proposal to impose director qualifications, to limit director pay and to disclose director conflicts of interest, despite the proponent’s claim that all three elements related to “director accountability”); *Morgan Stanley* (avail. Feb. 4, 2009) (concurring with the exclusion of a proposal requesting share ownership guidelines for director candidates, new conflict of interest disclosures and

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restrictions on director compensation, notwithstanding the proponent’s argument that each of those items related to the broad concept of “improving director accountability”); *Centra Software, Inc.* (avail. Mar. 31, 2003) (concurring with the exclusion of a proposal requesting amendments to the bylaws to require separate meetings of the independent directors and that the chairman of the board not be a company officer or employee, where the company argued the proposals would amend “quite different provisions” of the bylaws and were therefore unrelated).

Like the multiple-proposal submissions described in the precedents above, the Submission contains two proposals that request specific and separate actions in violation of Rule 14a-8(c). As discussed above, the Resolved clause of the Submission requests the Company prepare two distinct and separate reports—the Political Activities Report and the Charitable Contributions Report. While the Resolved clause indicates that the Political Activities Report “should disclose company funding and in-kind support directed to candidates or electioneering, lobbying [and] scientific advocacy,” it provides no additional instruction limiting or specifying the categories of “charitable donations” made “outside of the United States” that the Charitable Contributions Report should cover.

Moreover, the Supporting Statement does not unify the two distinct topics of the two reports requested by the Submission. Instead, the Supporting Statement focuses almost exclusively on issues related to the Political Activities Report, including issues related to:

- “corporate advocacy”;
- “company support for scientific *advocacy* intended to shape policy maker perceptions and stall *policymaking, regulations and rule-setting*”;
- “governance of corporate *political activity*”;
- “international disclosures of *corporate political activities*”;
- “corporate *political activity* both in the U.S. and internationally”; and
- “spending to *influence and engage on public policy* outside of the U.S.” (emphases added).

Nowhere does the Supporting Statement explain how a report on the Company’s charitable giving is related to a report on the Company’s political and lobbying activities or why providing additional disclosure regarding charitable contributions would advance the Company’s reputation as “a leader on *political* transparency.” While a company’s support of and contributions to “candidates or electioneering, [or] lobbying” are clearly part of that company’s political and lobbying activities targeted at “public policy and political

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influence,” those activities are wholly unrelated to the company’s charitable giving and other philanthropic activity. Given that these topics are unrelated, providing the disclosure requested by the Submission would necessarily require the preparation of two separate and distinct reports.

Indeed, the Company’s existing disclosures reflect that the disclosure requested by the Submission address two distinct and separate topics. The Company’s website contains extensive disclosure regarding the Company’s public policy engagement, political activities and political contributions,² including providing access to the Company’s Political Contributions Policy,³ lists of its registered lobbyists⁴ and trade associations and policy groups,⁵ as well as detailed reports regarding the Company’s corporate political contributions.⁶ Notably, because the Company’s public policy engagement and political activities are unrelated to the Company’s charitable and philanthropic activities, the Company provides separate reporting regarding its charitable giving on the Company’s website.⁷ The Company’s Philanthropy webpage describes the focus areas for charitable giving by the Company and the PepsiCo Foundation, including, for example, the shared commitment of more than \$71 million to provide access to food and other essential goods for communities around the world as they confront the COVID-19 crisis and the Company’s four key charitable areas of focus—nutrition, water, waste and women’s rights. In addition, the Company discloses data on global citizenship giving by the Company and the PepsiCo Foundation, as well as disbursements by the PepsiCo Foundation.

As demonstrated by the Company’s existing disclosures, preparation of the Political Activities Report would necessarily involve distinct and separate matters from those that would be addressed by the Charitable Contributions Report. Moreover, neither the Submission nor the Supporting Statement articulates the common theme that unifies these

² See Public Policy Engagement, Political Activities and Contributions Guidelines, available at <https://www.pepsico.com/esg-topics-a-z/public-policy-engagement-political-activities-and-contributions-guidelines>.

³ See Political Contributions Policy, available at https://www.pepsico.com/docs/album/esg-topics-policies/pepsico's-political-contributions-policy.pdf?sfvrsn=b08b2cdd_20.

⁴ See 2020 Registered Lobbyists, available at https://www.pepsico.com/docs/album/esg-topics-policies/pepsico-2020-registered-lobbyists.pdf?sfvrsn=afc8609c_4.

⁵ See 2020 Trade Associations and Public Policy Groups, available at https://www.pepsico.com/docs/album/esg-topics-policies/pepsico's-2020-trade-associations-and-policy-groups.pdf?sfvrsn=dcd9b87c_3.

⁶ See PepsiCo, Inc. and Affiliates 2020 Corporate Political Contributions Report, available at https://www.pepsico.com/docs/album/esg-topics-policies/pepsico's-2020-corporate-political-contributions.pdf?sfvrsn=cd83d005_4.

⁷ See Philanthropy, available at <https://www.pepsico.com/sustainability/philanthropy>.

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disparate and unrelated reports. Thus, like the submissions at issue in *Textron, PG&E Corp.* and the other precedent cited above, the Submission requests the Company undertake separate and distinct actions that are unified by a common theme, and because the Proponent failed to limit the Submission to a single proposal after timely and proper notice, the Submission may be excluded under Rule 14a-8(c).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Submission from its 2022 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 shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Alicia Lee, the Company's Senior Counsel, Corporate Governance, at (914) 253-2198.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Alicia Lee, PepsiCo, Inc.
John C. Harrington

EXHIBIT A



November 22, 2021

Corporate Secretary
PepsiCo
700 Anderson Hill Road
Purchase, New York 10577

RE: Shareholder Proposal Submission

Dear Corporate Secretary:

I, John C. Harrington, am filing the enclosed proposal at PepsiCo for the enclosed proposal for inclusion in the 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. I have been a shareholder continuously for over 3 years, since and including November 22, 2018, holding at least \$2,000 in market value and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. The verification of ownership by our custodian, a DTC participant, will be sent separately. I, or a representative, will attend the Annual Meeting to present the resolution as required by SEC rules.

We look forward to having productive conversations with the company. Per SEC requirements, I am available to meet with the company via teleconference on December 9 or December 10 at 10 am PT, respectively. Please direct all future correspondence regarding this proposal to me via the information below on all correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Harrington", is written over a light blue circular stamp or watermark.

John C. Harrington
President and CEO

RESOLVED: Shareholders request that the Company annually issue a transparency report on global public policy and political influence, disclosing company expenditures and activities outside of the United States. Such report should disclose company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations for the preceding year including:

- recipients and amounts;
- date and timeframe of the activity taking place
- the Company's membership in or payments to nongovernmental organizations including trade and business associations, scientific or academic organizations and charities.
- the rationale for these activities.

The Board and management may, in its discretion, establish a de minimis threshold, such as contributions to an individual or organization totaling less than \$250, below which itemized disclosures would not be required.

Supporting statement

Food corporations rely heavily on consumer trust, brand affinity and public goodwill. In today's world, public officials, journalists, NGOs, and even social media can quickly and publicly reveal corporate advocacy that seems remarkably at odds with a company's image, brand or stated values.

In the food industry, a particular vulnerability involves company support for scientific advocacy intended to shape policymaker perceptions and stall policymaking, regulations and rule-setting.¹ Other problematic company-sponsored advocacy efforts may undercut public health policies through national trade associations. For instance, a PepsiCo supported trade association, ConMexico, lobbied the Mexican government to postpone food labeling regulations generating widespread criticism due to negative impacts on public health.² PepsiCo scores low with regards to international disclosures of corporate political activities, according to a recently published transparency index.³

In March 2021, Vanguard cautioned that "poor governance of corporate political activity, coupled with misalignment to a company's stated strategy or a lack of transparency about the activity, can manifest into financial, legal, and reputational risks that can affect long-term value".⁴

In January 2021, our company announced it was "suspending all political contributions while conducting a full review to ensure they align with our company's values and our shared vision

¹ <https://www.corporateaccountability.org/wp-content/uploads/2020/09/Partnership-for-an-unhealthy-planet.pdf>

² <https://ojo-publico.com/1702/mexico-empresas-ponen-de-pretexto-la-pandemia-para-aplazar-etiquetado>

³ https://feedthetruth.org/wp-content/uploads/2021/08/FeedtheTruth_FACT_Index_report_v3.pdf

⁴ https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INVSPOLS_032021.pdf

going forward”⁵. The announcement raised serious concerns for investors regarding our company’s corporate political activity both in the U.S. and internationally.

As a truly global corporation, PepsiCo operates in over 200 countries and territories⁶, with approximately 291,000 global employees.⁷ In 2020, 42 percent of PepsiCo operating profits came from outside the U.S.⁸ While our Company discloses fragmentary information relating to U.S. political activities, spending to influence and engage on public policy outside of the U.S. is even more poorly disclosed.

We urge you to vote in favor of this proposal, and to encourage our company to disclose detailed data on its non-domestic political contributions, lobbying, and support for trade associations, charitable and scientific organizations, thus all corporate political activities. Adopting this resolution would position the corporation globally to be a leader on political transparency.

⁵ <https://www.reuters.com/article/us-usa-trump-pepsico/pepsico-suspends-all-political-contributions-idUSKBN29K1NC>

⁶ <https://www.pepsico.com/about/about-the-company>

⁷ <https://www.statista.com/statistics/536974/pepsico-s-number-of-employees-worldwide/>

⁸ https://www.pepsico.com/docs/album/annual-reports/pepsico-inc-2020-annual-report.pdf?sfvrsn=d25439e4_4

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- To qualify for the Letter rate, the UPS Express Envelope must weigh 8 oz. or less. UPS Express Envelopes weighing more than 8 oz. will be billed by weight.

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EXHIBIT B

From: Lee, Alicia {PEP}
Sent: Tuesday, December 7, 2021 3:05 PM
To: john@harringtoninvestments.com
Cc: Nastanski, Cynthia {PEP} <Cynthia.Nastanski@pepsico.com>; Brianna Harrington <brianna@harringtoninvestments.com>
Subject: PepsiCo

Dear Mr. Harrington,

I am writing on behalf of PepsiCo, Inc., which received on November 24, 2021, the shareholder proposals you submitted for inclusion in PepsiCo's 2022 proxy statement. Please see the attached letter, which we will also send today by UPS overnight mail. Please confirm receipt of this email and the attached letter.

In addition, we wanted to follow up with you on your availability to discuss. We have availability at the following times during the week of December 13:

- Monday, December 13 – 2:00-3:00 or 4:00-5:00pm ET
- Tuesday, December 14 – 12:00-3:00pm or 4:00-5:00pm ET
- Wednesday, December 15 – 1:00-5:00pm ET

Please let us know if any of these times would work. If not, please suggest another time that would be convenient. We look forward to speaking with you.

Best,
Alicia

Alicia Lee
Senior Counsel, Corporate Governance
PepsiCo, Inc.
700 Anderson Hill Road | Purchase | New York | 10577 | USA





700 Anderson Hill Road, Purchase, New York, 10577 www.pepsico.com

ALICIA LEE
SENIOR COUNSEL, CORPORATE GOVERNANCE
[REDACTED]
alicia.lee@pepsico.com

December 7, 2021

VIA OVERNIGHT MAIL AND EMAIL

John Harrington
Harrington Investments, Inc.
[REDACTED]

Dear Mr. Harrington:

I am writing on behalf of PepsiCo, Inc. (the “Company”), which received on November 24, 2021, your shareholder proposals that you submitted on November 22, 2021 pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Shareholders (the “Proposals”).

The Proposals contain certain procedural deficiencies, which SEC regulations require us to bring to your attention. Pursuant to Rule 14a-8(c) under the Exchange Act, a person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting. We believe that the Proposals constitute more than one shareholder proposal. Specifically, while parts of the Proposals relate to the Company’s political activities and contributions outside of the United States, we believe that the requests in the Proposals related to the Company’s charitable donations and related activities outside of the United States address a separate proposal. You can correct this procedural deficiency by indicating which proposal you would like to submit and which proposal you would like to withdraw.

The SEC’s rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 700 Anderson Hill Road, Purchase, NY 10577. Alternatively, you may transmit any response by email to me at alicia.lee@pepsico.com.

If you have any questions with respect to the foregoing, please contact me at [REDACTED]. For your reference, I enclose a copy of Rule 14a-8 as amended for meetings that occur on or after January 1, 2022 but before January 1, 2023.

Sincerely,

A handwritten signature in black ink, appearing to be "Alicia Lee", written in a cursive style.

Alicia Lee
Senior Counsel, Corporate Governance

Enclosure

#427303-1

Rule 14a-8 – Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the

time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you

continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5: What is the deadline for submitting a proposal?* (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?* Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10: What procedures must the company follow if it intends to exclude my proposal?*

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11: May I submit my own statement to the Commission responding to the company's arguments?*

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?*

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?*

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

EXHIBIT C

From: [Brianna Harrington](#)
To: [Lee, Alicia {PEP}](#)
Cc: [Nastanski, Cynthia {PEP}](#); [John Harrington](#); [TJ Faircloth](#); [Ashka Naik](#)
Subject: Re: PepsiCo
Date: Thursday, December 16, 2021 6:38:47 PM
Attachments: [OutlookEmoji-1583537596521d308c494-e9ff-4e7c-87f4-020e59c3a473.png](#)
[PepsiCo.pdf](#)

Good afternoon,

Apologies for the delayed response. We would be happy to speak with you regarding the proposal, but perhaps it would be best for everyone if we waited until after the holidays to coordinate a call. I have included our colleagues, TJ Faircloth and Ashka Naik from Corporate Accountability on this email, as we would like them to be present on the call and included in the discussion and dialogue. We look forward to speaking with you soon and will coordinate a time that works for everyone. Thank you so much - have a safe & healthy holiday season!

Brianna Harrington

Shareholder Advocacy Coordinator
Research Analyst

~

Tel: [REDACTED]

Harrington Investments, Inc.

[REDACTED]

Toll-free: [REDACTED]

Fax: [REDACTED]



<http://harringtoninvestments.com>

oo

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From: Lee, Alicia {PEP} <Alicia.Lee@pepsico.com>

Sent: Tuesday, December 7, 2021 12:05 PM
To: John Harrington:
Cc: Nastanski, Cynthia {PEP}; Brianna Harrington
Subject: PepsiCo

Dear Mr. Harrington,

I am writing on behalf of PepsiCo, Inc., which received on November 24, 2021, the shareholder proposals you submitted for inclusion in PepsiCo's 2022 proxy statement. Please see the attached letter, which we will also send today by UPS overnight mail. Please confirm receipt of this email and the attached letter.

In addition, we wanted to follow up with you on your availability to discuss. We have availability at the following times during the week of December 13:

- Monday, December 13 – 2:00-3:00 or 4:00-5:00pm ET
- Tuesday, December 14 – 12:00-3:00pm or 4:00-5:00pm ET
- Wednesday, December 15 – 1:00-5:00pm ET

Please let us know if any of these times would work. If not, please suggest another time that would be convenient. We look forward to speaking with you.

Best,
Alicia

Alicia Lee

Senior Counsel, Corporate Governance

PepsiCo, Inc.

700 Anderson Hill Road | Purchase | New York | 10577 | USA



SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

VIA ELECTRONIC MAIL

January 21, 2022
OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE
SECURITIES AND EXCHANGE COMMISSION
450 FIFTH STREET, NW
WASHINGTON, DC 20549
shareholderproposals@sec.gov

Re: PepsiCo, Inc.
Stockholder Proposal of John C. Harrington
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

John C. Harrington (the “Proponent”) is the beneficial owner of common stock in PepsiCo Inc., (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated January 3, 2022 (the “Company Letter”) sent to the Securities and Exchange Commission by Elizabeth A. Ising. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being emailed concurrently to Elizabeth A. Ising.

SUMMARY

The Proposal requests that the Company annually issue a transparency report on global public policy and political influence, disclosing company expenditures and activities outside of the United States. The proposal also further elaborates that the report should disclose company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations for the previous year including:

- recipients and amounts.
- date and timeframe of the activity taking place.
- the company’s membership in or payments to nongovernmental organizations including trade and business associations, scientific or academic organizations and charities.
- the rationale for these activities.

The Company contends that the Proposal can be excluded under Rule 14a-8(c) as containing more than one proposal. Rule 14a-8(c) states that a shareholder “may submit no more than one proposal to a company for a particular shareholders’ meeting”. The Company claims that the submission consists of two distinct and unrelated topics. Namely, “(1) a report on the company’s

political and lobbying activities and contributions outside of the United States (“Political Activities Report”); and (2) a report on the Company’s ‘charitable donations’ outside of the United States (“Charitable Contributions Report”).

In fact, the current Proposal was inspired by a the Food and Agriculture Corporations Transparency Index report (cited in the background section of the Proposal) which assessed the manner in which the world’s largest food and agricultural corporations wield power over the rules that govern the food system. The report found that food and agricultural corporations wield power globally through a combination of lobbying, political contributions and support for nonprofit organizations, and that this activity and spending occurs opaque league with little oversight. Even as companies like Pepsi promote a family and environmentally friendly image, they may, behind the scenes spend heavily to block policies that would improve public health and prevent climate change.

The report examined the array of strategies deployed by corporations and rated them on transparency in their global activities. It turns out that philanthropy is a major strategy deployed by many of these companies, including Pepsi, to wield unaccountable influence over public policy. As such, the Company’s international political and charitable contributions are appropriately combined in a single proposal seeking transparency on the range of spending that is geared toward influence and power over public policy. The current proposal therefore presents a single, coherent unified request - seeking a transparency report which asks the Company to disclose international electioneering, lobbying, scientific advocacy and philanthropy. As such, the Proposal does not constitute two separate proposals. It is not excludable under Rule 14a-8(c).

THE PROPOSAL

RESOLVED: Shareholders request that the Company annually issue a transparency report on global public policy and political influence, disclosing company expenditures and activities outside of the United States. Such report should disclose company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations for the preceding year including:

- recipients and amounts;
- date and timeframe of the activity taking place
- the Company’s membership in or payments to nongovernmental organizations including trade and business associations, scientific or academic organizations and charities.
- the rationale for these activities.

The Board and management may, in its discretion, establish a de minimis threshold, such as contributions to an individual or organization totaling less than \$250, below which itemized disclosures would not be required.

Supporting statement

Food corporations rely heavily on consumer trust, brand affinity and public goodwill. In today's world, public officials, journalists, NGOs, and even social media can quickly and publicly reveal corporate advocacy that seems remarkably at odds with a company's image, brand or stated values.

In the food industry, a particular vulnerability involves company support for scientific advocacy intended to shape policymaker perceptions and stall policy-making, regulations and rule-setting.¹ Other problematic company-sponsored advocacy efforts may undercut public health policies through national trade associations. For instance, a PepsiCo supported trade association, ConMexico, lobbied the Mexican government to postpone food labeling regulations generating widespread criticism due to negative impacts on public health.²

PepsiCo scores low with regards to international disclosures of corporate political activities, according to a recently published transparency index.³

In March 2021, Vanguard cautioned that “poor governance of corporate political activity, coupled with misalignment to a company's stated strategy or a lack of transparency about the activity, can manifest into financial, legal, and reputational risks that can affect long-term value”.⁴

In January 2021, our company announced it was “suspending all political contributions while conducting a full review to ensure they align with our company's values and our shared vision going forward”⁵. The announcement raised serious concerns for investors regarding our company's corporate political activity both in the U.S. and internationally.

As a truly global corporation, PepsiCo operates in over 200 countries and territories⁶, with approximately 291,000 global employees.⁷ In 2020, 42 percent of PepsiCo operating profits came from outside the U.S.⁸ While our Company discloses fragmentary information relating to U.S. political activities, spending to influence and engage on public policy outside of the U.S. is even more poorly disclosed.

We urge you to vote in favor of this proposal, and to encourage our company to disclose detailed data on its non-domestic political contributions, lobbying, and support for trade associations, charitable and scientific organizations, thus all corporate political activities. Adopting this resolution would position the corporation globally to be a leader on political transparency.

¹ <https://www.corporateaccountability.org/wp-content/uploads/2020/09/Partnership-for-an-unhealthy-planet.pdf>

² (SNOTE_LABEL) <https://ojo-publico.com/1702/mexico-empresas-ponen-de-pretexto-la-pandemia-para-aplazar-etiquetado>

³ https://feedthetruth.org/wp-content/uploads/2021/08/FeedtheTruth_FACT_Index_report_v3.pdf

⁴ https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INVSPOLS_032021.pdf

⁵ <https://www.reuters.com/article/us-usa-trump-pepsico/pepsico-suspends-all-political-contributions-idUSKBN29K1NC>

⁶ <https://www.pepsico.com/about/about-the-company>

⁷ <https://www.statista.com/statistics/536974/pepsico-s-number-of-employees-worldwide/>

⁸ https://www.pepsico.com/docs/album/annual-reports/pepsico-inc-2020-annual-report.pdf?sfvrsn=d25439e4_4

BACKGROUND

Food & Agriculture Corporate Transparency (FACT) Index is a report published by a nongovernmental organization that reviews the range of activities of food and agricultural corporations' spending and influence activities worldwide, including the extent of transparency or opacity of corporate practices in the sector.



The report notes:

The world's largest food and agriculture corporations have enormous power and control over virtually every aspect of our food system—and the rules that govern it. Big Food corporations wield this power in the political arena to their advantage using a variety of tactics—from lobbying policymakers and funding political campaigns to funding research and nonprofit organizations to support their policy agendas—and they do so opaquely and with little oversight. This lack of transparency means that corporations can sell us a family-, worker-, and environmentally-friendly image even as they spend heavily to block policies that would improve public health, cut down on inequality and poverty, and help prevent the climate breakdown. But the lack of transparency around corporations' political activities isn't just bad for people and the planet; it's bad for business. Just as the public is increasingly demanding to know what's in their food, they are also asking more and more critical questions about the corporations behind the cereal, soda, and hamburgers they buy. Investors are

also taking note. Political spending that conflicts with corporations' stated values or publicly-held positions endangers brand reputations, putting investors money at risk. As one of the world's largest investors, Vanguard, recently cautioned, "poor governance of corporate political activity, coupled with...a lack of transparency about the activity, can manifest into financial, legal, and reputational risks that can affect long-term value."

The FACT Index examines four dimensions of political giving that are used most heavily by food and agriculture corporations to block, shape, and control policymaking: (1) lobbying; (2) spending on elections, political campaigns, and ballot measures; (3) funding of scientific research; and (4) philanthropic contributions. Corporations were assessed on a scale of zero to 100 based on the extent of what they publicly disclose of their spending and activity across these four dimensions. This multidimensional view and the global scope of the analysis help to provide a broader picture of these corporations' political transparency.

The report discusses the range of global corporate influence strategies that currently lack transparency and rates companies according to their transparency. To create a complete picture of corporate transparency on public policy influence, the authors found it necessary to combine traditional "political" and lobbying spending with the important roles that funding of scientific advocacy organizations and other forms of philanthropy can play in corporate influence over public policy.

Criterion: Lobbying

| DIRECT LOBBYING SPENDING | | |
|---|--------|---|
| Question | Points | Scoring |
| 13 Does the corporation publicly disclose the amount it has spent on lobbying activities and what it has lobbied for or against in the US? | 6 | 0 = no disclosure Additional points: 1 point awarded for partial disclosure of lobbying \$ OR 2 points awarded for full disclosure of lobbying \$ 1 point awarded for partial disclosure of what it has lobbied on (e.g. issues or disclosure for only some issues) OR 2 points awarded for full disclosure for what it has lobbied on 1 point awarded for partial disclosure for what it has lobbied for (i.e. not just the issue, but also whether it lobbied for against it OR 2 awarded points for full disclosure OR 6 points awarded for a policy that prohibits any lobbying activity |
| 14 Does the corporation publicly disclose the amount it has spent on lobbying activities and what it has lobbied for or against outside the US? | 6 | 0 = no disclosure Additional points: 1 point awarded for partial disclosure of lobbying \$ OR 2 points awarded for full disclosure of lobbying \$ 1 point awarded for partial disclosure of what it has lobbied on (e.g. issues or disclosure for only some issues) OR 2 points awarded for full disclosure for what it has lobbied on 1 point awarded for partial disclosure for what it has lobbied for (i.e. not just the issue, but also whether it lobbied for against it OR 2 awarded points for full disclosure OR 6 points awarded for a policy that prohibits any lobbying activity |

Criterion: Science

| Question | Points | Scoring |
|---|--------|---|
| 21 Does the corporation publicly disclose its funding of scientific research, including the amount it has contributed, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
| 22 Does the corporation publicly disclose its donations to academic or research institutions, including a recipient list and the amount contributed, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
| 23 Does the corporation publicly disclose its partnerships with academic or research institutions, including the amount it has spent on the partnerships? | 4 | 0 = no disclosure 1 = partial partnership list with no \$ amounts 2 = full partnership list 3 = full partnership list or partial partnership list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
| 24 Does the corporation publicly disclose its funding of scientific, agricultural associations or professional associations with health professionals, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |

The report notes, however, that funding of scientific advocacy, whether funded through nongovernmental organizations or academia, can be an important element of influence by these food and agricultural corporations:

Corporate scientific activities are designed to manufacture and influence an evidence base which is used to create a favorable regulatory environment for corporations and their products. For instance, Cargill, Unilever, Pepsi, and Coca-Cola have all funded the global industry lobby group ILSI (International Life Sciences Institute) to produce research that has helped slow, or stall altogether, public health policy from

India to Mexico, China to Brazil. Through this category we can also get a view into how food corporations attempt to mislead public discourse to secure more favorable policy outcomes.

The report notes that philanthropy/charity is important as an element of disclosure because it can provide:

a window into what food corporations are doing to purchase favor from potential critics and win favor from policymakers. Economists recently estimated that as much as \$1 billion a year of corporate philanthropy is used to sway congressional representatives in the U.S.—more than double the amount spent on contributions from political action committees (PAC). Researchers concluded that, “[a]bsent of disclosure requirements, charitable giving may be a form of corporate political influence undetected by voters and subsidized by taxpayers.” Charity is also a means for corporations to create a halo around their brand(s), obscure their liabilities, and otherwise deflect regulation. One example of this is how Tyson’s claims that its corporate grantmaking addresses the most important risks facing the communities it operates in as it faces allegations that it knowingly risked the health and lives of employees working in its plants.

Criterion: Charity

| Question | Points | Scoring |
|--|--------|---|
| 19 Does the corporation publicly disclose a list of organizations to which it has made charitable contributions in the US and the amounts given, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
| 20 Does the corporation publicly disclose a list of organizations to which it has made charitable contributions outside the US and the amounts given, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |

As the article “Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence” highlights, companies routinely funnel donations to politicians under the guise of charitable giving⁹. For example, as the article describes, Walmart funneled thousands of dollars to former U.S. representative Joe Baca through donations to his ‘Joe Baca Foundation’ while he served on

⁹ See *Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence*. *American Economic Review* 2020, 110(7): 2065–2102 <https://doi.org/10.1257/aer.20180615>

the Financial Services Committee under the guise of charitable giving rather than classify the funding for what it was, domestic political lobbying efforts.

Moreover, even the Company itself has engaged in this sort of quasi-political, charitable giving. In 2010, the New York Times reported that the nonprofit Save the Children, which previously pushed for soda tax campaigns to curb childhood obesity, announced that they would “no longer support efforts to tax soft drinks”. This announcement came only after they had received a \$5 million grant from the PepsiCo foundation for their work in India and Bangladesh. This is exactly the type of in-kind giving that the report seeks disclosure of. This type of contribution served both as a philanthropic effort to fund international relief work, and also a means through which political pressure applied by Save the Children on the soft drink industry could be relieved.

The FACT index reports that as much as \$1 billion is spent annually on corporate philanthropy with political ends. Furthermore, the article “Tax-Exempt Lobbying” estimates that 6.3 percent of corporate charity may be politically motivated.

A single transparent report on international spending and in-kind support for electioneering, lobbying, and scientific advocacy seeks to provide illumination for shareholders, and prevent or dissuade this sort of shadowy corporate behavior. Additional disclosures regarding the Company’s charitable and political contributions and in-kind giving would enable shareholders to know if these general trends are consistent with the Company’s own charitable endeavors, while also shedding light on the Company’s public policy goals.

From the standpoint of investors concerned about a company’s ESG profile, or its relationship to its stakeholders, the lack of transparency of these practices raises multiple concerns. These activities, when they do come to light, are often a reputational hazard to the companies that are undercutting public health policy under the cover of corporate opacity. To the extent that companies like Pepsi are undercutting proactive public health policies such as discouragement of consumption of sugar and junk food, whether they are doing so through lobbying or through charitable contributions, they are posing a systemic risk to society, one that diversified investors of all sizes should find of interest and concern.

The current Proposal provides an opportunity to ask the Company to be transparent on the full range of opaque public influence identified by the researchers.

ANALYSIS

I. THE COMPANY HAS FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14a-8(c)

Rule 14a-8(c) provides that a shareholder may submit only one shareholder proposal for consideration at any given annual shareholders meeting. *See* 17 C.F.R. . The company contends that the Proposal does not comply with the one proposal limitation because it alleges that the proposal contains two distinct proposals.

A. *The Proposal Is a Single Proposal with More Than One Element*

Contrary to the Company position, Staff precedent is clear. A single proposal may contain multiple elements without violating Rule 14a-8(c) so long as the elements are “closely related and essential to a single well-defined unifying concept.” *See, e.g., AT&T Wireless Services, Inc.* (avail. Feb. 11, 2004). Additionally, exclusion under Rule 14a-8(c) is permitted *only* where the proposal at issue deals with “separate and distinct matters” and lacks a unifying concept. *See Marathon Petroleum Corp.* (avail Feb. 17, 2017). Here, the multiple elements of the proposal at issue, as in *AT&T Wireless Services*, are “closely related and essential to a single well-defined unifying concept.”

As demonstrated by the FACT report described in the background section of this letter, the issue of corporate influence on public policy, that is a unifying theme in the proposal, and the need for transparency especially on expenditures outside of the US, is a clear and coherent concept for an annual transparency report.

The elements within the Proposal, including company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations, relate back to this specific, and well-defined unifying annual international transparency report concept.

At its core, the Proposal’s report simply seeks Company disclosure of the multiple elements that comprise the Company’s overall expenditures and activities outside of the United States in order to paint a transparent and more wholistic understanding for shareholders.

In its letter, the Company seeks to create an artificial distinction between charitable contributions and political spending, arguing that each are so different that they cannot be grouped or reported together. As we have highlighted above, this ignores the overlap and often shared objectives that political contributions and charitable giving often have - influence over public policy and stakeholders.

The attempt to create an artificial distinction between the various elements ignores the unifying concept behind the Proposal. As Staff precedent in *Marathon Petroleum Corp.* details, exclusion under Rule 14a-8(c) is only permissible where the proposal at issue deals with “separate and distinct matters” and lacks a unifying concept. Here, as we have highlighted, the common overlap between charitable giving and political contributions show that these elements are unified in the manner in which they are utilized as tools of influence on public policy worldwide.

Staff precedent also clarifies that a Proposal with separate elements qualifies as a single proposal where the separate elements are sequential, interdependent, or otherwise linked, and together achieve a combined purpose. *See Safeway Inc.* (avail. Mar. 17, 2010) where Staff rejected the argument that a proposal was excludable because it contained six different elements and where the company claimed each element would require the board to engage in separate and distinct actions, ranging from lobbying efforts to creating a market to reduce carbon emissions to providing incentives in other countries to combat global warming. In that instance, Staff found that the company could not omit the proposal from the proxy materials under Rule 14a-8(c) and that “In our view, the proponent has submitted only one proposal.”

Here, based on the analysis in the FACT report, transparency of the Company’s public influence practices will be incomplete without transparency into the range of company expenditures and activities highlighted in the proposal.

The Precedents Do Not Support the Company’s Position

The Company principally cites precedent from *Textron Inc.* (Avail. Mar. 7, 2012, *recon. Denied* Mar. 30, 2012). However, that precedent does not accurately apply to this situation. There, Staff found that a collateral provision regarding change of control of the company ‘constituted a separate and distinct matter from the proposals relating to the inclusion of nominations for director’. Here, no such collateral provision creates a separate and distinct matter.

The Company also cites *General Motors Corp.* (avail. Apr. 9, 2007, *recon. Denied* May 15, 2007) where Staff excluded a proposal requesting that the board “seek shareholder approval for the restructuring of the company” and detailed several transactions that the restructuring plan should entail. However, again, this present Proposal differs greatly from the proposal in *General Motors*. There, the proposal sought two different objectives, first a restructuring, and then transactions that would follow the restructuring. Here, there is no such second step.

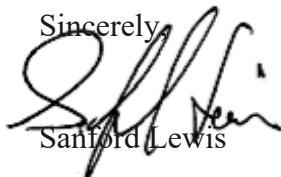
The Company also cites *PG&E Corp.* (avail. Mar. 11, 2010) as another controlling precedent. In that case however, the proposal in question sought to require the company completion of certain studies of a specific power plant site, attempted to mitigate potential risks encompassed by those studies, defer requests for or expenditures of public or corporate funds for license renewal at the site, and prevent increases in the production of certain waste at the site beyond the levels then authorized. In that ruling, Staff specifically held that the proposal constituted separate and distinct matters because the proposal sought to both mitigate certain risks and production levels as well as address the issues relating to the plant’s license renewal. The Company Letter repeatedly cites Staff precedents where the proposals at issue sought to require the companies in question to conduct multiple and separate actions.

The Proposal only requests the company take a single action, to create a single transparency report for shareholders on topics that are well-unified under the umbrella of corporate transparency on influence over public policy and stakeholders. This is a single proposal and therefore cannot be excluded under Rule 14a-8(c).

CONCLUSION

Based on the forgoing, we believe the Company has provided no basis for the conclusion that the Proposal be excludable from the 2022 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written over the printed name.

Sanford Lewis

February 18, 2022

VIA E-MAIL

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

*Re: PepsiCo, Inc.
Supplemental Letter Regarding Shareholder Proposal of John C.
Harrington
Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

On January 3, 2022, we submitted a letter (the “No-Action Request”) on behalf of our client, PepsiCo, Inc. (the “Company”), to inform the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder submission (the “Submission”) and statements in support thereof (the “Supporting Statement”) received from John C. Harrington (the “Proponent”). The No-Action Request sets forth the basis for our view that the Submission may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(c) because the Submission requests two separate reports on two distinct and unrelated topics, and, despite proper notice, the Proponent failed to correct this deficiency.

This supplemental letter responds to a letter dated January 21, 2022 received from the Proponent’s representative, Sanford J. Lewis, in response to the No-Action Request (the “Response Letter”), a copy of which is attached hereto as Exhibit S-1.

In the Response Letter, the Proponent’s representative characterizes the Submission’s requests as “disclosure of the multiple elements that comprise the Company’s overall expenditures and activities outside of the United States.” The Proponent’s representative further argues that the Submission does not consist of multiple proposals because the Submission’s two disparate and unrelated requests—the first for a report on the Company’s political activities and contributions outside of the United States and the

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second for a report on the Company's charitable donations and related activities outside of the United States—are unified by the theme of an “annual international transparency report concept.” In support of this claim, the Response Letter relies on the Food & Agriculture Corporate Transparency Index (the “FACT Index”), which, according to the Response Letter, “combine[s] traditional ‘political’ and lobbying spending” with other activities that the authors of the FACT Index believe may influence public policy.

Contrary to the Response Letter's claims, the Company's political and lobbying activities are entirely unrelated to the Company's charitable giving program and policies and its charitable contributions thereunder. As explained in the No-Action Request, the Company's existing disclosures demonstrate that the disclosure requested by the Submission addresses two distinct and separate topics. The Company's website contains extensive disclosure regarding the Company's public policy engagement, political activities and political contributions. Because the Company's public policy engagement and political activities are unrelated to the Company's charitable and philanthropic activities, the Company provides separate reporting regarding charitable giving by the Company and the PepsiCo Foundation on the Company's website.

Neither the Submission nor the Supporting Statement explain how one of the “multiple elements” of the requested reports, the Company's charitable giving program, is related to the other elements. Instead of unifying the two distinct topics of the two requested reports, the Supporting Statement focuses again and again on corporate political activity and political influence, without explaining how a report on the Company's charitable giving is related to a report on the Company's political and lobbying activities.

Moreover, the existence of the FACT Index is insufficient to demonstrate that the two separate and distinct reports requested by the Submission are actually unified by a common theme articulated in the Submission and the Supporting Statement. Notably, the Proposal's sole reference to the FACT Index indicates characterizes the index as having assessed the Company's “international disclosures of *corporate political activities*” (emphasis added) without reference to the Company's separate charitable giving program and policies. While the FACT Index may take the view that a company's charitable contributions constitute “corporate influence activities,” it does not alter the fact that the Submission asks the Company to issue reports on two separate and unrelated topics. Indeed, the Response Letter appears to acknowledge the bifurcated nature of the Submission's requests, which the Response Letter describes as “[a] single transparent report on international spending and in-kind support for electioneering, lobbying, and scientific advocacy” supplemented by “additional disclosures” regarding the Company's charitable giving program.

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Accordingly, because the Submission requests the Company undertake separate and distinct actions that are not unified by a common theme, and because the Proponent failed to limit the Submission to a single proposal after timely and proper notice, we continue to believe that the Submission may be properly excluded under Rule 14a-8(c).

Based upon the foregoing and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Submission from its 2022 Proxy Materials. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Alicia Lee, the Company's Senior Counsel, Corporate Governance, at (914) 253-2198.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Alicia Lee, PepsiCo, Inc.
John C. Harrington
Sanford J. Lewis

EXHIBIT S-1

SANFORD J. LEWIS, ATTORNEY



VIA ELECTRONIC MAIL

January 21, 2022
OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE
SECURITIES AND EXCHANGE COMMISSION
450 FIFTH STREET, NW
WASHINGTON, DC 20549
shareholderproposals@sec.gov

Re: PepsiCo, Inc.
Stockholder Proposal of John C. Harrington
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

John C. Harrington (the “Proponent”) is the beneficial owner of common stock in PepsiCo Inc., (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated January 3, 2022 (the “Company Letter”) sent to the Securities and Exchange Commission by Elizabeth A. Ising. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being emailed concurrently to Elizabeth A. Ising.

SUMMARY

The Proposal requests that the Company annually issue a transparency report on global public policy and political influence, disclosing company expenditures and activities outside of the United States. The proposal also further elaborates that the report should disclose company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations for the previous year including:

- recipients and amounts.
- date and timeframe of the activity taking place.
- the company’s membership in or payments to nongovernmental organizations including trade and business associations, scientific or academic organizations and charities.
- the rationale for these activities.

The Company contends that the Proposal can be excluded under Rule 14a-8(c) as containing more than one proposal. Rule 14a-8(c) states that a shareholder “may submit no more than one proposal to a company for a particular shareholders’ meeting”. The Company claims that the submission consists of two distinct and unrelated topics. Namely, “(1) a report on the company’s

political and lobbying activities and contributions outside of the United States (“Political Activities Report”); and (2) a report on the Company’s ‘charitable donations’ outside of the United States (“Charitable Contributions Report”).

In fact, the current Proposal was inspired by a the Food and Agriculture Corporations Transparency Index report (cited in the background section of the Proposal) which assessed the manner in which the world’s largest food and agricultural corporations wield power over the rules that govern the food system. The report found that food and agricultural corporations wield power globally through a combination of lobbying, political contributions and support for nonprofit organizations, and that this activity and spending occurs opaque league with little oversight. Even as companies like Pepsi promote a family and environmentally friendly image, they may, behind the scenes spend heavily to block policies that would improve public health and prevent climate change.

The report examined the array of strategies deployed by corporations and rated them on transparency in their global activities. It turns out that philanthropy is a major strategy deployed by many of these companies, including Pepsi, to wield unaccountable influence over public policy. As such, the Company’s international political and charitable contributions are appropriately combined in a single proposal seeking transparency on the range of spending that is geared toward influence and power over public policy. The current proposal therefore presents a single, coherent unified request - seeking a transparency report which asks the Company to disclose international electioneering, lobbying, scientific advocacy and philanthropy. As such, the Proposal does not constitute two separate proposals. It is not excludable under Rule 14a-8(c).

THE PROPOSAL

RESOLVED: Shareholders request that the Company annually issue a transparency report on global public policy and political influence, disclosing company expenditures and activities outside of the United States. Such report should disclose company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations for the preceding year including:

- recipients and amounts;
- date and timeframe of the activity taking place
- the Company’s membership in or payments to nongovernmental organizations including trade and business associations, scientific or academic organizations and charities.
- the rationale for these activities.

The Board and management may, in its discretion, establish a de minimis threshold, such as contributions to an individual or organization totaling less than \$250, below which itemized disclosures would not be required.

Supporting statement

Food corporations rely heavily on consumer trust, brand affinity and public goodwill. In today's world, public officials, journalists, NGOs, and even social media can quickly and publicly reveal corporate advocacy that seems remarkably at odds with a company's image, brand or stated values.

In the food industry, a particular vulnerability involves company support for scientific advocacy intended to shape policymaker perceptions and stall policy-making, regulations and rule-setting.¹ Other problematic company-sponsored advocacy efforts may undercut public health policies through national trade associations. For instance, a PepsiCo supported trade association, ConMexico, lobbied the Mexican government to postpone food labeling regulations generating widespread criticism due to negative impacts on public health.²

PepsiCo scores low with regards to international disclosures of corporate political activities, according to a recently published transparency index.³

In March 2021, Vanguard cautioned that “poor governance of corporate political activity, coupled with misalignment to a company's stated strategy or a lack of transparency about the activity, can manifest into financial, legal, and reputational risks that can affect long-term value”.⁴

In January 2021, our company announced it was “suspending all political contributions while conducting a full review to ensure they align with our company's values and our shared vision going forward”⁵. The announcement raised serious concerns for investors regarding our company's corporate political activity both in the U.S. and internationally.

As a truly global corporation, PepsiCo operates in over 200 countries and territories⁶, with approximately 291,000 global employees.⁷ In 2020, 42 percent of PepsiCo operating profits came from outside the U.S.⁸ While our Company discloses fragmentary information relating to U.S. political activities, spending to influence and engage on public policy outside of the U.S. is even more poorly disclosed.

We urge you to vote in favor of this proposal, and to encourage our company to disclose detailed data on its non-domestic political contributions, lobbying, and support for trade associations, charitable and scientific organizations, thus all corporate political activities. Adopting this resolution would position the corporation globally to be a leader on political transparency.

¹ <https://www.corporateaccountability.org/wp-content/uploads/2020/09/Partnership-for-an-unhealthy-planet.pdf>

² (SNOTE_LABEL) <https://ojo-publico.com/1702/mexico-empresas-ponen-de-pretexto-la-pandemia-para-aplazar-etiquetado>

³ https://feedthetruth.org/wp-content/uploads/2021/08/FeedtheTruth_FACT_Index_report_v3.pdf

⁴ https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INVSPOLS_032021.pdf

⁵ <https://www.reuters.com/article/us-usa-trump-pepsico/pepsico-suspends-all-political-contributions-idUSKBN29K1NC>

⁶ <https://www.pepsico.com/about/about-the-company>

⁷ <https://www.statista.com/statistics/536974/pepsico-s-number-of-employees-worldwide/>

⁸ https://www.pepsico.com/docs/album/annual-reports/pepsico-inc-2020-annual-report.pdf?sfvrsn=d25439e4_4

BACKGROUND

Food & Agriculture Corporate Transparency (FACT) Index is a report published by a nongovernmental organization that reviews the range of activities of food and agricultural corporations' spending and influence activities worldwide, including the extent of transparency or opacity of corporate practices in the sector.



The report notes:

The world's largest food and agriculture corporations have enormous power and control over virtually every aspect of our food system—and the rules that govern it. Big Food corporations wield this power in the political arena to their advantage using a variety of tactics—from lobbying policymakers and funding political campaigns to funding research and nonprofit organizations to support their policy agendas—and they do so opaquely and with little oversight. This lack of transparency means that corporations can sell us a family-, worker-, and environmentally-friendly image even as they spend heavily to block policies that would improve public health, cut down on inequality and poverty, and help prevent the climate breakdown. But the lack of transparency around corporations' political activities isn't just bad for people and the planet; it's bad for business. Just as the public is increasingly demanding to know what's in their food, they are also asking more and more critical questions about the corporations behind the cereal, soda, and hamburgers they buy. Investors are

also taking note. Political spending that conflicts with corporations' stated values or publicly-held positions endangers brand reputations, putting investors money at risk. As one of the world's largest investors, Vanguard, recently cautioned, "poor governance of corporate political activity, coupled with...a lack of transparency about the activity, can manifest into financial, legal, and reputational risks that can affect long-term value."

The FACT Index examines four dimensions of political giving that are used most heavily by food and agriculture corporations to block, shape, and control policymaking: (1) lobbying; (2) spending on elections, political campaigns, and ballot measures; (3) funding of scientific research; and (4) philanthropic contributions. Corporations were assessed on a scale of zero to 100 based on the extent of what they publicly disclose of their spending and activity across these four dimensions. This multidimensional view and the global scope of the analysis help to provide a broader picture of these corporations' political transparency.

The report discusses the range of global corporate influence strategies that currently lack transparency and rates companies according to their transparency. To create a complete picture of corporate transparency on public policy influence, the authors found it necessary to combine traditional "political" and lobbying spending with the important roles that funding of scientific advocacy organizations and other forms of philanthropy can play in corporate influence over public policy.

Criterion: Lobbying

| DIRECT LOBBYING SPENDING | | |
|---|--------|---|
| Question | Points | Scoring |
| 13 Does the corporation publicly disclose the amount it has spent on lobbying activities and what it has lobbied for or against in the US? | 6 | 0 = no disclosure Additional points: 1 point awarded for partial disclosure of lobbying \$ OR 2 points awarded for full disclosure of lobbying \$ 1 point awarded for partial disclosure of what it has lobbied on (e.g. issues or disclosure for only some issues) OR 2 points awarded for full disclosure for what it has lobbied on 1 point awarded for partial disclosure for what it has lobbied for (i.e. not just the issue, but also whether it lobbied for against it OR 2 awarded points for full disclosure OR 6 points awarded for a policy that prohibits any lobbying activity |
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Criterion: Science

| Question | Points | Scoring |
|---|--------|---|
| 21 Does the corporation publicly disclose its funding of scientific research, including the amount it has contributed, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
| 22 Does the corporation publicly disclose its donations to academic or research institutions, including a recipient list and the amount contributed, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
| 23 Does the corporation publicly disclose its partnerships with academic or research institutions, including the amount it has spent on the partnerships? | 4 | 0 = no disclosure 1 = partial partnership list with no \$ amounts 2 = full partnership list 3 = full partnership list or partial partnership list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
| 24 Does the corporation publicly disclose its funding of scientific, agricultural associations or professional associations with health professionals, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |

The report notes, however, that funding of scientific advocacy, whether funded through nongovernmental organizations or academia, can be an important element of influence by these food and agricultural corporations:

Corporate scientific activities are designed to manufacture and influence an evidence base which is used to create a favorable regulatory environment for corporations and their products. For instance, Cargill, Unilever, Pepsi, and Coca-Cola have all funded the global industry lobby group ILSI (International Life Sciences Institute) to produce research that has helped slow, or stall altogether, public health policy from

India to Mexico, China to Brazil. Through this category we can also get a view into how food corporations attempt to mislead public discourse to secure more favorable policy outcomes.

The report notes that philanthropy/charity is important as an element of disclosure because it can provide:

a window into what food corporations are doing to purchase favor from potential critics and win favor from policymakers. Economists recently estimated that as much as \$1 billion a year of corporate philanthropy is used to sway congressional representatives in the U.S.—more than double the amount spent on contributions from political action committees (PAC). Researchers concluded that, “[a]bsent of disclosure requirements, charitable giving may be a form of corporate political influence undetected by voters and subsidized by taxpayers.” Charity is also a means for corporations to create a halo around their brand(s), obscure their liabilities, and otherwise deflect regulation. One example of this is how Tyson’s claims that its corporate grantmaking addresses the most important risks facing the communities it operates in as it faces allegations that it knowingly risked the health and lives of employees working in its plants.

Criterion: Charity

| Question | Points | Scoring |
|--|--------|---|
| 19 Does the corporation publicly disclose a list of organizations to which it has made charitable contributions in the US and the amounts given, including recipient names and amounts given? | 4 | 0 = no disclosure 1 = partial recipient list with no \$ amounts 2 = full list 3 = full list or partial list with \$ amounts 4 = full itemized list with amounts given to each OR explicit policy that prohibits this type of activity |
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As the article “Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence” highlights, companies routinely funnel donations to politicians under the guise of charitable giving⁹. For example, as the article describes, Walmart funneled thousands of dollars to former U.S. representative Joe Baca through donations to his ‘Joe Baca Foundation’ while he served on

⁹ See *Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence*. *American Economic Review* 2020, 110(7): 2065–2102 <https://doi.org/10.1257/aer.20180615>

the Financial Services Committee under the guise of charitable giving rather than classify the funding for what it was, domestic political lobbying efforts.

Moreover, even the Company itself has engaged in this sort of quasi-political, charitable giving. In 2010, the New York Times reported that the nonprofit Save the Children, which previously pushed for soda tax campaigns to curb childhood obesity, announced that they would “no longer support efforts to tax soft drinks”. This announcement came only after they had received a \$5 million grant from the PepsiCo foundation for their work in India and Bangladesh. This is exactly the type of in-kind giving that the report seeks disclosure of. This type of contribution served both as a philanthropic effort to fund international relief work, and also a means through which political pressure applied by Save the Children on the soft drink industry could be relieved.

The FACT index reports that as much as \$1 billion is spent annually on corporate philanthropy with political ends. Furthermore, the article “Tax-Exempt Lobbying” estimates that 6.3 percent of corporate charity may be politically motivated.

A single transparent report on international spending and in-kind support for electioneering, lobbying, and scientific advocacy seeks to provide illumination for shareholders, and prevent or dissuade this sort of shadowy corporate behavior. Additional disclosures regarding the Company’s charitable and political contributions and in-kind giving would enable shareholders to know if these general trends are consistent with the Company’s own charitable endeavors, while also shedding light on the Company’s public policy goals.

From the standpoint of investors concerned about a company’s ESG profile, or its relationship to its stakeholders, the lack of transparency of these practices raises multiple concerns. These activities, when they do come to light, are often a reputational hazard to the companies that are undercutting public health policy under the cover of corporate opacity. To the extent that companies like Pepsi are undercutting proactive public health policies such as discouragement of consumption of sugar and junk food, whether they are doing so through lobbying or through charitable contributions, they are posing a systemic risk to society, one that diversified investors of all sizes should find of interest and concern.

The current Proposal provides an opportunity to ask the Company to be transparent on the full range of opaque public influence identified by the researchers.

ANALYSIS

I. THE COMPANY HAS FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14a-8(c)

Rule 14a-8(c) provides that a shareholder may submit only one shareholder proposal for consideration at any given annual shareholders meeting. *See* 17 C.F.R. . The company contends that the Proposal does not comply with the one proposal limitation because it alleges that the proposal contains two distinct proposals.

A. *The Proposal Is a Single Proposal with More Than One Element*

Contrary to the Company position, Staff precedent is clear. A single proposal may contain multiple elements without violating Rule 14a-8(c) so long as the elements are “closely related and essential to a single well-defined unifying concept.” *See, e.g., AT&T Wireless Services, Inc.* (avail. Feb. 11, 2004). Additionally, exclusion under Rule 14a-8(c) is permitted *only* where the proposal at issue deals with “separate and distinct matters” and lacks a unifying concept. *See Marathon Petroleum Corp.* (avail Feb. 17, 2017). Here, the multiple elements of the proposal at issue, as in *AT&T Wireless Services*, are “closely related and essential to a single well-defined unifying concept.”

As demonstrated by the FACT report described in the background section of this letter, the issue of corporate influence on public policy, that is a unifying theme in the proposal, and the need for transparency especially on expenditures outside of the US, is a clear and coherent concept for an annual transparency report.

The elements within the Proposal, including company funding and in-kind support directed to candidates or electioneering, lobbying, scientific advocacy, and charitable donations, relate back to this specific, and well-defined unifying annual international transparency report concept.

At its core, the Proposal’s report simply seeks Company disclosure of the multiple elements that comprise the Company’s overall expenditures and activities outside of the United States in order to paint a transparent and more wholistic understanding for shareholders.

In its letter, the Company seeks to create an artificial distinction between charitable contributions and political spending, arguing that each are so different that they cannot be grouped or reported together. As we have highlighted above, this ignores the overlap and often shared objectives that political contributions and charitable giving often have - influence over public policy and stakeholders.

The attempt to create an artificial distinction between the various elements ignores the unifying concept behind the Proposal. As Staff precedent in *Marathon Petroleum Corp.* details, exclusion under Rule 14a-8(c) is only permissible where the proposal at issue deals with “separate and distinct matters” and lacks a unifying concept. Here, as we have highlighted, the common overlap between charitable giving and political contributions show that these elements are unified in the manner in which they are utilized as tools of influence on public policy worldwide.

Staff precedent also clarifies that a Proposal with separate elements qualifies as a single proposal where the separate elements are sequential, interdependent, or otherwise linked, and together achieve a combined purpose. *See Safeway Inc.* (avail. Mar. 17, 2010) where Staff rejected the argument that a proposal was excludable because it contained six different elements and where the company claimed each element would require the board to engage in separate and distinct actions, ranging from lobbying efforts to creating a market to reduce carbon emissions to providing incentives in other countries to combat global warming. In that instance, Staff found that the company could not omit the proposal from the proxy materials under Rule 14a-8(c) and that “In our view, the proponent has submitted only one proposal.”

Here, based on the analysis in the FACT report, transparency of the Company’s public influence practices will be incomplete without transparency into the range of company expenditures and activities highlighted in the proposal.

The Precedents Do Not Support the Company’s Position

The Company principally cites precedent from *Textron Inc.* (Avail. Mar. 7, 2012, *recon. Denied* Mar. 30, 2012). However, that precedent does not accurately apply to this situation. There, Staff found that a collateral provision regarding change of control of the company ‘constituted a separate and distinct matter from the proposals relating to the inclusion of nominations for director’. Here, no such collateral provision creates a separate and distinct matter.

The Company also cites *General Motors Corp.* (avail. Apr. 9, 2007, *recon. Denied* May 15, 2007) where Staff excluded a proposal requesting that the board “seek shareholder approval for the restructuring of the company” and detailed several transactions that the restructuring plan should entail. However, again, this present Proposal differs greatly from the proposal in *General Motors*. There, the proposal sought two different objectives, first a restructuring, and then transactions that would follow the restructuring. Here, there is no such second step.

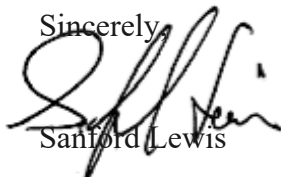
The Company also cites *PG&E Corp.* (avail. Mar. 11, 2010) as another controlling precedent. In that case however, the proposal in question sought to require the company completion of certain studies of a specific power plant site, attempted to mitigate potential risks encompassed by those studies, defer requests for or expenditures of public or corporate funds for license renewal at the site, and prevent increases in the production of certain waste at the site beyond the levels then authorized. In that ruling, Staff specifically held that the proposal constituted separate and distinct matters because the proposal sought to both mitigate certain risks and production levels as well as address the issues relating to the plant’s license renewal. The Company Letter repeatedly cites Staff precedents where the proposals at issue sought to require the companies in question to conduct multiple and separate actions.

The Proposal only requests the company take a single action, to create a single transparency report for shareholders on topics that are well-unified under the umbrella of corporate transparency on influence over public policy and stakeholders. This is a single proposal and therefore cannot be excluded under Rule 14a-8(c).

CONCLUSION

Based on the forgoing, we believe the Company has provided no basis for the conclusion that the Proposal be excludable from the 2022 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at [REDACTED] or [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written over the printed name.

Sanford Lewis

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 22, 2022
Via electronic mail

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

Re: Shareholder Proposal to Pepsico Inc. on
Behalf of John C. Harrington -Supplemental Response

Ladies and Gentlemen:

John C. Harrington (the “Proponent”) is beneficial owner of common stock of Pepsico Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the supplemental letter dated February 18, 2022 (“Supplemental Letter”) sent to the Securities and Exchange Commission by Elizabeth Ising. A copy of this response letter is being emailed concurrently to Elizabeth Ising.

In the Supplemental Letter, the Company reiterates its argument that the proposal consists of two disparate and unrelated requests, rather than the unified theme presented in the proposal of an “annual international transparency report .” The Company Letter argues that instead of evaluating this question based on the NGO analysis which justifies the need for a combined report, SEC staff should look to the company’s own reporting and that “the Company’s existing disclosures demonstrate that the disclosure requested by the Submission addresses two distinct and separate topics. The Company’s website contains extensive disclosure regarding the Company’s public policy engagement, political activities and political contributions. Because the Company’s public policy engagement and political activities are unrelated to the Company’s charitable and philanthropic activities, the Company provides separate reporting regarding charitable giving by the Company and the PepsiCo Foundation on the Company’s website.”

There are numerous examples in the Staff decisions of multi-part reporting proposals, such as Global Reporting Initiative proposals, in which the proposal unites various factors of reporting under the category of, e.g. “sustainability reporting”, e.g. workplace health and safety, climate change, etc. which would, under the Company’s logic, be treated as

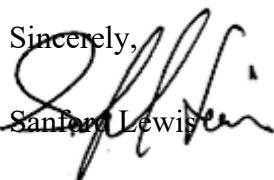
multiple proposals and reports. The Proponent's choice to adopt the analytical and disclosure framework of the FACT Index is an adequate basis for the unified concept presented in that report.

Notably, pursuant to the shareholder proposal rule, the Company has shared its draft opposition statement with the proponent. The opposition statement, enclosed, demonstrates that the Company could easily report on the disclosures together in a single document, as it does in its draft opposition statement for the proposal. While the opposition statement does not substantially implement the request, the opposition statement does shed some light on how the company rationalizes certain donations as "political" and others as scientific or charitable. While the company may not give to political candidates in other countries, the Proponent and the Company clearly disagree on the extent to which the Company waxes its power and influence worldwide through its charitable and scientific expenditures.

The Company's treatment of charitable and scientific expenditures as not "political" is an appropriate argument for the Company to make in the opposition statement, as it has done in its draft. However, the Company's internal distinction for concluding that this represents multiple proposals and therefore disallowing debate on this important shareholder proposal.

In these and all other aspects we stand by our original response and ask the Staff to deny the Company's no action request.

Sincerely,



Sanford Lewis



Our Board of Directors recommends that shareholders vote “AGAINST” this proposal.

In recent years, public attention and scrutiny have increased around the role corporations play in influencing global public policy, including through the provision of political contributions. PepsiCo recognizes the need for corporations to ensure strong governance over their corporate political activities and alignment between such activities and stated corporate strategies, as well as to provide transparency with respect to their advocacy and related actions. As such, PepsiCo has worked to ensure active oversight and abundant corporate transparency around this topic.

After careful consideration, the Board has determined that the report on PepsiCo’s non-U.S. political activities and related contributions requested by the shareholder proposal is neither necessary nor in the best interests of PepsiCo or our shareholders given our existing policies and practices, including the fact that we do not make political contributions outside of the U.S. and have already publicly stated on our website that we would disclose any international political contributions.

We regularly engage with global stakeholders, including government officials, to raise our concerns around or support regulatory proposals designed to ensure an equal playing field for our global operations or facilitate our Company’s goals, such as in the area of environmental sustainability. Over the years, we have worked closely with external stakeholders to design a leading system of transparency on political engagement in the U.S., which also takes into account our international operations, as reflected through our comprehensive publicly available reporting and disclosures on our website. Our practices and policies, as detailed below, reflect our efforts to provide clear, consistent, transparent and meaningful safeguards around PepsiCo’s role in engaging in public policy dialogues:

We have not and do not plan to make political contributions to candidates outside of the U.S. Although no international political contributions are currently planned, we have publicly stated on our website that we would disclose any international contributions paid, along with all our U.S. contributions, to ensure transparency. Additionally, PepsiCo does not directly sponsor communications supporting or opposing candidates or political parties.

Our Board of Directors oversees the Company’s public policy processes and activities with the assistance of its Sustainability, Diversity and Public Policy Committee, which is comprised entirely of, and chaired by, independent directors. This includes the Committee’s periodic review of our policies and practices regarding political contributions, as well as an annual review of our political contributions and expenditures. We provide robust disclosures on our governance, public policy engagement, political activities and contributions guidelines on our website, including our Political Contributions Policy which specifically states that PepsiCo does not generally provide contributions to candidates outside of the U.S. and that we will appropriately disclose such contributions on our website. For additional information, see the dedicated page on our website at www.pepsico.com/esg-topics-a-z/public-policy-engagement-political-activities-and-contributions-guidelines.

We comply with all national transparency rules around reporting contributions to trade associations in the U.S. and internationally.

PepsiCo advocates on our own behalf and belongs to trade associations that advocate on our behalf. We follow all national transparency rules regarding the disclosure of our contributions to trade associations. As a general rule, the trade associations with which we engage internationally do not provide contributions to political candidates, and we expect our associations to inform the Company if they were to begin engaging in this way.

Our scientific engagement is focused on sharing our expertise on key issues. PepsiCo adheres to robust principles on transparency in sponsoring any scientific research, including making available links to PepsiCo-funded research on our website and disclosing any role of PepsiCo in research when promoting findings of sponsored research.

As companies continue to be called upon to develop creative, innovative solutions and products to better serve society's needs, PepsiCo is committed to engaging with stakeholders on public health and sustainability topics. For example, PepsiCo is a member of organizations such as the European Food Information Council, a non-profit organization focused on making the science behind food and health more accessible and easier to understand among the public. Our scientific engagement is focused on sharing our expertise on key issues such as food safety, food allergies, health benefits assessment of food products, microplastics, packaging materials, sensory science and consumer behavior.

With respect to scientific research, PepsiCo believes that adherence to ethical principles is essential and has adopted the PepsiCo Position on Conduct of Scientific Research ("**Scientific Research Position**"), which is disclosed on a dedicated page on responsible research on our website, available at www.pepsico.com/esg-topics-a-z/responsible-research. The Scientific Research Position outlines our guiding principles on transparency, conflicts of interest and minimizing bias and best practices with respect to PepsiCo-sponsored research and research conducted by PepsiCo associates with external research partners. Among other things, we require sponsored researchers to follow accepted principles of scientific rigor in order to adequately test the stated hypotheses and assure accuracy of data produced and requires that any role of PepsiCo at all times be made public through disclosure of source of funding.

In addition, the Scientific Research Position states that we will (1) make available on our website citations for, and hyperlinks to, PepsiCo-funded research at the time of publication in a peer-reviewed journal, and (2) be fully transparent about our role in the design, implementation and analysis of the research, as well as in research funding, when promoting the findings of sponsored research. Published content from PepsiCo-sponsored research from 2010 to present can be found on the PepsiCo Health & Nutrition Sciences website at www.pepsicohealthandnutritionsciences.com/publications.

We do not make charitable contributions for purposes of political influence and all charitable contributions made by The PepsiCo Foundation are publicly disclosed in its tax returns.

Most of our international cash charitable contributions in 2020 were made through The PepsiCo Foundation, the Company's philanthropic arm. The PepsiCo Foundation primarily works with U.S. non-profit organizations such as Charities Aid Foundation America to contribute to various international partners for disaster relief and work in the areas of access to food security, safe water and economic opportunity. As a 501(c)(3) private foundation, The PepsiCo Foundation is prohibited from engaging in most lobbying and political activities, including directly or indirectly participating or intervening in political campaigns on behalf of or in opposition to any political candidate, and does not make charitable contributions for purposes of political influence.

All of The PepsiCo Foundation's contributions, including those made to foreign organizations, are publicly disclosed on its U.S. tax returns in compliance with federal disclosure requirements.

More information regarding The PepsiCo Foundation's work and disbursements, including its extensive work to bring food and other vital resources to the communities most affected by COVID-19, can be found on our website at www.pepsico.com/sustainability/philanthropy.

We are committed to continued transparency and addressing input from external stakeholders related to our advocacy on global public policy and other related activities. Given our robust public reporting and our current policies and practices, which both meet high standards and are reviewed on a regular basis, we believe the report requested by this proposal would be both duplicative and unnecessary.

Our Board of Directors recommends that shareholders vote "AGAINST" this proposal.