July 12, 2022

VIA E-MAIL

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

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

Ladies and Gentlemen:

This letter is to inform you that our client, Brinker International, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Proposal”), including statements in support thereof (the “Supporting Statement”), received from The Humane Society of the United States (the “Proponent”).

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

• filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 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 the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.
THE PROPOSAL

The Proposal states:

THerefore, Be It Resolved: Shareholders request that Brinker disclose an analysis of the practices in its supply chain which violate its Supplier Code of Conduct—including how each practice violates the SCC and how prevalent each practice is in Brinker’s supply chain. Shareholders further request disclosure of what steps, if any, Brinker is taking to eliminate each area of misalignment. This disclosure should occur within six months, at reasonable cost, and omit proprietary information.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations and does not focus on a significant policy issue for purposes of Rule 14a-8.

BACKGROUND

The Proposal focuses on how the Company generally manages its supplier relationships, including how it monitors its suppliers’ compliance with existing Company business and ethics standards and policies as set forth the Company’s Supplier Code of Conduct (the “Code”). The Company believes in the importance of ethical sourcing in its supply chain and is committed to responsible business practices. To that end, the Company’s suppliers are required to comply with the Code, which establishes a myriad of requirements that suppliers must meet in order to conduct business with the Company. Notably, although the Supporting Statement mentions the animal welfare part of the Code, the Resolved clause is not so limited and applies to the Code generally. As a result, the Code (and therefore the Proposal) involves a variety of ordinary business matters, including ethical standards in the conveyance of business, compliance with local and international laws, ordinary workforce matters pertaining to employees (including training, communication during emergencies, working hours, and employee documentation that verifies compliance with laws regulating the legal age of workers), Company standards for food products (including quality of products and ingredients and compliance with the Company’s food

1 Available at https://investors.brinker.com/static-files/313ef8c3-9b98-455d-b947-c11a2b4a7f41#:~:text=Suppliers%20are%20required%20to%20conduct,with%20equality%2C%20dignity%20and%20respect.
specifications) and information about food products and processes (including nutrition content, allergens, and formulations for proprietary ingredients). Thus, although the Supporting Statement references concerns about animal welfare, the Proposal does not focus on any significant policy issue as defined with respect to Rule 14a-8(i)(7) and is excludable because it relates to the Company’s policies pertaining to a broad range of practices in the Company’s supply chain.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Addresses Matters Related To The Company’s Ordinary Business Operations

As discussed below, the Proposal may be omitted under Rule 14a-8(i)(7) as it relates to the Company’s ordinary business operations because it relates to decisions regarding the Company’s suppliers and enforcement of its existing standards of supplier conduct, and it does not focus on any significant policy issue that transcends the Company’s ordinary business operations for purposes of Rule 14a-8.

A. Background

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to its “ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues” (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While “proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not “transcend the day-to-day business matters” discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).
Moreover, framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983); see also Johnson Controls, Inc. (avail. Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”).

B. The Proposal Is Excludable Because It Relates To Decisions Regarding The Company’s Supplier Relationships And Enforcement Of Its Existing Supplier Standards Of Conduct

The Proposal requests disclosure of “the practices in [the Company’s] supply chain which violate its Supplier Code of Conduct” and “what steps, if any, [the Company] is taking to eliminate each area of misalignment.” As noted in the Supporting Statement, the Proponent believes that this type of disclosure “would allow shareholders to assess the extent of the problem” with respect to Brinker’s enforcement of the Code. Notably, the Proposal does not seek to alter the Company’s existing policies pertaining to its suppliers or modify its supply chain standards. Rather, the Supporting Statement recognizes that the Code “mandates that suppliers ‘must comply with all aspects’ of [the Company’s] specifications.” Thus, as demonstrated in the Resolved clause and the Supporting Statement, the Proposal focuses on the issue of all of the Company’s existing policies and practices with respect to its supply chain standards (as set forth in the Code) and how it monitors and verifies compliance with the Code. For example, the Supporting Statement states that “[s]hareholders deserve an analysis of the practices in [the Company’s] supply chain which violate the standards set forth in the company’s [Code].” Further, the “Resolved” clause requests information on “how each practice violates the [Code] and how prevalent each practice is in [the Company’s] supply chain.”

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to ordinary business aspects of a company’s supplier relationships. For example, in Foot Locker, Inc. (avail. Mar. 3, 2017), the proposal requested a report “outlin[ing] the steps that the company is taking, or can take, to monitor the use of subcontractors by the company’s overseas apparel suppliers.” The proposal specifically requested information relating to: “[t]he extent to which company codes of conduct are applied to apparel suppliers and sub-contractors”; “[p]rocess and procedures for monitoring compliance with corporate codes of conduct by apparel suppliers and sub-contractors”; and “[p]rocess and procedures that the company has in place for dealing with code non-compliance by apparel suppliers and sub-contractors.” The company argued that the proposal sought to “influence the manner in which the [c]ompany monitors the conduct of its suppliers and their subcontractors” and that “[t]he extent to which a company applies and enforces its code of conduct on suppliers and their subcontractors” was an ordinary business matter. In concurring with exclusion, the Staff noted “the proposal relates broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors.”
See also The TJX Companies, Inc. (NorthStar Asset Management, Inc. Funded Pension Plan) (avail. Apr. 9, 2021) (concurring with the exclusion of a proposal requesting a report “evaluating whether the company is supporting systemic racism through undetected supply chain prison labor” where the proposal’s supporting statements requested, among other things, “metrics regarding the number of supplier audits completed by the [c]ompany or third party auditors that evaluated the extent to which prison labor is present in the supply chain” and an “assessment of the effectiveness of current company policies and practices in preventing the utilization of prison labor in the company’s supply chain” and the company argued that the proposal was excludable as ordinary business because, among other reasons, it related to decisions regarding the company’s suppliers and enforcement of its existing standards of supplier conduct); The Home Depot, Inc. (avail. Mar. 20, 2020) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on prison labor “summarizing the extent of known usage of prison labor in the company’s supply chain”) (“Home Depot 2020”); Walmart Inc. (avail. Mar. 8, 2018) (concurring with the exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability as relating to the company’s ordinary business matters); Kraft Foods Inc. (avail. Feb. 23, 2012) (concurring with the exclusion of a proposal requesting a report detailing the ways the company would assess and mitigate water risk to its agricultural supply chain as “relat[ing] to decisions relating to supplier relationships”); Alaska Air Group, Inc. (avail. Mar. 8, 2010) (concurring with the exclusion of a proposal discussing the maintenance and security standards used by the company’s aircraft contract repair stations and the company’s procedures for overseeing maintenance performed by the contract repair stations as “relat[ing] to . . . standards used by the company’s vendors”).

As in Foot Locker, the Proposal focuses on ordinary business aspects of the Company’s supplier relationships, including policies and standards relating thereto. The Proposal requests “an analysis of the practices” in the Company’s supply chain that violate every aspect of the Code, “how prevalent each practice is,” and any “steps” the Company is taking to “eliminate each area of misalignment.” In this regard, the Proposal focuses on the same issues that were the focus of the proposal in Foot Locker, including concerns about supplier compliance with the relevant code of conduct and processes and procedures that the Company has in place to monitor and correct areas of noncompliance. As discussed below, and as was the case in Foot Locker and the other precedent discussed above, the fact that the Proposal may touch upon a significant policy issue is insufficient to preclude relief where the Proposal relates to the ordinary business matters of the Company’s relationships with its suppliers and how the Company monitors compliance with its existing Code.

Similarly, the Staff has consistently concurred with the exclusion of shareholder proposals, like the Proposal, that relate to a company’s adherence to ethical business practices and policies. Of particular relevance here is the Staff’s recent consideration of a similar proposal in PayPal Holdings, Inc. (avail. Apr. 7, 2022), which requested that the company’s “board of directors
compare the [company’s code of business conduct and ethics] with the actual operations of the company.” The proposal’s supporting statements cited portions of the company’s code of conduct and expressed concerns that the “high ideals” cited “are not currently being practiced by [the company].” The Staff concurred with exclusion of the proposal as relating the company’s ordinary business operations. Likewise, *Mattel, Inc.* (avail. Feb. 10, 2012) involved a proposal that requested the company require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries (“ICTI”) Code of Business Practices. The proposal addressed several concerns relating to the company’s suppliers’ plants in China, including “underage workers during the summer, excessive overtime, concerns about chemicals and poor ventilation” and alleged that “reviewers of the audit firms of the ICTI” were “seeking bribes.” Consequently, the proposal sought “proven and transparent compliance with [the ICTI Code of Business Practice] at [the company’s] suppliers’ plants” in order to “avoid strikes, negative media coverage and loud complaints from consumers.” The Staff concurred with exclusion of the proposal in *Mattel* as relating to the company’s ordinary business operations, noting that “the proposal calls for [the company] to require that its suppliers publish a report about their compliance with the ICTI Code of Business Practices” and specifically noted “[the company’s] view that the ICTI Code ‘has a broad scope that covers several topics that relate to the [c]ompany’s ordinary business operations and are not significant policy issues.’” See also *The Walt Disney Co.* (avail. Dec. 12, 2011) (concurring with the exclusion of a proposal requesting a report on board compliance with the company’s code of business conduct and ethics for directors, stating that “[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under [R]ule 14a-8(i)(7)”; *Verizon Communications, Inc.* (avail. Jan. 10, 2011) (concurring with the exclusion of a proposal directing the board to form a Corporate Responsibility Committee charged with monitoring the company’s commitment to integrity, trustworthiness, and reliability—and the extent to which it lived up to its Code of Business Conduct, as “relating to [the company’s] ordinary business operations” and concerning “general adherence to ethical business practices”); *NYNEX Corp.* (avail. Feb. 1, 1989) (concurring with the exclusion of a proposal related to the formation of a special committee of the company’s board of directors to revise the existing code of corporate conduct because it related “to the [c]ompany’s ordinary business operations (i.e. the particular topics to be addressed in the company’s code of conduct”).

In this regard, the Proposal requests a broad review of the Company’s existing standards of ethical behavior applicable to its suppliers (i.e., the Code) by seeking “an analysis of the practices in [the Company’s] supply chain which violate its [Code]” and seeks additional detail as to the Company’s approach to monitoring and enforcing its Code by requesting disclosure of the “steps” the Company “is taking to eliminate each area of misalignment.” Developing and maintaining relationships with suppliers and determining how best to manage those relationships, including how the Company decides to encourage its suppliers to pursue or address the topics covered in the Code, are important management responsibilities. As described in the “Background” section above, the Company already requires its suppliers to comply with a wide
variety of business and ethical standards described in the Code. Further, as noted above and as acknowledged by the Proposal, the Code expresses the Company’s commitment to working with suppliers that uphold good animal welfare practices. Thus, similar to PayPal and Mattel, by seeking to require the Company to report on its suppliers’ compliance with the Code, the Proposal delves into the terms of the Company’s relationships with its suppliers and compliance with its existing policies such that it is properly excludable under Rule 14a-8(i)(7).

The extent to which a company oversees, applies, and enforces compliance with its supplier code of conduct (such as the Code) involves decisions that are fundamental to the company’s day-to-day operations and entails a variety of ordinary business considerations. The underlying subject matter of the Proposal addresses standards set forth in the Code, which involve the Company’s oversight of its suppliers and their business practices. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight. As such, consistent with Foot Locker, PayPal, Mattel and the other well-established precedent discussed above, the Proposal is properly excludable under Rule 14a-8(i)(7) because it seeks disclosure concerning general adherence to the Company’s existing ethical business practices and policies applicable to its suppliers (i.e., the Code), which relate to the Company’s ordinary business operations.


As discussed above, the plain language of the Proposal focuses on supplier compliance with the full range of Company’s policies and practices set forth in the Code, which implicates a host of ordinary business matters. While the Supporting Statement mentions animal welfare, that is just one aspect of the Code, and these references neither shift the underlying thrust and focus of the Proposal nor do they transcend ordinary business operations. To that end, the Proposal remains squarely focused on the Company’s policies and procedures relating to the various practices in its supply chain that may violate the Code and does not focus on any issue “with a broad societal impact” such that it transcends ordinary business matters.

Consistent with the 1998 Release, the Staff routinely concurs with the exclusion of proposals that touch upon a significant policy issue but also encompass topics that relate to ordinary business operations and are not significant policy issues, as is the case here. Notably, in PetSmart, Inc. (avail. Mar. 24, 2011), the proposal requested the board to require its suppliers to certify that they had not violated “the Animal Welfare Act, the Lacey Act, or any state law equivalents.” The Staff concurred with exclusion, noting that “[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is ‘fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.’” The Staff’s position that proposals are excludable where they relate to both ordinary and non-ordinary business matters is well established, as evidenced by Wal-Mart Stores, Inc. (avail. Mar. 15, 1999), where Staff concurred with the exclusion of a proposal that requested that the board report on the company’s “actions to
ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, or child labor or who fail to comply with laws protecting their employees’ wages, benefits, working conditions, freedom of association and other rights.” In concurring with the company’s request, the Staff noted “in particular that, although the proposal appears to address matters outside the scope of ordinary business, paragraph 3 of the description of matters to be included in the report relates to ordinary business operations.” The paragraph referenced by the Staff addressed “[p]olicies to implement wage adjustments to ensure adequate purchasing power.” In addition, the proposal addressed disclosure regarding “[c]urrent monitoring practices enforcing the company’s Standards for Vendor Partners for its manufacturers and licensees,” “[i]ncentives to encourage suppliers to comply with standards” and “[p]lans to report to the public on supplier compliance reviews.” See also Amazon.com, Inc. (Domini Impact Equity Fund) (avail. Mar. 28, 2019) (concurring with the exclusion of a proposal that requested that the board annually report to shareholders “its analysis of the community impacts of [the company’s] operations, considering near- and long-term local economic and social outcomes, including risks, and the mitigation of those risks, and opportunities arising from its presence in communities” noting that “the [p]roposal relates generally to ‘the community impacts’ of [the company’s] operations and does not appear to focus on an issue that transcends ordinary business matters.”); Foot Locker, Inc. (avail. Mar. 3, 2017) (concurring with the exclusion of a proposal entitled “Supplier Labor Standards” that took issue with violations of human rights in overseas operations, child labor and “sweatshop” conditions, even where two out of four recitals addressed human rights in the company’s supply chain); JPMorgan Chase & Co. (avail. Mar. 9, 2015) (concurring with the exclusion of a proposal requesting the company amend its human rights-related policies “to address the right to take part in one’s own government free from retribution” because the proposal related to “[the company’s] policies concerning its employees”); Papa John’s International, Inc. (avail. Feb. 13, 2015) (concurring with the exclusion of a proposal requesting that the company include more vegan offerings in its restaurants, despite the proponent’s assertion that the proposal would promote animal welfare—a significant policy issue); Mattel, Inc. (avail. Feb. 10, 2012) (concurring with the exclusion of a proposal that requested the company require its suppliers publish a report detailing their compliance with the International Council of Toy Industries Code of Business Practices, noting that the ICTI encompasses “several topics that relate to . . . ordinary business operations and are not significant policy issues”); Apache Corp. (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7), stating “in particular that some of the principles [referenced in the proposal] related to [the company’s] ordinary business operations”); Union Pacific Corp. (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal requesting disclosure of the company’s efforts to safeguard the company’s operations from terrorist attacks and other homeland security incidents when the company argued that the proposal was excludable because it related to securing the company’s operations from both extraordinary incidents (such as terrorism) and ordinary incidents (such as earthquakes, floods, and counterfeit merchandise)).
Here, and as demonstrated above, the focus of the Proposal is on the Company’s policies relating
to its suppliers and ethical business practices, which are ordinary business matters. The Proposal
is squarely focused on an analysis of “each practice” in the Company’s supply chain that violates
the Code, the scope of which covers numerous topics ranging from compliance with local laws,
employee compensation, training, and workplace safety to food safety, food quality, waste
reduction and water management. The Proposal itself cites to portions of the Company’s Code
unrelated to animal welfare, including the requirement that suppliers must “comply with all
aspects of [Company] specifications” related to food safety and food ingredients and that, more
generally, the Company expects that suppliers “will be familiar with our supplier code of
conduct and must adhere to those principles and procedures.” Therefore, references in the
Supporting Statement to concerns about animal welfare as one example of the types of supply
chain practices that may violate the Code do not shift the focus of the Proposal.

The Company is aware that the Staff has been unable to concur with the exclusion of proposals
related to company policies involving suppliers or ethical business practices under Rule 14a-
8(i)(7) where the proposals requested review of specific topics that transcend ordinary business
matters. For example, in The Walt Disney Co. (National Legal and Policy Center) (avail. Jan.
19, 2022), the proposal requested a “report on the process of due diligence, if any, that the
Company undertakes in evaluating the human rights impacts of its business and associations
with foreign entities, including foreign governments, their agencies, and private sector
intermediaries” and the Company argued that the proposal related to the company’s “adherence
to ethical business practices and policies” (emphasis added). Similarly, in Pilgrim’s Pride Corp.
(avail. Mar. 19, 2021), the proposal requested a “report assessing if and how the company plans
to increase the scale, pace, and rigor of its efforts to reduce water pollution from its supply
chain” including “plans to verify suppliers’ compliance with [the company’s] policies” and the
company argued that the proposal related to supply chain management and supervision of
supplier conduct (emphasis added). Here, the Proposal is distinguishable because, rather than
focusing specifically on a particular policy that may transcend ordinary business operations, such
as human rights impacts or water pollution, the Proposal focuses on the Company’s broad range
of policies and practices related to suppliers. Unlike the proposals in Walt Disney and Pilgrim’s
Pride, which specifically requested a report focused on human rights impacts and water
pollution, respectively, and focused exclusively on these concerns, the Proposal requests broad
disclosure of “how each practice” in the Company’s supply chain violates the Code and “how
prevalent each practice is” (emphasis added), making no reference in the Proposal to any
particular aspect of the Code and only mentioning animal welfare in the Supporting Statement as
an example of one area of concern and one aspect of the Code that suppliers must comply with.
The Supporting Statement also confirms that the Proponent is seeking disclosure that addresses
the Company’s policies and practices related to suppliers more generally, asserting that there are
reasons “[b]eyond animal welfare,” such as general “inconsistencies in the application of the
ESG standards in the [Code that] may indicate governance problems” such that “[s]hareholders
deserve an analysis of the practices in [the Company’s] supply chain which violate the standards set forth in the [Code].”

While the Proposal refers to matters that may be significant policy issues, the overall text of the Proposal makes clear that it focuses on ordinary business matters. In this regard, the Proposal is similar to the proposals in *Home Depot 2020* and *PetSmart*, each of which the Staff concurred as excludable under Rule 14a-8(i)(7) notwithstanding references to forced prison labor and the humane treatment of animals, respectively. Like in *Home Depot 2020*, the Proposal is concerned with the manner in which the Company monitors its suppliers’ conduct, including what practices the Company encourages its suppliers to pursue or address, and like in *PetSmart*, the Proposal involves a broad range of topics not limited to animal welfare, and is thus properly excludable under Rule 14a-8(i)(7).

In summary, the Proposal squarely concerns supplier practices that potentially violate the Code and the Company’s existing policies and standards pertaining to ethical business practices in its supply chain, all matters that have historically been excludable as relating to a company’s ordinary business matters. In this regard, the Proposal is comparable to cited precedent including *PayPal*, *Foot Locker* and *Mattel*, and is properly excludable under Rule 14a-8(i)(7).

**CONCLUSION**

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2022 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(7).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter 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 Daniel Fuller, the Company’s Senior Vice President, General Counsel and Secretary, at Dan.Fuller@brinker.com.

Sincerely,

Elizabeth A. Ising

Enclosures

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

Please see attached shareholder proposal submission. Thanks, and could you please confirm receipt?

Best,
Matt

Matt Prescott
Senior Director, Food & Agriculture
The Humane Society of the United States
May 24, 2022

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

And via email: [REDACTED]

Dear Mr. Fuller,

Enclosed with this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2022 annual meeting and a letter from The Humane Society of the United States’ (HSUS) brokerage firm, BNY Mellon, confirming ownership of Brinker common stock.

The HSUS has continuously held at least $2,000.00 in market value of shares eligible to vote on the proposal for at least one year as of January 4, 2021 and has continuously maintained at least $2,000 of such securities from January 4, 2021 through the date of this letter; we will hold at least this amount through and including the date of the 2022 annual meeting.

Please e-mail me to confirm receipt of this proposal, and please send all correspondence about this submission to me via electronic means only at mprescott@humanesociety.org.

As well, if the company will attempt to exclude any portion of this proposal under Rule 14a-8, please advise me within 14 days.

I am available to discuss this proposal via teleconference at your earliest convenience. Specifically, I am free any time between 9am – 5pm ET, any business day between June 7 and July 5, 2022. Please let me know a day and time within those options that works for you and I’ll be happy to schedule a call.

Sincerely,

Matthew Prescott
Senior Director of Food and Agriculture
[REDACTED]
May 24, 2022

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

And via email: [redacted]

Dear Mr. Fuller,

BNY Mellon National Association, custodian for The Humane Society of the United States, verifies that The HSUS has continuously held at least $2,000.00 in market value of Brinker common stock for at least one year as of January 4, 2021 and has continuously maintained at least $2,000 of such securities from January 4, 2021 through the date of this letter.

Sincerely,

Stacy L. Stout
Vice President, Client Service Manager
BNY Mellon Wealth Management
Family Office Group

bnymellonwealth.com
Is Brinker failing to enforce its own Supplier Code of Conduct?

Take, for example, the company’s animal welfare assurances.

Brinker’s 2021 Sustainability Report states that quality ingredients “depend” on the company meeting the animal welfare standard set forth in its Supplier Code of Conduct (“SCC”). But is that standard being met?

First, let’s look at the actual standard:

Brinker’s SCC includes a “requirement” that its suppliers “adhere” to a principle called the “Five Freedoms” of animal welfare. That principle says that animals should have: 1) freedom from hunger or thirst; 2) freedom from discomfort; 3) freedom from pain, injury or disease; 4) freedom to express normal behavior; and 5) freedom from fear and distress.

So, are Brinker’s suppliers actually complying with its SCC?

No. The SCC mandates that suppliers “must comply with all aspects” of Brinker’s specifications, including its animal welfare standard. And yet, Brinker’s supply chain is rife with practices that are inconsistent with the Five Freedoms its SCC supposedly “requires.”

How do we know?

Brinker’s own reporting confirms this fact.

- For example, Brinker’s disclosure to the Sustainability Accounting Standards Board (“SASB”) shows that 100% of its pork is produced using gestation crates. These solitary confinement cages lock-up animal so tightly, they’re unable even to turn around. This prevents animals from experiencing *most* of the Five Freedoms: the animals live in chronic discomfort, pain and distress and are unable to express normal behaviors.
- Brinker’s SASB reporting also shows that over 90% of its eggs come from tightly-caged chickens—which also dramatically contradicts the Five Freedoms Brinker claims to require.

And there are additional routine industry practices that contravene the Five Freedoms, but that Brinker doesn’t expressly condemn or prohibit: stressful transportation and slaughter conditions, the mutilation of animals without any pain relief, and more.

Beyond animal welfare itself, why else should shareholders care?

Since Brinker’s Board of Directors “oversees ESG strategies and objectives...and monitors performance,” inconsistencies in the application of the ESG standards in the SCC may indicate governance problems, which would be concerning for shareholders.

Shareholders deserve an analysis of the practices in Brinker’s supply chain which violate the standards set forth in the company’s SCC. This would allow shareholders to assess the extent of the problem.

THEREFORE, BE IT RESOLVED: Shareholders request that Brinker disclose an analysis of the practices in its supply chain which violate its Supplier Code of Conduct—including how each practice violates the SCC and how prevalent each practice is in Brinker’s supply chain. Shareholders further request disclosure of what steps, if any, Brinker is taking to eliminate each area of misalignment. This disclosure should occur within six months, at reasonable cost, and omit proprietary information.