



DIVISION OF
CORPORATION FINANCE

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

September 15, 2022

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: Brinker International, Inc. (the "Company")
Incoming letter dated July 12, 2022

Dear Elizabeth A. Ising:

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

The Proposal requests that the Company disclose an analysis of the practices in its supply chain which violate its supplier code of conduct, including how each practice violates the code, how prevalent each practice is in the Company's supply chain, and what steps, if any, the Company is taking to eliminate each area of misalignment.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

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: Matthew Penzer
The Humane Society of the United States

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.

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 2

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”).¹ 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>.

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 3

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).

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 4

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.”

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 5

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 requesting a report 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

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 6

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 to 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

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 7

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.

C. The Proposal Does Not Focus On A Significant Policy Issue That Transcends 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

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 8

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 [c]ompany'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)).

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 9

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

Office of Chief Counsel
Division of Corporation Finance
July 12, 2022
Page 10

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

EXHIBIT A

From: Matthew Prescott [REDACTED]
Sent: Tuesday, May 24, 2022 12:55 PM
To: Daniel Fuller [REDACTED]
Subject: [EXTERNAL] Shareholder proposal submission

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
[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,

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

Matthew Prescott
Senior Director of Food and Agriculture

[REDACTED]
[REDACTED]



Stacy Stout
Vice President
Client Service Manager

BNY Mellon Wealth Management
Family Office

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

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

[REDACTED]
[REDACTED]
[REDACTED]
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.



August 15, 2022

Via Electronic Mail: shareholderproposals@sec.gov

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

Re: Brinker International, Inc. – Shareholder Proposal submitted by the Humane Society of the United States

Ladies and Gentlemen:

I am writing on behalf of the Humane Society of the United States (the “Proponent”), who is the beneficial owner of common stock of Brinker International, Inc. (the “Company”) and who has submitted a shareholder proposal (the “Proposal”) to the Company. I am in receipt of a letter dated July 12, 2022 (“Company Letter”) sent to the Securities and Exchange Commission on behalf of the Company. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this reply is being emailed concurrently to counsel for the Company.

SUMMARY

The Proponent submitted the Proposal to the Company requesting the following:

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 Code 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.

The full Proposal is attached as Exhibit 1.

The Company argues for exclusion of the Proposal on the basis of Rule 14a-8(i)(7), claiming both that the Proposal concerns matters of ordinary business, and that it does not involve a significant policy issue. The Company is incorrect.

The Proposal seeks a report on the Company's implementation of certain ESG "values" it has pledged to adhere to in its supply chain. These values are set out as principles in the Company's Supplier Code of Conduct ("Supplier Code" or "Code"), which is attached as Exhibit 2. See investors.brinker.com/static-files/313ef8c3-9b98-455d-b947-c11a2b4a7f41. The principles set out in the Code are discussed in the Company's first ever sustainability report in 2021, and on the Company's Sustainability website. See "Making People Feel Special," Brinker International 2021 Sustainability Report (pp. 23, 24, 26); "Sustainability at Brinker," www.brinker.com/sustainability.

Each topic in the Code falls under one of "four key pillars" of the Company's claimed ESG priorities: Passionate People, Great Food, Better World, Responsible Governance. See Brinker 2021 Sustainability Report, p. 7. More specifically, the "values" expressly covered by the Code are grouped under ESG headings related to safe workplaces, human rights fundamentals, safe and responsibly sourced food ingredients, animal welfare standards, and environmental sustainability.

It is difficult to imagine how the Company could deem any of these principles to be less than a significant policy issue, yet that is precisely the core theme of the Company's no-action letter. While acknowledging the Code includes aspects of transcendent policy issues, such as animal welfare, the Company suggests that the Code also reaches into matters of ordinary supplier relations, although it never specifically says how the Proposal does that. Company Letter, p. 7. Nonetheless, according to the Company, because the Supplier Code reaches some aspect of the Company's ordinary supplier relations, so does the Proposal and, therefore, it is excludable.

But the Code *does not* involve ordinary business matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Release No. 34-40018 (May 21, 1998). In fact, the entire content of the Code comprises barely more than two pages of ESG principles in mostly bullet-point format. The Code itself expressly states its language is "not in lieu of the statements of any legal agreement or contract between a supplier and Brinker International or any of its affiliates." And the Proposal does not seek disclosures beyond the ESG principles expressed in the Code, which the Company itself touts as a representation of how "we live our values" and its understanding that "trust matters." Supplier Code, p. 1. The Proposal doesn't seek information beyond this. The Proposal doesn't ask, for example, for ordinary matters such as supplier contract terms, compensation or pricing, confidential information, regulatory

compliance, or any other host of routine supplier relationship matters. Nor does it call for identification of individual violators of the Code, or anything else that could impact specific supplier relationships.

Rather, the Proposal asks at the highest level for a report that will inform shareholders whether and to what extent the values expressed in its Supplier Code are being implemented, and how the Company is working to bring misaligned practices into conformity. The Company cannot make reputation-building ESG commitments, then protest when shareholders seek even the most basic information about whether the Company is following through on them. As such, the Proposal may not be excluded from the Company's 2022 proxy materials.

ANALYSIS

The Proposal May Not be Excluded under Rule 14a-8(i)(7).

The Proposal cannot be excluded under Rule 14a-8(i)(7) because it does not relate to "ordinary business practices" and, in any event, it raises significant policy issues that transcend the Company's ordinary business. *See* Release No. 34-40018 (May 21, 1998).

A. The Proposal raises significant policy issues that transcend the Company's ordinary business.

Although the Company addresses this issue at the end of its letter, Proponent begins its analysis here because of the dispositive effect of a significant policy issue that transcends the Company's ordinary business. The Proposal's subject matter involves high-level, non-prescriptive reporting on ESG principles the Company itself professed to be implementing throughout its supply chain. As set out in the Proposal's opening heading, the subject matter involves an inquiry into whether the Company is actually "enforce[ing] its own Supplier Code of Conduct." Ex. 1. The Proposal then analyzes, as an "example" of concern, the Code's standards with respect to one of its key values, animal welfare. *Id.* After illustrating why the Company's assurances of supplier compliance with the Five Freedoms of Animal Welfare, as specified by the Code, appears to be inaccurate, Proponent calls for disclosures about supplier compliance with the ESG values set out in the Code generally. *Id.*

Moreover, the Company's own public statements on the policy issues implicated by the Supplier Code demonstrate its views on their significance. For example, in its 2020 and 2021 Annual Reports, the Company describes the Code as a requirement of suppliers that "sets forth our expectation of business integrity, food safety and

food ingredients, animal welfare and sustainability.” See Brinker International Inc., Form 10-K, Aug. 24, 2020 (p. 9), and Aug. 26, 2021 (p. 8).¹

In his introductory letter to shareholders, Wyman T. Roberts, President and CEO of Brinker International, proclaimed the Company’s first ever sustainability report “represent[ed] a new chapter in our commitment to environmental, social and governance (ESG) issues and reporting.” Brinker 2021 Sustainability Report, p. 7. The report specifically included sections on each of the topics covered by the Supplier Code, mentioning it by name several times. *Id.* at 7, 23, 24, 26. The Supplier Code is meant “to convey our expectations that our suppliers do what is right for us and the planet.” *Id.* at 23. For example, the Company touted the Supplier Code as outlining the Company’s expectation that suppliers “continually improve their use of natural resources and their sustainability efforts” in a wide range of sourcing and environmental responsibilities. *Id.* at 24. The Code also “includes a requirement that our suppliers adhere to the ‘Five Freedoms’ of care throughout the life of farm animals.” *Id.* at 26.

In addition to the significant policy matters of human rights and animal welfare, the Supplier Code inclusion of food safety and environmental assurances are of an even greater focus to shareholders in light of the heightened focus on ESG claims in the face of a climate “crisis.” See, e.g., Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 FR 7037, Jan. 20, 2021. On March 4, 2021, the SEC announced the creation of a Climate and ESG Enforcement Task Force, expressly recognizing the “increasing investor focus and reliance on climate and ESG-related disclosure and investment.” SEC Release, 2021-42. Indeed, the Division has not permitted exclusion of proposals that “have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public’s health.” Staff Legal Bulletin No. 14E (October 27, 2009).

Given how prominent a role the values-focused Supplier Code plays in the Company’s first ever sustainability report, which the Company represents as the beginning of an even greater policy of reporting on ESG issues, it is inconceivable that the Company now argues the Code encompasses ordinary business matters. For example, the Company claims the Code deals with ordinary matters, like “employee compensation” and “compliance with local laws.” Company Letter, p. 9. But this isn’t a fair characterization of the Code, which isn’t prescriptive as to actual compensation or legal matters. Rather, the Code generally establishes values-based standards, such as prohibitions against forced or unpaid labor, underage or otherwise unlawful workers (as defined by local laws), discrimination-free workplaces, and the like. See Exhibit 2, Supplier Code, Business Integrity: Human Rights. Prohibiting slavery forced labor is hardly an issue of “ordinary”

¹ The two reports differed by one word, with 2020 stating “expectation on...” and 2021 stating “expectation of...”

employee compensation. Nor would shareholder disclosure of the Company's enforcement of an anti-slavery policy in any way interfere with management's ability to run the Company.

Importantly, the Company does acknowledge the Staff has not concurred "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." Company Letter, p. 9 (emphasis in original) (citing *The Walt Disney Co. (National Legal and Policy Center)* (Jan. 19, 2022) and *Pilgrim's Pride Corp.* (Mar. 19, 2021)).² The Company then makes two strained arguments to attempt to distinguish the instant Proposal from these dispositive decisions. First, the Company claims the Proposal does not focus "specifically on a particular policy that may transcend ordinary business operations, such as human rights impacts or water pollution," but instead "focuses on the Company's broad range of policies and practices related to suppliers." *Id.* But the Supplier Code does not focus on such a "broad range" of supplier practices. Rather, it is explicitly limited to the Company's principles-based expectations of suppliers in the areas of human rights, workplace safety, animal welfare, food safety and responsible sourcing, and environmental sustainability. *See* Exhibit 2 (Supplier Code) (establishing the scope of ESG principles the Company expects of suppliers). And the Proposal seeks disclosures that report on the implementation and enforcement of the Supplier Code *only*. *See* Exhibit 1 (Proposal) (seeking only disclosures that would inform shareholders of the extent of the Supplier Code's implementation, as well as remedies for supply chain practices that are not aligned with the Code's principles).

Second, the Company argues that, although "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." Company Letter, p. 10. But the Proposal's text unwaveringly focuses on the Company's implementation of the principles set forth in the Supplier Code of Conduct, and nothing more. *See* Exhibit 1. The Company appears to take issue with the Proposal's observation that inconsistencies in the application of the ESG standards in the Code may indicate governance problems. *Id.* at 9-10; *see also* Exhibit 1. But such an observation is wholly consistent with the Proposal's subject matter, which focuses on ensuring the

² *See also, Rite Aid Corporation* (April 23, 2018), in which the Staff did not allow exclusion of a proposal requesting a sustainability report on the Company's ESG "risks and opportunities, including customer and worker safety, privacy and security, environmental management, including energy and waste minimization, and supply-chain risks." In *Nucor* (March 6, 2008), the Staff did not allow Rule 14a-8(i)(7) exclusion of a proposal requesting that the board of directors review Nucor's "policies and practices related to its global operations and supply chain to assess areas where [the company] needs to adopt and implement additional policies to ensure the protection of fundamental human rights and report its findings to shareholders."

Company is implementing and enforcing the ESG principles set out in its Supplier Code, and if it is not doing so, explaining its reasons for that.

Finally, Proponent notes that the Staff decisions cited by the Company Letter to argue against a transcendent policy issue involved proposals that are readily distinguishable. Company Letter, p. 7-10. Some included a mix of significant policy issues and ordinary business. *See PetSmart, Inc.* (Mar. 24, 2011) (proposal called for disclosures on significant policy matters *and* minor administrative matters); *Wal-Mart Stores, Inc.* (Mar. 15, 1999) (proposal called for disclosures relating to five “human rights,” one of which the Staff viewed as ordinary business); *Mattel, Inc.* (Feb. 10, 2012) (proposal called for report that included “several topics that relate to the Company’s ordinary business operations and are not significant policy issues”). Some focused inwardly on day-to-day business or financial considerations, rather than ESG impacts. *See The Home Depot, Inc.* (Mar. 20, 2020) (proposal included request for analysis of “risks to finances, operations, and reputation related to prison labor”). Others focused on supplier relationships involving no significant policy issue at all. *See Alaska Air Group, Inc.* (Mar. 8, 2010) (involved aircraft maintenance standards used at contract repair stations); *Amazon.com, Inc. (Domini Impact Equity Fund)* (Mar. 28, 2019) (proposal related “generally to ‘the community impacts’ of the Company’s operations” and did not focus on a transcendent issue); *Papa John’s International, Inc.* (Feb. 13, 2015) (proposal related “to the products offered for sale by the company,” rather than a significant policy issue).

But despite its burden of proof under Rule 14a-8(g), the Company cannot show—and doesn’t really try to show—that the short, value-based ESG principles of the Supplier Code cover anything other than significant policy issues. Nor can the Company sidestep that burden by interpreting the Proposal beyond the scope of its clear text, which expressly applies only to disclosures relating to implementation and enforcement of the Supplier Code (in light of the Company’s weighty promotion of its expectations that suppliers adhere to the Code’s principles). The Proposal cannot, therefore, be excluded from the Company’s 2022 proxy materials.

B. The Proposal does not involve the type of day-to-day business decisions that cannot practically be submitted to a shareholder vote.

The Commission has explained that “ordinary business matters” for purposes of rule 14a-8(i)(7) are those tasks that are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Release No. 34-40018 (May 21, 1998). The purpose of the exception 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.” *Id.*

The instant Proposal does not intrude on any such on-the-ground business practices, but instead focuses in broad terms on informing shareholders of the Company's implementation and enforcement of the ESG principles collected within its Supplier Code. Nonetheless, the Company asserts the Proposal is excludable because it infringes on decisionmaking relationships with suppliers. Rather than provide any specific examples of how the Proposal actually infringes on management's ability to conduct core business matters, the Company relies only on overbroad generalities, mischaracterizations of the Proposal, and inapposite Staff decisions, none of which are sufficient to carry its burden under Rule 14a-8(g).

The Proposal seeks to inform shareholders on the Company's professed adoption of values-based policies that it expects of its suppliers. *See* Exhibit 1. As mentioned above, the language of the Supplier Code of Conduct is "not in lieu of the statements of any legal agreement or contract between a supplier and Brinker International or any of its affiliates." *See* Exhibit 2, p. 1. And the proposal does not ask for disclosure of any such business information between the Company and its suppliers.

The Supplier Code contains no standards—and the Proposal seeks no disclosures—relating to product choices, pricing information, staffing decisions, subcontracting, insurance, or any of the other myriad ordinary business decisions management makes regarding suppliers. Moreover, the Proposal does not call for disclosure of individual suppliers who have violated the Code or actions taken against them. Instead, the Proposal squarely and clearly focuses on disclosure of the Company's implementation of the ESG policies set out in its Supplier Code, the practices within its supply chain that are not compliant with the Code, and the steps the Company is taking to eliminate non-compliance. Disclosure of such high-level information on significant policy issues (human rights, food safety and responsible sourcing, animal welfare, sustainability) does not implicate in any way management's day-to-day business operations.

Despite the clear and narrow focus of the Proposal's plain text, the Company mischaracterizes it as one that "focuses on how the Company generally manages its supplier relationships." Company Letter, 2. Without giving any actual examples of which day-to-day decisions the Proposal might interfere with, the Company simply treats the Proposal like it presents an all-encompassing overreach into the Company's supply chain (rather than a high-level report on ESG implementation and enforcement). *See generally* Company Letter, p. 4-7. The Company is wrong, and the Staff decisions it cites are plainly distinguishable.

Unlike the ESG-focused disclosures sought by the instant Proposal, decisions relied on by the Company improperly focused elsewhere. Some decisions, for example, called for companies to disclose specific details about the procedures by which they monitor suppliers. *See Foot Locker, Inc.* (Mar. 3, 2017) ("proposal relates broadly to the manner in which the company monitors the conduct of its suppliers

and their subcontractors”). Others, while incidentally involving significant issues, focused not on the company’s impacts on the issue, but on the ordinary business aspects and impacts of supply chain decisions. See *The TJX Companies, Inc. (NorthStar Asset Management, Inc. Funded Pension Plan)* (Apr. 9, 2021) (proposal called for report on how and whether the company monitors suppliers for “undetected” use of prison labor, and for an evaluation of business “risks to finances, operations, and reputation related to prison labor”); *The Home Depot, Inc.* (Mar. 20, 2020) (same proponent and similar language to *The TJX Companies* proposal); *Kraft Foods Inc.* (Feb. 23, 2012) (proposal called for company report “assessing water risk to its agricultural supply chain and action it intends to take to mitigate the impact on long-term shareholder value”).

The Company fares no better with its next citations of proposals purportedly involving ethics codes, arguing the Staff’s recent decision in *PayPal Holdings, Inc.* (Apr. 7, 2022) to be of “particular relevance here.” Company Letter, p. 5-6. But the proposal in *PayPal* involved an “ethics code” that was essentially a business pledge to provide money services, with the proposal itself expressing frustration over the Company’s freezing of some user accounts. See *PayPal Holdings, Inc.* (Apr. 7, 2022). The Staff understandably concurred with the view that the proposal related to ordinary business matters. The proposal in *Mattel, Inc.* (Feb. 10, 2012) included a requirement that the company’s *suppliers publish a report* about their compliance with some third-party business practices). Finally, the Company cites to several decisions involving, not a company’s public ESG pledges, but internal business codes. See *The Walt Disney Co.* (Dec. 12, 2011) (proposal called for company to disclose how it determines whether the political beliefs and advocacy of board members violates its Code of Business Conduct and Ethics for Directors); *Verizon* (Jan. 10, 2010) (Staff concurred in exclusion of a proposal requesting “that a board committee monitor Verizon’s integrity, trustworthiness, and reliability” as concerning “general adherence to ethical business practices”); *NYNEX Corp.* (Feb. 1, 1989) (Staff concurred in exclusion of a proposal relating to director compensation).

None of the proposals above involved the type of significant policy issues as the ESG principles contained within the Supplier Code here, which the Company itself publicly subscribes to and promotes in furtherance of its stakeholder assurances. PayPal’s pledge to “democratize financial services” is simply not of “particular relevance” to the Company’s pledged policies on human rights, animal welfare, food safety and responsible sourcing, or environmental sustainability. Nor are the political beliefs of Disney’s board, the general trustworthiness of Verizon, or the director compensation at NYNEX. The Company’s broad generalities provide no basis why the proposals under consideration above have any relevance to the instant Proposal. In fact, they do not.

Finally, the Company offers a broadly generalized statement, without any factual support:

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.

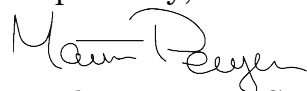
What's lacking from this statement—and indeed the rest of the Company's letter—is any explanation of *how* any of the specific ESG disclosures called for by the Proposal *actually* involve “complex” decisions fundamental to daily business operations (or of how they might impact supplier relationships in any way at all). The boilerplate generality of such a statement, which could just as easily be applied to any shareholder proposal that even mentions a company's suppliers regardless of context, cannot be sufficient to meet a Company's burden of proof under Rule 14a-8(g), lest that rule be swallowed away without even a modicum of proof. *See* 17 C.F.R. § 240.14a-8(g).

Nothing about the high-level disclosure of the Company's implementation and enforcement of ESG principles it claims to be requiring of its suppliers is “so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Release No. 34-40018 (May 21, 1998). And the Company has not proven otherwise.

CONCLUSION

In conclusion, the Company has failed to carry its burden under Rule 14a-8(g) of establishing that the Proposal is excludable on the basis of Rule 14a-8(i)(7). Accordingly, we request that the Company's request for no-action be declined.

Respectfully,



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cc: Elizabeth A. Ising

Exhibit 1

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.

Exhibit 2

Brinker International Supplier Code of Conduct

Introduction

Brinker International, Inc. is one of the world's leading casual dining restaurant companies. Brinker International owns, operates, or franchises more than 1,600 restaurants in 31 countries and two territories under the names Chili's® Grill & Bar and Maggiano's Little Italy®

Our guests know, every time they step into our restaurants, we'll give them a warm welcome and delicious food and signature drinks that they can't get anywhere else. But gathering around our table is about more than sharing a meal — it's about sharing ideas, dreams, and memories. We're about serving from our hearts, serving our communities and serving Chili's Fresh Tex™ and Fresh Mex favorites and Maggiano's homemade, classic Italian-American cuisine while making people feel special.

We live our values and protect our brand

Brinker International is committed to operating a business that aspires to continuously supply our guests with healthy, safe and fresh food. Our goal is to utilize suppliers that adhere to the promises of our business by meeting the following cultural beliefs:

- 1) Understand that **Trust Matters** by having high ethical standards of equality, fairness, and overall conveyance of business
- 2) Be responsible in ensuring that they meet and aim to exceed compliance of all local and international laws and regulations by **Owning It**
- 3) Encourage a business supplier/relationship by **Winning Together** to achieve results
- 4) Have an attitude of transparency in our business relations by giving **Priceless Feedback**
- 5) Share the Brinker International vision by **Thinking Forward** to improve our restaurant quality, value and experience

The language in this code may be in addition to, and not in lieu of the statements of any legal agreement or contract between a supplier and Brinker International or any of its affiliates. Suppliers will be familiar with our supplier code of conduct and must adhere to those principles and procedures.

Business Integrity

Workplace Atmosphere:

It is the expectation of Brinker International that suppliers will adapt their practices to workplace standards for their industry. Suppliers should have safe work practices that ensure all workers receive proper training and communication in the event of an emergency. Furthermore, suppliers must have systems to detect, prevent and respond to potential risks involving safety, health and security of all employees. Suppliers are required to conduct their business in accordance with applicable laws/regulations including local, state and federal laws.

Human Rights:

- 1) Suppliers should have a discrimination free work environment - all employees are to be treated with equality, dignity and respect. Policies should be implemented to avoid discrimination geared towards race, ethnicity, religion, gender, age, physical or mental disability, national origin or any other basis prohibited by law. Physical, emotional, or sexual harassment/abuse should not be tolerated.
- 2) Suppliers should only employ legally authorized employees eligible through appropriate documentation.
- 3) Suppliers should not utilize involuntary workers for any type of work or production of goods for Brinker International. This includes slave, forced bonded indentured or involuntary prison labor
- 4) Suppliers should ensure that all employees are of legal age abiding by their local laws. All information for employees must be verifiable through official documentation: any legally recognizable document that can confirm the age of the employee.

- 5) Suppliers should ensure that their workers are paid lawful wages, including overtime, premium pay and equal pay for equal work without discrimination.

Food Safety and Food Ingredients

At Brinker International, our goal is to exceed our guests' expectations – every day in every restaurant. We recognize the critical role our suppliers play in ensuring a safe and quality food supply. Every day, we work with our supplier partners to grow, produce and ship products that meet or exceed our food safety requirements, which are among the most stringent in the restaurant industry. We continually monitor the food we serve and hold our suppliers accountable to our standards and immediately reporting any issues that could affect the safety or quality of our food. Our suppliers are required to provide the system with the specified quality products and ingredients at all times. Our guests can be confident that no matter which Chili's or Maggiano's restaurant they visit, they will be served food that meets our high standards of quality and safety.

Brinker International and our Suppliers jointly agree to:

- Meet or exceed all regulatory requirements with respect to growing, processing, transporting and serving of food
- Conduct and document thorough and regular food safety checks
- Practice continuous improvement in the areas of food safety and quality
- Remove from the system any food that is deemed unsafe

Suppliers Must:

- Comply with all aspects of Brinker International specifications
- Procure ingredients in a responsible way that is consistent with Brinker International animal welfare standards
- Provide timely and accurate information about products and processes inclusive, but not limited to ingredients, nutrition content, allergens and formulations for Brinker proprietary ingredients

Animal Welfare

Brinker International is committed to working with suppliers committed to upholding good animal welfare practices. While we do not own or raise our own animals, we have a responsibility to source animal products from suppliers who share our commitment to animal welfare. Our approach to animal welfare and auditing our suppliers is to ultimately ensure the 'Five Freedoms' of care throughout the life of farm animals.

1. Freedom from hunger or thirst
2. Freedom from discomfort
3. Freedom from pain, injury or disease
4. Freedom to express (most) normal behavior
5. Freedom from fear and distress

Sustainability

Brinker International expects our suppliers to use the earth's precious resources in a sustainable way and to document continuous improvement in the following areas:

- Freshwater and wastewater management
- Soil management in agriculture and construction operations
- Energy reduction and fossil fuel usage
- Material and food waste reduction
- Packaging and recycling
- Solid waste reduction
- Emissions from manufacturing, processing and transportation

- Responsible construction and development
- Protection of forests and high conservation value areas
- Hazardous material handling and disposal
- Responsible sourcing of raw materials