August 3, 2022

VIA EMAIL

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

Email Address: shareholderproposals@sec.gov

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

Ladies and Gentlemen:

This letter is to inform you that our client, Microsoft Corporation (the “Company” or “Microsoft”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Shareholders Meeting (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof received from James McRitchie (the “Proponent”).

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

- submitted this letter to the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Commission Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), provide that shareholder proponents are required to send companies a copy of any correspondence that the proponent elects to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.
THE PROPOSAL

The Proposal sets forth the following resolution to be included in Microsoft’s 2022 Proxy Materials, to be voted on by shareholders at the 2022 Annual Shareholders Meeting:

Resolved: Microsoft Corporation (“Company”) shareholders request the Board’s Compensation Committee (“Committee”) report annually on all stock distributed to employees, directors, and consultants under compensation plans approved by shareholders. The report should include a matrix, sorted by an appropriate classification scheme with five or more categories chosen by the Committee, showing aggregate amounts of stock ownership distributed and utilized, including associated voting power, if any. The Committee should issue the report before or concurrent with the next annual proxy statement.

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

BASIS FOR EXCLUSION OF THE PROPOSAL

Microsoft respectfully requests that the Staff concur in the view that it may exclude the Proposal from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to Microsoft’s ordinary business operations.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals with Matters Relating to Microsoft’s Ordinary Business Operations

A. Rule 14a-8(i)(7) Background

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it “deals with a matter relating to the company’s 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 [of] 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,” and identified two central considerations that underlie this policy. The consideration relevant here is that “[c]ertain tasks 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.” Id. Further, in the 1998 Release, the Commission expressly cited
“management of the workforce” as an example of a function that is fundamental to management’s ability to run a company on a day-to-day basis.

When assessing proposals under the “ordinary business” standard, the Commission considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). As relevant here, a shareholder proposal that is framed 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); Johnson Controls, Inc. (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 General Employee Compensation

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it directly relates to the Company’s general employee compensation policies and practices, a core component of the Company’s ordinary business. In analyzing shareholder proposals relating to compensation, the Staff has distinguished between proposals that relate to general employee compensation and proposals that address only executive officer and director compensation, indicating that the former implicate a company’s ordinary business operations and thus are excludable under Rule 14a-8(i)(7). See Staff Legal Bulletin No. 14A (July 12, 2002) (“SLB 14A”) (indicating that “[s]ince 1992, [the Staff has] applied a bright-line analysis to proposals concerning equity or cash compensation” under which companies “may exclude proposals that relate to general employee compensation matters in reliance on [R]ule 14a-8(i)(7)” except in the case where proposals “concern only senior executive and director compensation”).

The Staff has consistently concurred with the exclusion of shareholder proposals relating to employee stock ownership under Rule 14a-8(i)(7) as focused on general compensation matters, consistent with the “bright line” approach articulated in SLB 14A. For instance, in Yum! Brands, Inc. (Feb. 24, 2015), the proposal suggested that as part of a report on the company’s executive compensation policies, the company include a comparison of senior executive compensation and “store employees’ median wage.” The Staff concurred that the company could “exclude the proposal under [R]ule 14a-8(i)(7), as relating to [the company’s] ordinary business operations,” noting “that the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors.” See also CytRx Corporation (Jun. 26, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company’s board limit the annual salary and benefit packages of each employee of the company, noting that the proposal relates to the “compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors”); Apple, Inc. (Nov. 16, 2015) (allowing the exclusion of a proposal asking Apple’s compensation committee to adopt new compensation principles responsive to the U.S.’s “general economy, such as unemployment working hour[s] and wage inequality”); Verizon Communications Inc. (Feb. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal
requesting a review of the company’s executive compensation policies including a comparison of the total compensation package of the top senior executives and the company’s employees’ median wage, noting that the proposal “relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors”); ENGlobal Corp. (Mar. 28, 2012) (concurring with the exclusion of a proposal that sought to amend the company’s equity incentive plan, noting that “the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors”); International Business Machines Corp. (Jan. 22, 2009) (concurring with the exclusion of a proposal requesting that no employee above a certain management level receive a salary raise in any year in which at least two-thirds of all company employees did not receive a three percent salary raise).

The Proposal here does not limit itself only to senior executive officers and directors, but is intentionally broad, encompassing stock distributed to “employees, directors, and consultants under compensation plans approved by shareholders.” The supporting statement references creating an “ownership culture for all employees and consultants” and the distinction between “incentives to boards and executives” as separate from “all U.S. company employees.” The broad focus of the Proposal is precisely focused on employees generally, and therefore relates directly to Microsoft’s general employee compensation policies and practices. Decisions regarding compensation and management of each Microsoft employee are critical to day-to-day operations, and are the type of matter that the Staff has recognized should not be subject to shareholder oversight. Accordingly, even with passing references to executive compensation, the Proposal focuses on general employee compensation and employee stock ownership, and therefore focuses on an ordinary business matter.

C. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends Microsoft’s Ordinary Business

In Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff recently explained that it will “focus on the social policy significance of the issue that is the subject of the shareholder proposal” to “realign its approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues.” As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has “a broad societal impact, such that [it] transcend[s] the ordinary business of the company.” See SLB 14L. Moreover, consistent with well-established Staff precedents, mere references to topics in passing that might raise significant policy issues, but that do not define the scope of actions addressed in a proposal and have only peripheral implications for the issues that constitute the central focus of a proposal, do not transform an otherwise ordinary business proposal into one that transcends ordinary business. For example, in Marriott International, Inc. (Jan. 13, 2021), the Staff concurred with the exclusion of a shareholder proposal that requested production of a report on the “external social costs” created by the company’s compensation policy. The proposal purported to address “social issues of great importance”; however, the Staff concurred with the company’s assertion that referencing social policy issues that “have only tangential implications for the issues
that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.” See also Dollar General Corp. (Mar. 6, 2020) (the Staff noted, that “notwithstanding some references in the supporting statement to potentially important social issues, the [p]roposal as a whole deals with a matter relating to the [c]ompany’s ordinary business operations”).

The Proposal here does not focus on a significant social policy issue. Instead, it focuses on the production of an annual report on all stock distributed to all of Microsoft’s employees, directors and consultants. While the supporting statement makes passing reference to “wealth inequality,” “political polarization” and “racial and wealth gaps” as social policy issues, it is unclear how the report requested by the Proposal would address these issues. The mere inclusion of references to a range of social policy matters does not change the focus of the Proposal from being on Microsoft’s ordinary business operations. See Amazon.com, Inc. (Mar. 1, 2017) (concurring with the exclusion of a proposal requesting adoption and publication of principles for minimum wage reform, noting that “the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters,” despite the proponent’s assertion that minimum wage was a significant social policy issue). The Proposal focuses on the ordinary business issue of general employee compensation and, similar to the precedents cited above, the passing references to various societal injustices do not implicate, much less focus on, a significant social policy issue.

Two nearly identical shareholder proposals relating to the production of a report on aggregate amounts of stock ownership of each respective company’s workforce were recently submitted to other companies. In both instances, the Staff concurred that each similar proposal “relates to, and does not transcend, ordinary business matters,” and as such, that Rule 14a-8(i)(7) provided a basis to exclude such proposals. See Repligen Corporation (Apr. 1, 2022) and Amazon.com, Inc. (Apr. 8, 2022). The difference between the Proposal and those in Amazon and Repligen – that the Proposal refers to stock distributed under compensation plans “approved by the shareholders” – fails to distinguish it in any meaningful way with respect to the ordinary business standard. All stock issued to Microsoft employees is pursuant to shareholder-approved plans, and as a result the Proposal covers the same subject matter – general employee, non-executive officer equity compensation – as the excluded Amazon and Repligen proposals.

Accordingly, the Proposal’s focus on the stock compensation of all of its employees, directors and consultants is directly related to ordinary business matters and does not otherwise transcend such matters by focusing on a significant social policy issue. Therefore, we ask that the Staff concur that Microsoft may exclude the Proposal under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, Microsoft respectfully requests that the Staff concur that it will take no action if Microsoft excludes the Proposal from its 2022 Proxy Materials.

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

Sincerely,

[Signature]

Allison C. Handy
Partner
Perkins Coie LLP

Enclosures

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

    James McRitchie, Proponent
    John Chevedden, agent of the Proponent
Exhibit A

Proposal and Related Correspondence
MSC 123/9999, Office of the Corporate Secretary, Microsoft Corporation One Microsoft Way, Redmond, Washington 98052-6399

Via: askboard@microsoft.com

Dear Corporate Secretary,

I am submitting the attached shareholder proposal, “create and ownership culture,” for a vote at the next annual shareholder meeting. I intend to hold the requisite number of shares required by Rule 14a-8 through the annual meeting.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. I am available to meet with the Company’s representative via phone on June 17, 2022, at 12:00 noon or 12:30 pm Pacific or at a time that is mutually convenient.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including presentation at the forthcoming shareholder meeting but not with regard to submission, negotiations or modification, which require my approval. Please include Mr. Chevedden (PH: [redacted]) at: [redacted] in future regarding this proposal. I am open to negotiations.

Per SEC SLB 14L https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals, Section F, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." Please honor my request to promptly acknowledge receipt of this email and attachment. That will also prompt me to request the required letter from my broker and to submit it to you, avoiding the time and cost of a deficiency letter.

Sincerely,

James McRitchie

June 1, 2022
Proposal 4* - Create an Ownership Culture

Resolved: Microsoft Corporation ("Company") shareholders request the Board's Compensation Committee ("Committee") report annually on all stock distributed to employees, directors, and consultants under compensation plans approved by shareholders. The report should include a matrix, sorted by an appropriate classification scheme with five or more categories chosen by the Committee, showing aggregate amounts of stock ownership distributed and utilized, including associated voting power, if any. The Committee should issue the report before or concurrent with the next annual proxy statement.

Supporting Statement:

In 2003 the Securities and Exchange Commission approved an NYSE mandate that shareholder approval must be obtained for specified equity compensation plans before they can be awarded.¹ Our Company recognizes stock ownership as an incentive for directors and named executives, reporting annually on utilization. We ask our Company to track and disclose similar information and associated voting power using meaningful classifications to create an ownership culture for all employees and consultants.

Widespread employee ownership is correlated with better firm performance, fewer layoffs, better employee compensation and benefits, higher median household wealth, longer median job tenure, and reduced racial and gender wealth gaps.² It also has a long history of bipartisan support.³ Our Company should educate and promote ownership plans and progress towards an engaged employee ownership culture.⁴

⁴ https://smlr.rutgers.edu/faculty-research-engagement/institute-study-employee-ownership-and-profit-sharing
Wealth inequality in the United States has increased dramatically,\textsuperscript{5} is widely recognized as a \textit{significant social policy issue},\textsuperscript{6} and brings many problems, such as political polarization.\textsuperscript{7} Employee ownership is key to addressing this social policy in a bipartisan manner.\textsuperscript{8}

Providing stock ownership incentives to boards and executives but not to all U.S. company employees has led to glaring inequality. Our Company's last reported "pay ratio" was 333:1. A similar ratio comparing stock ownership and/or the voting power of named executives with those of typical employees would probably be much higher.

From 1973 to 2018, inflation-adjusted wages for nonsupervisory American workers were flat. Meanwhile, a dollar's worth of stock grew (in real terms) to $14.09. Hourly wages stagnated. Income from capital ownership accelerated. The top 10\% of American households earned 97\% of capital gains. Typical White families own nearly 10x the average Black family. Single women own only 36\% of what typical men own. That gap is greater for women of color.\textsuperscript{9} Strengthening employee ownership would help address these inequities,\textsuperscript{10} while generating higher value for all shareholders.

Employee engagement and trust are crucial to success. Expanding the Committee's perspective beyond executive compensation would give them "a better grasp on how human talent matters for the company's business strategy and operations."\textsuperscript{11} Our Company could benefit shareholders, employees, and the economy by leading on this issue.

Increase Long-Term Shareholder Value

Vote to \textbf{Create an Ownership Culture} – Proposal [4*]

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

Number 4* to be assigned by Company

The graphic included above is intended to be published with the rule 14a-8 proposal. It would be the same size as the largest management graphic (or highlighted management text) used in conjunction with a management proposal or opposition to a Rule 14a-8 shareholder proposal in the 2022 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal. Reference SEC Staff Legal Bulletin No. 14I (CF) [16].

Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the Company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

\textsuperscript{5} https://inequality.org/facts/wealth-inequality/
\textsuperscript{6} https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s/
\textsuperscript{7} https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2649215
\textsuperscript{9} https://ownershipamerica.org/the-problem/
\textsuperscript{10} https://smnr.rutgers.edu/sites/default/files/Documents/Centers/Institute_Employee_Ownership/rutgerskelloggreport_april2019.pdf
Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

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

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

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

I also take this opportunity to remind you of the SEC's recent guidance and my request that you acknowledge receipt of this shareholder proposal submission. SLB 14L Section F, https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."