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

DIVISION OF
CORPORATION FINANCE

January 19, 2022

Jennifer Kraft
Starbucks Corporation

Re: Starbucks Corporation (the "Company")
Incoming letter dated November 9, 2021

Dear Ms. Kraft:

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

The Proposal requests, in relevant part, that the board commission a workplace non-discrimination audit analyzing the Company's impacts, including the impacts arising from Company-sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the Company's business, and issue a report on the audit.

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

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

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

Starbucks Coffee Company
P.O. Box 34067
Seattle, WA 98124-1067

(206) 318-4288

Jennifer Kraft
senior vice president, deputy general counsel and secretary
Starbucks Coffee Company

November 9, 2021

Via email: shareholderproposals@sec.gov

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

Re: Starbucks Corporation - Omission of Shareholder Proposal Submitted by the National Center for Public Policy Research

Ladies and Gentlemen:

Starbucks Corporation, a Washington corporation ("***Starbucks***" or the "***Company***"), hereby notifies the Securities and Exchange Commission (the "***Commission***") that Starbucks intends to omit from its form of proxy card and other proxy materials (its "***Proxy Materials***") for Starbucks 2022 annual meeting of shareholders (the "***2022 Annual Meeting***"), the shareholder proposal (the "***Proposal***") and supporting statement (the "***Supporting Statement***") submitted to Starbucks by the National Center for Public Policy Research (the "***Proponent***"). Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the "***Act***"), Starbucks requests confirmation that the staff (the "***Staff***") of the Commission will not recommend enforcement action if Starbucks excludes the Proposal from its Proxy Materials for the reasons discussed below. The Proposal, the accompanying Supporting Statement, and copies of all relevant correspondence between Starbucks and the Proponent are attached to this letter as Attachment A. The Proposal states:

> "Resolved: We, shareholders of Starbucks Corporation ("the company"), ask the Board of Directors to publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of employee-training materials offered to some or all of the company's employees by the company or with the company's consent, whether in a mandatory or voluntary setting, as well as any such materials that were sponsored by the company in whole or part. In the alternative we request the Board commission a workplace non-discrimination audit analyzing the company's impacts, including the impacts arising from company-sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company's business. In the latter instance, a report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company's website."

Reasons for Excluding the Proposal

As described in more detail below, Starbucks hereby respectfully requests that the Staff concur in Starbucks view that it may exclude the Proposal from its Proxy Materials because (i) pursuant to Rule 14a-8(i)(10) under the Act, the Company has already substantially implemented the Proposal and, were the Proposal to be voted upon by the shareholders at the Annual Meeting and pass, there is nothing further that the Company would do to implement the Proposal, and (ii) pursuant to Rule 14-8(i)(3), the Proposal is so inherently vague and indefinite that neither the shareholders voting on the Proposal, nor the Company, would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.

The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) because the Company has Substantially Implemented the Proposal

Background on Rule 14-8(i)(10)

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has already "substantially implemented" the proposal. The Commission stated in 1976 that the predecessor rule to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976). Initially, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were "'fully effected" by the company, which permitted proponents to successfully seek no-action relief from the Commission by submitting proposals that differed from existing company policy by only a few words. See Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "***1983 Release***"). To address this issue, in 1983, the Commission revised the rule to permit the omission of proposals that had been "substantially implemented." Id. The 1998 amendments to Rule 14a-8 codified this position. See Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998).

Under this standard, the Staff has concurred that a shareholder proposal may be excluded as "substantially implemented" if the company can demonstrate that it has already taken actions to address the essential objective of a shareholder proposal. The Staff has noted that a determination of "substantial implementation" of the underlying proposal "depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." Texaco, Inc. (Recon.) (avail. Mar. 28, 1991). In applying this standard, the Staff concurred with the exclusion of a proposal requesting that the board of directors prepare a report on the company's processes for "implementing human rights commitments within company-owned operations and through business relationships" where the requested information was already disclosed in the company's global code of ethics, global supplier code of conduct, supplier sustainability policy, and sustainability report, and other disclosures that addressed the requested information. PPG Industries (avail. Jan. 16, 2020).

Moreover, the Staff has consistently concurred with the exclusion of shareholder proposals requesting reports if the company has provided information about the requested subject matter in public disclosures, regardless of the form of disclosure. See, e.g., Hess Corp. (avail. Apr. 11, 2019) (concurring in the exclusion of a proposal requesting a report on aligning the company's carbon footprint with the necessary greenhouse gas reductions to achieve the Paris Agreement's goal

where the company had met the essential objective through its most recent sustainability report, its responses to the Carbon Disclosure Project Climate Change Questionnaire, and its 2018 Investor Day Presentation); Mondelēz International, Inc. (avail. Mar. 7, 2014) (concurring in the exclusion of a proposal requesting a report on the company's process for identifying and analyzing potential and actual human rights risks of the company's operations and supply chain where the company had achieved the essential objective of the proposal by publicly disclosing its risk-management processes).

The Current Disclosures Substantially Implement the Proposal by Disclosing Information Regarding the Company's Civil Rights and Non-Discrimination Audit

The Proposal requests that the Board of Directors (the "***Board***") of Starbucks publish employee-training materials offered to some or all of the Company's employees by the Company or with the Company's consent, or, alternatively, publicize a report describing the outcomes of a civil rights and non-discrimination audit analyzing the Company's impacts, including the impacts arising from such training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company's business. Starbucks already performs regular Civil Rights Assessments and makes those reports publicly available, and also makes other disclosures that would substantially meet the second alternative.

Starbucks is firmly committed to guiding its core values of equity, diversity, and inclusion with intentionality, transparency, and accountability. As discussed in greater detail below, the Company's existing publicly-disclosed reports and disclosures (collectively, the "***Current Disclosures***")—including its Civil Rights Assessment, Global Human Rights Statement, Standards of Business Conduct, and annual Global Environmental and Social Impact Report—describe the Company's implementation and oversight of training, including "on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company's business."

The Starbucks Global Human Rights Statement[1] and the Starbucks Standards of Business Conduct[2] emphasize the Company's commitment to global human rights and note that "this commitment is communicated with and embedded in our training materials and manuals and Starbucks Standards of Business Conduct."[3] In its efforts to further this commitment, Starbucks has made publicly available multiple disclosures regarding training, impacts on civil rights and non-discrimination in the workplace, and the importance of those issues to the Company's business. These disclosures are discussed in greater detail below. Notable among these disclosures are Starbucks Civil Rights Assessments, which have been conducted for the past three fiscal years, and effectively serve as workplace non-discrimination audits by providing detailed evaluations of Starbucks progress in the past year in connection with its commitment to civil rights, equity, diversity, and inclusion. Therefore, it is unnecessary to submit the Proposal to shareholders for their consideration at the 2022 Annual Meeting as the Proposal has been substantially implemented.

[1] See https://content-prod-live.cert.starbucks.com/binary/v2/asset/137-72282.pdf
[2] See https://content-prod-live.cert.starbucks.com/binary/v2/asset/137-71881.pdf
[3] See https://content-prod-live.cert.starbucks.com/binary/v2/asset/137-72282.pdf

2021 Civil Rights Assessment[4] (“*CRA*”)

Since 2019, Starbucks has worked on an annual basis with former Attorney General Eric Holder, leading a team from Covington & Burling LLP, to conduct a comprehensive assessment of the Company’s commitment to civil rights, equity, diversity, and inclusion. Each year Starbucks has published the assessments on the Company’s website. The initial CRA was developed in response to the Company’s efforts to “understand and mitigate the potential effects of implicit bias in its stores and to ensure that all of its customers and partners were treated equally.” Since then, the Company has committed to continuing to create accountability to ensure equal access to advancement and promotion opportunities and enhanced accountability for leaders.[5] The 2021 CRA details the Company’s commitment to (1) sustaining Starbucks stores as a “third place” where customers feel welcome, (2) fostering an internal culture of equity and inclusion, (3) strengthening communities, and (4) the importance of leadership.

The CRA is a civil rights and non-discrimination audit, conducted independently by a third party, and Starbucks has regularly made the results of that audit public on its website, thus substantially fulfilling the objective of the proposal.[6]

The CRA also substantially addresses the particular topics requested in the proposal – “the company’s impacts, including the impacts arising from company-sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company’s business.” The audit specifically involved a review of the Company’s “trainings, policies, and initiatives,” including meetings with those responsible for such trainings, policies, and initiatives, and with employees – whom Starbucks refers to as “partners.”[7] The CRA spends several pages describing the content and delivery of these trainings, including quotes from partners about the impact of the training on their experience.[8] It also outlines recommendations for enhancing the Company’s training regarding civil rights and non-discrimination, and the Company’s progress towards those recommendations.[9] The CRA further describes the impacts of the Company’s efforts on civil rights and non-discrimination in the workplace, and on the impacts on the Company’s business.[10]

In particular, the 2021 CRA outlines the Company’s commitment to fighting discrimination, including by detailing the Company’s resolution with the United States Equal Employment Opportunity Commission through a voluntary reconciliation process through which Starbucks resolved allegations dating back to 2007 that “Starbucks’ promotion practices discriminated against

[4] See https://stories.starbucks.com/uploads/2021/03/Starbucks-2021-Civil-Rights-Assessment.pdf
[5] See https://stories.starbucks.com/press/2021/our-third-civil-rights-assessment/
[6] Although Starbucks refers to the CRA as a “Civil Rights Assessment,” it is the result of a thorough and objective third-party audit conducted by Covington & Burling LLP that examines Starbucks “ongoing efforts to promote civil rights, equity, diversity, and inclusion—both within the Company and the communities it serves.” See https://stories.starbucks.com/uploads/2019/01/Covington-Report-to-Starbucks-Jan-23-2019.pdf at 11.
[7] https://stories.starbucks.com/uploads/2020/02/Starbucks-Civil-Rights-Assessment-2020-Update.pdf at 8.
[8] *Id.* at 9-16.
[9] *Id.* at 19-21.
[10] See https://stories.starbucks.com/uploads/2021/03/Starbucks-2021-Civil-Rights-Assessment.pdf at 25-29.

some of its store partners on the basis of race and national origin." Recognizing an opportunity for improvement, the 2021 CRA notes that "Starbucks has worked to make the structural changes necessary to ensure that every partner has the opportunity to learn about promotion opportunities."

In describing the work that Starbucks has done to combat all forms of discrimination, including implicit bias, pages 22-23 of the 2021 CRA describe the efforts made by the Company for its store partners at all levels, including the following:

- Implementation of an enhanced applicant tracking system in order to create a more formal, data-driven process for new hires and promotions;
- Expanding internal capacity for inclusion and diversity analytics;
- Hiring an independent labor economist to analyze data, create promotion goals and assess progress toward those promotion goals in order to ensure that qualified, eligible and interested Black, Indigenous and People of Color ("***BIPOC***") and other partners are promoted at rates that mirror availability;
- Providing training on candidate selection and combating bias in promotion and prohibiting Starbucks store managers from executing on promotions outside of the established processes; and
- Performing an audit on roles and behaviors and diversity training resources in order to better define and promote inclusive behaviors related to both retail and non-retail roles.

Based on the CRA alone, Starbucks has already substantially implemented the proposal, and should be excluded. There are also additional disclosures on these same topics, outlined below.

Other Disclosures

Annual Report on Form 10-K for the year ended September 27, 2020[11] *("Annual Report").* Pages 7-8 of the Annual Report discuss the Company's training efforts, which are overseen by the Company's Partner Resources Organization, which is "tasked with managing employment-related matters, including recruiting and hiring, onboarding and training, compensation planning, performance management and professional development." The Annual Report describes Starbucks training programs, including trainings related to mental health and substance use issues, engagement with customers and communities, and bias and discrimination.

2020 Global Environmental and Social Impact Report[12] *("GESIR").* Starbucks provides the GESIR annually to provide a public update on the Company's global environmental and social impact. Of note, the "People" section of the GESIR, included on pages 7-14, explains in detail the Company's impacts on civil rights and non-discrimination in the workplace and the impacts of those issues on the company's business. Page 7 of the GESIR provides an update on the Company's progress in advancing racial and social equity on behalf of its partners, customers, and communities through a variety of mechanisms, including, among others, the commission of the CRA, the launch of a mentorship program to connect BIPOC partners to senior leaders, the launch of a safe space for internal discussions, and investments in strategic partnerships with professional organizations who focus on the development of BIPOC talent. Page 8 of the GESIR emphasizes Starbucks

[11] See https://www.sec.gov/ix?doc=/Archives/edgar/data/829224/000082922420000078/sbux-20200927.htm
[12] See https://stories.starbucks.com/uploads/2021/04/Starbucks-2020-Global-Environmental-and-Social-Impact-Report.pdf

commitment to providing a safe, equal workplace by highlighting the Company's 100% rating from the Human Rights Campaign's Corporate Equality Index, 100/100 score on the Disability Equality Index, and the partner diversity present in its 69% female, 47% BIPOC representation in the Company's partner base. Page 9 of the GESIR notes that Starbucks has achieved and maintained 100% pay equity for women and men, and people of all races performing similar work in the United States. Pages 10-12 of the GESIR also note the Company's ongoing efforts by highlighting mental health benefits, social impact-designed stores (including (i) military family stores, which are located near major military bases and serve as a place of connection and support for service members, military families, and veterans, (ii) community stores, which focus on creating pathways for those facing barriers to opportunity by hiring from within the community, creating dedicated space for communities to come together for events, and working with diverse contractors for store construction and remodels, and (iii) signing stores, which provide employment opportunities for deaf and hard of hearing people and drive greater community connection, and the Starbucks FoodShare program, which donates eligible, unsold food to food banks and mobile pantries. Page 14 of the GESIR notes that the Company has committed $100 million to launch the Starbucks Community Resilience Fund focused on supporting small businesses and community development projects in BIPOC neighborhoods and highlights the diversity of the company's board of directors, which is 45% people of color and 36% women.

Workforce Diversity Statistics

In furtherance of its efforts to fight discrimination and advance diversity and inclusion, the Company has made public its current workforce diversity data and EEO-1 report since 2016.[13] The Company was also one of 34 companies in the S&P 100 to commit to disclosing its Consolidated EEO-1 Report, publicly disclosing the composition of its workforce by race, ethnicity, and gender. In addition, the Company has publicly communicated its commitment to inclusion, diversity, and equity, a commitment that includes its joining the Board Diversity Action Alliance to further the Company's commitment to representation of racially and ethnically diverse directors on corporate boards.[14] Information about the Company's own board diversity can be found in its annual proxy statement.

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The Current Disclosures address the core aspects of the Proposal by providing information on the employee training materials used and provided by the Company and information on the Company's impacts, including the impact arising from Company-sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company's business.

Rather than requiring disclosure that already substantially exists, Proponent's goal instead appears to make a statement in Starbucks proxy in support of Proponent's apparent view that Starbucks efforts to advance civil rights and combat workplace discrimination are improper or unfair. The Supporting Statement describes Proponent's desire for "an assessment of whether Company employee-training programs treat any employees or class of employees as inferior to any others, as by overt or implicit signals that some employees or groups of employees will be offered additional

[13] See https://stories.starbucks.com/stories/2020/workforce-diversity-at-starbucks/
[14] See https://stories.starbucks.com/stories/2020/our-commitment-to-inclusion-diversity-and-equity-at-starbucks/

mentoring or support programs denied to other employees on suspect grounds; that some employees will receive non-merit-related preferential treatment in hiring or promotion; or that some employees are encouraged to speak about their lived experiences and feelings - including their impressions of the employee-training itself - while others are constrained."[15] This particular request does not appear in the Proposal itself. Even if it were included, however, it too has been substantially implemented. Starbucks commitment to civil rights and non-discrimination extends to all Starbucks partners, as does its annual CRA. That proponents apparently disagree with the conclusions of the CRA does not provide a basis for them to seek a shareholder vote to require disclosure that already substantially exists.

Consistent with the precedents discussed above, there is no further action required of the Board to address the essential objective of the Proposal. The Current Disclosures demonstrate that the Company's actions and disclosures compare favorably with those requested under the Proposal. Accordingly, the Proposal may be excluded from the Company's 2022 Proxy Materials under Rule 14a-8(i)(10).

The Proposal May Be Excluded Pursuant to Rule 14-8(i)(3) Because the Proposal is So Inherently Vague and Indefinite that Neither the Shareholder Voting on the Proposal, Nor the Company Implementing the Proposal, Would Be Able to Determine with Any Reasonable Certainty Exactly What Actions or Measures the Proposal Requires

Background on Rule 14a-8(i)(3)

The Staff has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) if it is so vague and indefinite that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (September 15, 2004). Under this standard, the Staff has routinely permitted exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented.

The Staff has allowed exclusion of proposals under Rule 14a-8(i)(3) where the meaning and application of key terms used in the proposal may be subject to differing interpretations, such that shareholders and the company would be uncertain about the core purpose of the proposal or reach different conclusions regarding implementation thereof. Ambiguities in a proposal may render the proposal materially misleading, because "any action ultimately taken by the [c]ompany upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." Fuqua Industries, Inc. (March 12, 1991) (allowing exclusion of proposal to prohibit "any major shareholder . . . which currently owns 25% of the Company and has three Board seats from compromising the ownership of the other stockholders," where the meaning and application of such terms as "any major shareholder," "assets/interest" and "obtaining control" would be subject to differing interpretations).

The Proposal is Inherently Vague and Indefinite

The Proposal requests that the Company "publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of

[15] See the Supporting Statement.

employee-training materials offered to some or all of the company's employees by the company or with the company's consent, whether in a mandatory or voluntary setting, as well as any such materials that were sponsored by the company in whole or part."

It is unclear what is meant by the disclosure of "content" of employee training materials—a shareholder voting on the Proposal could interpret it to mean either providing copies of any and all training materials "offered to some or all of the company's employees or with the company's consent" or providing a summary of such materials. Moreover, "written and oral content" suggests that, in addition to providing all written training materials, Starbucks should also transcribe or record all verbal trainings provided on location to employees in order to provide the transcripts to shareholders.

The Proposal also includes trainings that are both "mandatory" and "voluntary." Given the amount of training that is presented across the Company's global workforce on a wide variety of topics every day, including things like informal training of new partners on processes and procedures, or existing partners regarding new equipment, policies, or offerings, this request could be interpreted to cover actions that occur daily for many Company partners.

The Proposal continues to request "any such materials that were sponsored by the company in whole or in part," which suggests that the Company would have to provide any materials provided at third-party events, such as conferences, sponsored by Starbucks so long as such events were attended by even one Starbucks employee.

The Proposal caveats that the Company should not disclose "genuinely confidential or proprietary" information, but it is unclear what would be considered confidential and proprietary as opposed to "genuinely" confidential or proprietary. The Supporting Statement goes on to state that "training materials that are too controversial or toxic to release to shareholders are necessarily inappropriate for use with employees…" Statements like this make it more difficult for shareholders to assess which kinds of trainings may be excluded.

The Proposal further limits its request by stating that the Company should not incur excessive costs in responding to its requests. However, Starbucks employs over 383,000 people, with approximately 138,000 employees working outside of the United States. Given the wide scope of the Proposal, the training materials provided to Starbucks employees abroad would have to be translated to English. It would be impossible for Starbucks to comply with the Proposal's request as it is written as it would be impossible to provide the training materials without incurring excessive costs given the sheer volume of training materials used by Starbucks and the lack of clarity provided by the Proposal.

Without more details or specificity as to what the Proposal is asking the shareholders to vote on and the Company to adopt, shareholders will have difficulty determining whether to vote "for" or "against" the Proposal, and neither the shareholders nor the Company will be able to determine with reasonable certainty what further actions or measures should be taken with regard to this Proposal were it to be approved by shareholders. If shareholders approved the Proposal pursuant to their individual interpretations thereof, the Company would have no consistent direction or guidelines with respect to how the Proposal should be implemented, which could result in actions taken by the Board differing significantly from the various actions envisioned by the shareholders voting on the Proposal.

If the Proposal were approved, the Company would have to choose among multiple options for implementing the Proposal, any one of which could look very different from what the shareholders approving the Proposal envisioned. Accordingly, the Proposal is vague and indefinite and therefore excludable under Rule 14-8(i)(3).

[*Remainder of page intentionally left blank*]

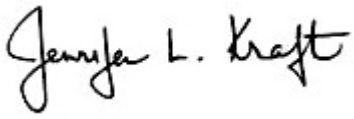
Conclusion

Based on the foregoing, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2022 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal, and Rule 14-8(i)(3) because the Proposal is so inherently vague and indefinite that neither the shareholders voting on the Proposal, nor the Company, would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires. Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should the Staff have questions or desire any additional information in support of our position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its Rule 14a-8(j) response. In this case, please contact Josh Gaul by telephone at 206.637.0923 or by email at jgaul@starbucks.com.

This request is being submitted electronically pursuant to guidance found in Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("***SLB 14D***"). Accordingly, we are not enclosing the additional six copies ordinarily required by Rule 14a-8(j). Pursuant to Rule 14a-8(j)(1) under the Act, a copy of this letter and the attachments is being sent via mail to the "National Center for Public Policy Research" at 20 F Street NW, Suite 700, Washington, DC 20001, pursuant to the Proponent's request.

Rule 14a-8(k) and 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. 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.

Sincerely,



Jennifer Kraft
senior vice president, deputy general counsel and corporate secretary
Starbucks Corporation

Enclosures

cc: Rachel Gonzalez, Starbucks
National Center for Public Policy Research
JT Ho, Orrick Herrington & Sutcliffe LLP
Carolyn Frantz, Orrick Herrington & Sutcliffe LLP

Attachment A

September 17, 2021

Via FedEx to

Rachel A. Gonzalez, Corporate Secretary
Starbucks Corporation
2401 Utah Avenue South
Mail Stop S-LA1
Seattle, Washington 98134

Dear Ms. Gonzalez,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Starbucks Corporation (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2022 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal September 29, 2021 from 2-5 p.m. eastern, 11 a.m.-2 p.m. pacific. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at sshepard@nationalcenter.org so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to sshepard@nationalcenter.org.

Sincerely,

Scott Shepard

Enclosure: Shareholder Proposal

Employee Training Disclosure Proposal

Resolved: We, shareholders of Starbucks Corporation ("the company"), ask the Board of Directors to publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of employee-training materials offered to some or all of the company's employees by the company or with the company's consent, whether in a mandatory or voluntary setting, as well as any such materials that were sponsored by the company in whole or part. In the alternative we request the Board commission a workplace non-discrimination audit analyzing the company's impacts, including the impacts arising from company-sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company's business. In the latter instance, a report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company's website.

Supporting Statement: Tremendous public attention has focused recently on workplace practices and employee training. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt "anti-racism" programs that seek to establish "racial equity," which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than on the basis of merit.[1] Where adopted, however, such programs raise significant objection, including concern that the "anti-racist" programs are themselves deeply racist and otherwise discriminatory.[2]

Many companies have been found to sponsor and promote overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer, CVS, and many others.[3]

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[1] https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/fdx3894361-def14a.htm#StockholderProposals88; https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf; https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf; https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58

[2] https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/; https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337; https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875; https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/; https://www.city-journal.org/verizon-critical-race-theory-training; https://www.city-journal.org/bank-of-america-racial-reeducation-program

[3] https://www.city-journal.org/bank-of-america-racial-reeducation-program; https://www.city-journal.org/verizon-critical-race-theory-training; https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/; https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory; https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ

Starbucks has its own history of discrimination in the ostensible name of anti-discrimination,[4] and of sponsoring ostensibly anti-racist programming.[5]

This concern, disagreement and controversy creates massive reputational, legal and financial risk. Companies should disclose to shareholders the materials that they use in employee-training programs so that shareholders can appropriately gauge executives' responses to and management of those risks. Training materials that are too controversial or toxic to release to shareholders are necessarily inappropriate for use with employees, so that publication will increase executive thoughtfulness and decrease overall company risk, to the benefit of all stakeholders.

Should the Board elect to perform an audit and render a report, it is encouraged to assess whether Company employee-training programs treat any employees or class of employees as inferior to any others, as by overt or implicit signals that some employees or groups of employees will be offered additional mentoring or support programs denied to other employees on suspect grounds; that some employees will receive non-merit-related preferential treatment in hiring or promotion; or that some employees are encouraged to speak about their lived experiences and feelings – including their impressions of the employee-training itself – while others are constrained.

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[4] https://www.theblaze.com/news/lawsuit-alleges-starbucks-fired-christian-barista-who-refused-to-wear-lgbt-pride-shirt; https://www.usatoday.com/story/news/nation/2019/11/29/police-chief-says-oklahoma-starbucks-served-cup-labeled-pig-cop/4333113002/; https://www.theepochtimes.com/starbucks-apologizes-after-2-california-police-officers-were-denied-service_3174765.html;

[5] https://time.com/5294343/starbucks-employees-racial-bias-training/

Address for Courier Deliveries:
2401 Utah Avenue South, S-LA1
Seattle, WA 98134

September 29, 2021

Via Email and FedEx
National Center for Public Policy Research
20 F Street, NW Suite 700
Washington, DC 20001

Re: Shareholder Proposal submitted under Rule 14a-8 in connection with The 2022 Annual Meeting of Shareholders of Starbucks Corporation

Dear Mr. Shepard:

On September 21, 2021, Starbucks Corporation (the "**Company**") received a letter from the National Center for Public Policy Research (the "**Proponent**") post-marked and dated September 17, 2021 (the "**Initial Letter**"). The Initial Letter requested under Rule 14a-8 that the Company include in the Company's proxy statement for the 2022 Annual Meeting of Shareholders (the "**Annual Meeting**"), a shareholder proposal, which requests that the Company's Board of Directors either (i) publish annually the written and oral content of employee-training materials offered to some or all of the Company's employees by the Company including materials that were sponsored by the Company in whole or in part, or (ii) commission a workplace non-discrimination audit analyzing the Company's impact arising from Company-sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the Company's business (the "**Proposal**"). The Initial Letter stated that all correspondence regarding the Proposal should be directed to you. The purpose of this letter is to notify you and the Proponent of the Defect discussed below and the means to remedy the Defect.

Under Rule 14a-8(b)(2), at the time the Proponent submitted the Proposal, the Proponent is required to prove its eligibility to submit the Proposal to the Company. Under Rule 14a-8(b)(1), the Proponent must have continuously held at least $2,000 in market value, or 1%, of the Company's securities (the "**Requisite Securities**") entitled to be voted on the Proposal at the Annual Meeting for at least one year by the date the Proponent submitted the Proposal.

The Initial Letter stated that the Proponent meets the ownership requirements discussed above and a proof of ownership letter would be forthcoming. However, to date, the Company has not received proof verifying the Proponent's beneficial ownership of the Requisite Securities. Under Rule 14a-8(f), the Company is hereby notifying you and the Proponent of this procedural defect (the "**Defect**").

Consistent with Staff Legal Bulletin 14G (CF) ("**SLB 14G**"), the Company views the Proposal dated September 17, 2021 as deficient. To remedy the Defect, please submit sufficient proof of the Proponent continuously holding the Requisite Securities entitled to be voted on the Proposal at the Annual Meeting

for the one-year period preceding and including September 17, 2021. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof may be in one of the following forms:

1. A written statement from the "record" holder of the Proponent's securities (usually a broker or a bank that is a Depository Trust Company ("**DTC**") participant) verifying that, at the time the Proponent submitted the Proposal, the Proponent continuously held the Requisite Securities for the one-year period preceding and including September 17, 2021; or

2. If the Proponent filed a Schedule 13D, Schedule 13G, Form 3, Form 4, and/or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the Requisite Securities as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level and a written statement that the Proponent continuously held the requisite number of Company securities for the one-year period as of the date of that statement.

For your reference, a copy of Rule 14a-8 is attached to this letter as Attachment A.

As set forth in (1.) above—to help shareholders comply with the proof of ownership requirements of Rule 14a-8 by providing a written statement from the "record" holder of shares—the SEC's Division of Corporation Finance published Staff Legal Bulletin 14F (CF) ("**SLB 14F**") as well as SLB 14G; both of which are also attached to this letter for your reference as attachments B and C, respectively. In SLB 14F and SLB 14G, the SEC staff stated only brokers or banks that are DTC participants, or are affiliates of DTC participants, will be viewed as "record" holders for purposes of Rule 14a-8. Thus, the Proponent will need to obtain the required written statement from the DTC participant, or an affiliate of a DTC participant, through which the Proponent's securities are held. If the Proponent is not certain whether the Proponent's broker or bank is a DTC participant, the Proponent may check DTC's participant list which is currently available on the Internet at http://www.dtcc.com/client-center/dtc-directories.

If the Proponent's broker or bank is a DTC participant, or an affiliate of a DTC participant, then the Proponent must submit a written statement from such DTC participant or affiliate verifying that the Proponent continuously held the Requisite Securities for the one-year period preceding and including September 17, 2021.

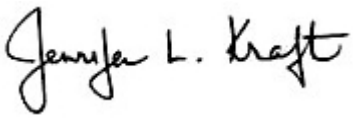
If the Proponent's broker or bank is not a DTC participant, or not an affiliate of a DTC participant, then the Proponent must submit proof of ownership from the DTC participant through which the securities are held verifying that the Proponent continuously held the Requisite Securities for the one-year period preceding and including September 17, 2021. The Proponent should be able to find out the identity of the DTC participant by asking its broker or bank. If the Proponent's broker is an introducing broker, the Proponent may be able to also learn the identity and telephone number of the DTC participant through the Proponent's account statements because the clearing broker identified on such account statements will generally be a DTC participant. If the DTC participant, or an affiliate of the DTC participant, that holds the Proponent's securities is not able to confirm the Proponent's holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent must satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including September 17, 2021, the Requisite Securities were continuously held: (i) one from the Proponent's broker or bank confirming the

Proponent's ownership, and (ii) another from the DTC participant, or an affiliate of a DTC participant, confirming the broker's or bank's ownership. Please refer to the attached copies of SLB 14F and SLB 14G.

In SLB 14G, the SEC staff clarified that, in situations where a shareholder holds securities through a securities intermediary that is not a broker or bank, a shareholder can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary. If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

The SEC's rules require that the Proponent's response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive the letter. Please address any response to JT Ho, outside counsel for the Company, at 405 Howard Street, San Francisco, CA 94105. Alternatively, you may transmit any response by facsimile to (415) 773-5759 or by email to jho@orrick.com. Please feel free to call him at (415) 773-5624 if you have any questions.

Sincerely,



Jennifer L. Kraft
svp, deputy general counsel & corporate secretary

cc: Rachel A. Gonzales, Starbucks Corporation
Josh Gaul, Starbucks Corporation
JT Ho, Orrick, Herrington & Sutcliffe LLP

Attachment A – Rule 14a-8

Code of Federal Regulations
Title 17. Commodity and Securities Exchanges
Chapter II. Securities and Exchange Commission
Part 240. General Rules and Regulations, Securities Exchange Act of 1934 (Refs & Annos)
Subpart A. Rules and Regulations Under the Securities Exchange Act of 1934
Regulation 14a: Solicitation of Proxies (Refs & Annos)

17 C.F.R. § 240.14a–8

§ 240.14a–8 Shareholder proposals.

Effective: January 4, 2021
Currentness

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

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

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

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

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

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

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

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

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

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

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

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

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

<Text of subsection (b)(3) added by 85 FR 70294, effective Jan. 4, 2021 through Jan. 1, 2023.>

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

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

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

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

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

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

(e) Question 5: What is the deadline for submitting a proposal?

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

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

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

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

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

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

(i) Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

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

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

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

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

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

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

(8) Director elections: If the proposal:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By the Commission.

Dated: September 23, 2020.

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

Credits

[41 FR 53000, Dec. 3, 1976, as amended at 43 FR 58530, Dec. 14, 1978; 44 FR 68456, 68770, Nov. 29, 1979; 48 FR 38222, Aug. 23, 1983; 50 FR 48181, Nov. 22, 1985; 51 FR 42062, Nov. 20, 1986; 52 FR 21936, June 10, 1987; 52 FR 48983, Dec. 29, 1987; 63 FR 29119, May 28, 1998; 63 FR 50622, Sept. 22, 1998; 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 75 FR 56782, Sept. 16, 2010; 75 FR 64641, Oct. 20, 2010; 76 FR 6045, Feb. 2, 2011; 76 FR 58100, Sept. 20, 2011; 85 FR 70294, Nov. 4, 2020]

SOURCE: 50 FR 27946, July 9, 1985; 50 FR 28394, July 12, 1985; 50 FR 37654, Sept. 17, 1985; 50 FR 41870, Oct. 16, 1985; 50 FR 42678, Oct. 22, 1985; 51 FR 8801, March 14, 1986; 51 FR 12127, April 9, 1986; 51 FR 14982, April 22, 1986; 51 FR 18580, May 21, 1986; 51 FR 25882, July 17, 1986; 51 FR 36551, Oct. 14, 1986; 51 FR 44275, Dec. 9, 1986; 52 FR 3000, Jan. 30, 1987; 52 FR 8877, March 20, 1987; 52 FR 9154, March 23, 1987; 52 FR 16838, May 6, 1987; 52 FR 27969, July 24, 1987; 52 FR 42279, Nov. 4, 1987; 53 FR 26394, July 12, 1988; 53 FR 33459, Aug. 31, 1988; 53 FR 37289, Sept. 26, 1988; 54 FR 23976, June 5, 1989; 54 FR 28813, July 10, 1989; 54 FR 30031, July 18, 1989; 54 FR 35481, Aug. 28, 1989; 54 FR 37789, Sept. 13, 1989; 55 FR 23929, June 13, 1990; 55 FR 50320, Dec. 6, 1990; 56 FR 7265, Feb. 21, 1991; 56 FR 9129, March 5, 1991; 56 FR 12118, March 22, 1991; 56 FR 19156, April 25, 1991; 56 FR 28322, June 20, 1991; 56 FR 30067, July 1, 1991; 57 FR 18218, April 29, 1992; 57 FR 32168, July 21, 1992; 57 FR 36501, Aug. 13, 1992; 57 FR 47409, Oct. 16, 1992; 58 FR 14682, March 18, 1993; 59 FR 10985, March 9, 1994; 59 FR 55012, Nov. 2, 1994; 59 FR 66709, Dec. 28, 1994; 61 FR 48328, Sept. 12, 1996; 62 FR 543, Jan. 3, 1997; 62 FR 6071, Feb. 10, 1997; 62 FR 12749, March 18, 1997; 62 FR 35340, July 1, 1997; 63 FR 8102, Feb. 18, 1998; 63 FR 13944, March 23, 1998; 65 FR 76087, Dec. 5, 2000; 66 FR 21659, May 1, 2001; 66 FR 43741, Aug. 20, 2001; 66 FR 55837, 55838, Nov. 2, 2001; 67 FR 247, Jan. 2, 2002; 67 FR 57288, Sept. 9, 2002; 67 FR 58299, Sept. 13, 2002; 68 FR 4355, Jan. 28, 2003; 68 FR 5364, Feb. 3, 2003; 68 FR 18818, April 16, 2003; 68 FR 36665, June 18, 2003; 68 FR 64970, Nov. 17, 2003; 68 FR 67009, Nov. 28, 2003; 68 FR 69221, Dec. 11, 2003; 71 FR 65407, Nov. 8, 2006; 71 FR 74708, Dec. 12, 2006; 71 FR 76596, Dec. 21, 2006; 72 FR 4166, Jan. 29, 2007; 74 FR 68365, Dec. 23, 2009; 75 FR 2794, Jan. 19, 2010; 75 FR 9081, Feb. 26, 2010; 75 FR 54477, Sept. 8, 2010; 75 FR 64653, Oct. 20, 2010; 76 FR 4511, Jan. 26, 2011; 76 FR 6045, Feb. 2, 2011; 76 FR 34363, June 13, 2011; 76 FR 34590, June 14, 2011; 76 FR 41685, July 15, 2011; 76 FR 46620, Aug. 3, 2011; 76 FR 71876, Nov. 21, 2011; 77 FR 30751, May 23, 2012; 77 FR 38454, June 27, 2012; 77 FR 41647, July 13, 2012; 77 FR 48356, Aug. 13, 2012; 77 FR 56362, Sept. 12, 2012; 77 FR 56417, Sept. 12, 2012; 77 FR 66285, Nov. 2, 2012; 77 FR 73305, Dec. 10, 2012; 78 FR 4783, Jan. 23, 2013; 78 FR 42450, July 16, 2013; 78 FR 67633, Nov. 12, 2013; 79 FR 1548, Jan. 8, 2014; 79 FR 39159, July 9, 2014; 79 FR 47369, Aug. 12, 2014; 79 FR 55261, Sept. 15, 2014; 79 FR 57344, Sept. 24, 2014; 80 FR 14550, March 19, 2015; 80 FR 49013, Aug. 14, 2015; 81 FR 8637, Feb. 19, 2016; 81 FR 28705, May 10, 2016; 81 FR 30142, May 13, 2016; 81 FR 70900, Oct. 13, 2016; 82 FR 17555, April 12, 2017; 84 FR 33491, July 12, 2019; 84 FR 33629, July 12, 2019; 84 FR 44041, Aug. 22, 2019; 84 FR 55055, Oct. 15, 2019, unless otherwise noted.

AUTHORITY: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub.L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub.L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.; Section 240.3a4–1 also issued under secs. 3 and 15, 89 Stat. 97, as amended,

89 Stat. 121 as amended;; Section 240.3a12–8 also issued under 15 U.S.C. 78a et seq., particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a);; Section 240.3a12–10 also issued under 15 U.S.C. 78b and c;; Section 240.3a12–9 also issued under secs. 3(a)(12), 7(c), 11(d)(1), 15 U.S.C. 78c(a)(12), 78g(c), 78k(d)(1);; Sections 240.3a43–1 and 240.3a44–1 also issued under sec. 3; 15 U.S.C. 78c;; Sections 3a67–1 through 3a67–9 and 3a71–1 and 3a71–2 are also issued under Pub.L. 111–203, §§ 712, 761(b), 124 Stat. 1841 (2010).; Section 240.3a67–10, 240.3a71–3, 240.3a71–4, 240.3a71–5, and 240.3a71–6 are also issued under Pub.L. 111–203, secs. 712, 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).; Sections 240.3a71–3 and 240.3a71–5 are also issued under Pub.L. 111–203, sec. 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).; Section 240.3b–6 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.3b–9 also issued under secs. 2, 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121, as amended (15 U.S.C. 78b, 78c, 78***o***);; Section 240.9b–1 is also issued under sec. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 120, 48 Stat. 905, 906, 908; secs. 1–4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57; sec. 505, 94 Stat. 2292; secs. 9, 15, 23(a), 48 Stat. 889, 895, 901; sec. 230(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; sec. 2, 52 Stat. 1075; secs. 6, 10, 78 Stat. 570–574, 580; sec. 11(d), 84 Stat. 121; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 77b, 77g, 77j, 77s(a), 78i, 78***o***, 78w(a);; Section 240.10b–10 is also issued under secs. 2, 3, 9, 10, 11, 11A, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 156, (15 U.S.C. 78b, 78c, 78i, 78j, 78k, 78k–1, 78***o***, 78q).; Section 240.12a–7 also issued under 15 U.S.C. 78a et seq., particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), 6, 15 U.S.C. 78(f), 11A, 15 U.S.C. 78k, 12, 15 U.S.C. 78(l), and 23(a)(1), 15 U.S.C. 78(w)(a)(1).; Sections 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78***l***, 78m, 78***o***;; Section 240.12b–15 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.12b–25 is also issued under 15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37.; Section 240.12g–3 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.12g3–2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.13a–10 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.13a–11 is also issued under secs. 3(a) and 306(a), Pub.L. 107–204, 116 Stat. 745.; Section 240.13a–14 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.13a–15 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.13d–3 is also issued under Public Law 111–203 § 766, 124 Stat. 1799 (2010).; Sections 240.13e–4, 240.14d–7, 240.14d–10 and 240.14e–1 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(d) and 14(e), 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(d) and 78n(e) and sec. 23(c) of the Investment Company Act of 1940, 15 U.S.C. 80a–23(c);; Sections 240.13e–4 to 240.13e–101 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 48 Stat. 882, 889, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, secs. 1, 2, 3–5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e), 78***o***(c)

sec. 23(c) of the Investment Company Act of 1940; 54 Stat. 825; 15 U.S.C. 80a–23(c);; Section 240.13f–2(T) also issued under sec. 13(f)(1) (15 U.S.C. 78m(f)(1));; Section 240.13p–1 is also issued under sec. 1502, Pub.L. 111–203, 124 Stat. 1376.; Section 240.13q–1 is also issued under sec. 1504, Pub.L. 111–203, 124 Stat. 2220.; Sections 240.14a–1, 240.14a–3, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1, and 240.14c–7 also issued under secs. 12, 15 U.S.C. 781, and 14, Pub.L. 99–222, 99 Stat. 1737,15 U.S.C. 78n;; Sections 240.14a–3, 240.14a–13, 240.14b–1 and 240.14c–7 also issued under secs. 12, 14 and 17, 15 U.S.C. 781, 78n and 78g;; Sections 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n;; Section 240.14d–1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 80a–37.; Section 240.14e–2 is also issued under 15 U.S.C. 77g, 77h, 77s(a), 77sss, 80a–37(a).; Section 240.14e–4 also issued under the Exchange Act, 15 U.S.C. 78a et seq., and particularly sections 3(b), 10(a), 10(b), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78***o***(c), and 78w(a)).; Section 240.15a–6, also issued under secs. 3, 10, 15, and 17, 15 U.S.C. 78c, 78j, 78***o***, and 78q;; Section 240.15b1–3 also issued under sec. 15, 17; 15 U.S.C. 78***o***78q;; Sections 240.15b1–3 and 240.15b2–1 also issued under 15 U.S.C. 78***o***, 78q;; Section 240.15b2–2 also issued under secs. 3, 15; 15 U.S.C. 78c, 78***o***;; Sections 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78***o***, 78q, 12 U.S.C. 241 nt.;; Section 240.15c2–6, also issued under secs. 3, 10, and 15, 15 U.S.C. 78c, 78j, and 78***o***.; Section 240.15c2–11 also issued under 15 U.S.C. 78j(b), 78***o***(c), 78q(a), and 78w(a).; Section 240.15c2–12 also issued under 15 U.S.C. 78b, 78c, 78j, 78***o***, 78***o***–4 and 78q.; Section 240.15c3–1 is also issued under 15 U.S.C. 78***o***(c)(3), 78***o***–10(d), and 78***o***–10(e).; Section 240.15c3–3 is also issued under 15 U.S.C. 78c–5, 78***o***(c)(2), 78(c)(3), 78q(a), 78w(a); sec. 6(c), 84 Stat. 1652; 15 U.S.C. 78fff.; Section 240.15c3–3a is also issued under Pub.L. 111–203, §§ 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78***o***–7 note).; Section 240.15c3–3(o) is also issued under Pub.L. 106–554, 114 Stat. 2763, section

203.; Section 240.15d–5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.15d–10 is also issued under 15 U.S.C. 80a–20(a) and 80a–37(a), and secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.15d–11 is also issued under secs. 3(a) and 306(a), Pub.L. 107–204, 116 Stat. 745.; Section 240.15d–14 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.15d–15 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.15***l***–1 is also issued under Pub.L. 111–203, sec. 913, 124 Stat. 1376, 1827 (2010).; Sections 240.15Ba1–1 through 240.15Ba1–8 are also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010). ; Section 240.15Bc4–1 is also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010). ; Sections 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1 also issued under secs. 3, 15C; 15 U.S.C. 78c, 78o–5;; Sections 240.15Fh–1 through 240.15Fh–6 and 240.15Fk–1 are also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.15Ga–1 is also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.15Ga–2 is also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.16a–1(a) is also issued under Public Law 111–203 § 766, 124 Stat. 1799 (2010).; Section 240.17a–3 also issued under secs. 2, 17, 23a, 48 Stat. 897, as amended; 15 U.S.C. 78d–1, 78d–2, 78q; secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076

sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78 Stat. 565-568, 569, 570, 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 18, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 78***l***, 78n, 78q, 78w(a); ; Section 240.17a–4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d–1, 78d–2; sec. 14, Pub.L. 94–29, 89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub.L. 94–29, 89 Stat. 155 (15 U.S.C. 78w);; Section 240.17a–14 is also issued under Public Law 111–203, sec. 913, 124 Stat. 1376 (2010).; Section 240.17a–23 also issued under 15 U.S.C. 78b, 78c, 78***o***, 78q, and 78w(a).; Section 240.17f–1 is also authorized under sections 2, 17 and 17A, 48 Stat. 891, 89 Stat. 137, 141 (15 U.S.C. 78b, 78q, 78q–1);; Section 240.17g–7 is also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.17g–8 is also issued under sec. 938, Pub.L. 111–203, 124 Stat. 1376.; Section 240.17g–9 is also issued under sec. 936, Pub.L. 111–203, 124 Stat. 1376.; Section 240.17h–1T also issued under 15 U.S.C. 78q.; Sections 240.17Ac2–1(c) and 240.17Ac2–2 also issued under secs. 17, 17A and 23(a); 48 Stat. 897, as amended, 89 Stat. 137, 141 and 48 Stat. 901 (15 U.S.C. 78q, 78q–1, 78w(a));; Section 240.17Ad–1 is also issued under secs. 2, 17, 17A and 23(a); 48 Stat. 841 as amended, 48 Stat. 897, as amended, 89 Stat. 137, 141, and 48 Stat. 901 (15 U.S.C. 78b, 78q, 78q–1, 78w);; Sections 240.17Ad–5 and 240.17Ad–10 are also issued under secs. 3 and 17A; 48 Stat. 882, as amended, and 89 Stat. (15 U.S.C. 78c and 78q–1);; Section 240.17Ad–7 also issued under 15 U.S.C. 78b, 78q, and 78q–1.; Section 240.17Ad–17 is also issued under Pub.L. 111–203, section 929W, 124 Stat. 1869 (2010).; Section 240.17Ad–22 is also issued under 12 U.S.C. 5461 et seq.; Sections 240.18a–1, 240.18a–1a, 240.18a–1b, 240.18a–1c, 240.18a–1d, 240.18a–2, 240.18a–3, and 240.18a–10 are also issued under 15 U.S.C. 78***o***–10(d) and 78***o***–10(e).; Section 240.18a–4 is also issued under 15 U.S.C. 78c–5(f).; Section 240.19b–4 is also issued under 12 U.S.C. 5465(e).; Sections 240.19c–4 also issued under secs. 6, 11A, 14, 15A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78***o***–3, and 78s);; Section 240.19c–5 also issued under Sections 6, 11A, and 19 of the Securities Exchange Act of 1934, 48 Stat. 885, as amended, 89 Stat. 111, as amended, and 48 Stat. 898, as amended, 15 U.S.C. 78f, 78k–1, and 78s.; Section 240.21F is also issued under Pub.L. 111–203, § 922(a), 124 Stat. 1841 (2010).; Section 240.31–1 is also issued under sec. 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

Notes of Decisions (76)

Current through September 23, 2021; 86 FR 52843.

End of Document

Attachment B – SLB 14F

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks

that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement

that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the

Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

Modified: Oct. 18, 2011

Attachment C – SLB 14G

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E and SLB No. 14F.

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which

means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)…."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the

date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

Modified: Oct. 16, 2012

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Starbucks Corporation
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Mail Stop S-LA1
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10/06/2021

Confirmation: Information regarding the account of The National Center for Public Policy Research

Dear Ms. Gonzalez,

The following client has requested UBS Financial Services Inc. to provide you with a letter of reference to confirm its banking relationship with our firm.

The National Center for Public Policy Research has been a valued client of ours since October 2002 and as of the close of business on 09/17/2021, the National Center for Public Research held, and has held continuously for at least three years, more than $2,000 of Starbucks Corp. common stock. UBS continues to hold the said stock.

Please be aware this account is a securities account not a "bank" account. Securities, mutual funds, and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation.

Questions
If you have any questions about this information, please contact Benjamin Valdes at (877) 827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

Sincerely

Benjamin Valdes

Benjamin Valdes
Financial Advisor
UBS Financial Services Inc.

December 3, 2020

Via email: shareholderproposals@sec.gov

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

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the letter of Jennifer Kraft on behalf of the Starbucks Corporation (the "Company") dated November 9, 2021, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our Shareholder Proposal (the "Proposal") from its 2021 proxy materials for its 2022 annual shareholder meeting.

RESPONSE TO STARBUCKS' CLAIMS

Our Proposal asks the Board of Directors either to publish the Company's potentially discriminatory employee-training materials so that shareholders can judge for themselves whether the Company is, in its purported efforts not to discriminate, instead regularly discriminating against groups who are excluded from the advantages offered by their "diversity, equity and inclusion" programs, and who are disfavored on constitutionally suspect grounds by those programs. Alternatively, we have asked the Company to issue a report that studies whether the Company's materials are discriminatory to some employees and violate some employees' civil rights, and whether such discrimination presents material risks to the Company.

The company asserts that it has already substantially implemented our Proposal, especially by publication of the 2021 Civil Rights Assessment (CRA),[1] and thus that our Proposal can be excluded under Rule 14a-8(i)(10). But the CRA is a document that establishes that the Company engages in all of the risky activities at which our Proposal explicitly asks the Company to look, but fails in any way to do any of the analysis we seek. The CRA in fact demonstrates why our Proposal is so vital for the company to undertake.

Meanwhile, the CRA in no way constitutes publication of the relevant materials themselves.

The Company also seeks to exclude our Proposal on the grounds that one of the two ways of fulfilling the proposal is inherently vague under Rule 14a-(8)(i)(3). But it can reach this conclusion only by claiming that standard phrases that are included in almost all proposals as protections for the Company are somehow baffling additions to our Proposal; that the supporting statement of our Proposal does not exist; and that a company that has spent vast amounts building programs that it claims fight racism – but that obviously discriminate against excluded employees – cannot also affordably add to those programs an analysis to make sure that the materials that present and support the programs to employees are not themselves impermissibly racist or otherwise discriminatory in risky ways.

Analysis

Part I. Our Proposal

The Company cited only the resolution of our Proposal in order to allow it even the slightest pretense that it has already substantially implemented our Proposal. This fails, because *all* Starbucks employees deserve protection against discrimination, a fact that the Company has studiously ignored and to which it has never paid the slightest attention. And though the resolution alone creates no confusion, the supporting statement drives home exactly what our Proposal seeks, and that the Company has never in any way provided it.

Our Proposal:

Employee Training Disclosure Proposal

> **Resolved:** We, shareholders of Starbucks Corporation ("the company"), ask the Board of Directors to publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of employee-training materials offered to some or all of the company's employees by the company or with the company's consent, whether in a mandatory or voluntary setting, as well as any such materials that were sponsored by the company in whole or part. In the alternative we request the Board commission a

[1] See 2021 Civil Rights Assessment, https://stories.starbucks.com/uploads/2021/03/Starbucks-2021-Civil-Rights-Assessment.pdf (hereinafter 2021 CRA).

workplace non-discrimination audit analyzing the company's impacts, including the impacts arising from company-sponsored or promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on the company's business. In the latter instance, a report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the company's website.

Supporting Statement: Tremendous public attention has focused recently on workplace practices and employee training. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt "anti-racism" programs that seek to establish "racial equity," which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than on the basis of merit.[2] Where adopted, however, such programs raise significant objection, including concern that the "anti-racist" programs are themselves deeply racist and otherwise discriminatory.[3]

Many companies have been found to sponsor and promote overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer, CVS, and many others.[4] Starbucks has its own history of discrimination in the ostensible name of anti-discrimination,[5] and of sponsoring ostensibly anti-racist programming.[6]

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[2] https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/fdx3894361-def14a.htm#StockholderProposals88; https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf; https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf; https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58

[3] https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/; https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337; https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875; https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/; https://www.city-journal.org/verizon-critical-race-theory-training; https://www.city-journal.org/bank-of-america-racial-reeducation-program

[4] https://www.city-journal.org/bank-of-america-racial-reeducation-program; https://www.city-journal.org/verizon-critical-race-theory-training; https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/; https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory; https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOiSwJ

[5] https://www.theblaze.com/news/lawsuit-alleges-starbucks-fired-christian-barista-who-refused-to-wear-lgbt-pride-shirt; https://www.usatoday.com/story/news/nation/2019/11/29/police-chief-says-oklahoma-starbucks-served-cup-labeled-pig-cop/4333113002/; https://www.theepochtimes.com/starbucks-apologizes-after-2-california-police-officers-were-denied-service_3174765.html;

[6] https://time.com/5294343/starbucks-employees-racial-bias-training/

This concern, disagreement and controversy creates massive reputational, legal and financial risk. Companies should disclose to shareholders the materials that they use in employee-training programs so that shareholders can appropriately gauge executives' responses to and management of those risks. Training materials that are too controversial or toxic to release to shareholders are necessarily inappropriate for use with employees, so that publication will increase executive thoughtfulness and decrease overall company risk, to the benefit of all stakeholders.

Should the Board elect to perform an audit and render a report, it is encouraged to assess whether Company employee-training programs treat any employees or class of employees as inferior to any others, as by overt or implicit signals that some employees or groups of employees will be offered additional mentoring or support programs denied to other employees on suspect grounds; that some employees will receive non-merit-related preferential treatment in hiring or promotion; or that some employees are encouraged to speak about their lived experiences and feelings – including their impressions of the employee-training itself – while others are constrained.

Part II: Rule 14a-8(i)(10) & relevant precedent.

The Company argues that the Proposal may be excluded from the 2022 proxy materials as substantially implemented pursuant to Rule 14a-8(i)(10). In order for the Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), it must show that its activities meet the guidelines and essential purpose of the proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. *Texaco, Inc.* (avail. Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's *guidelines* and its *essential objective*. *See, e.g., Exelon Corp*. (avail. Feb. 26, 2010) (emp. added).

Thus, when a company can demonstrate that it has already taken actions that meet most of the guidelines of a proposal and the proposal's essential purpose, the Staff has concurred that the proposal has been "substantially implemented." In the current instance, the Company has substantially fulfilled neither the guidelines nor the essential purpose of the Proposal.

This fact is lane particularly bare by more recent precedent. Just a few months ago, the proponents in *Nike, Inc.* (avail. Aug. 2, 2021) defeated a no-action effort by the company when it demonstrated that in the matter of civil-rights reporting it is not sufficient for exclusion under the substantial-implementation standard if companies have generated *some* civil-rights-related reporting but the reporting is not responsive to the guidelines and the essential object of the proponents.

Part III. Starbucks has failed in any way to implement our proposal.

The Company is capable of asserting that it has implemented our Proposal only by focusing solely on the resolution and also refusing to recognize that *all* of its employees have civil rights and the right not to be discriminated against. As a result, a report on non-discrimination that was responsive to our Proposal would demonstrate serious consideration of whether explicitly race-, sex- and orientation-based programs and supporting programming, which offer advantages to some employees and deny them to others on the basis of these suspect classifications, discriminate against the excluded employees, and if so if that discrimination creates risks for the Company. That the Company thinks that a recital of exactly the suspect programs under consideration, without more, satisfies our Proposal suggests a profound lacuna in the Company's understanding of what constitutes discrimination, and a failure to understand that legal and moral non-discrimination obligations run to *all* employees. And this very lacuna renders our Proposal vital.

The Company's pretense about what our Proposal asks falls apart completely upon review of the supporting statement of our Proposal. It is notable that the Company fails to make any reference to that supporting statement in claiming that it has already substantially implemented our Proposal.

Consider again the supporting statement of our Proposal:

> **Supporting Statement:** Tremendous public attention has focused recently on workplace practices and employee training. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.
>
> Concern stretches across the ideological spectrum. Some have pressured companies to adopt "anti-racism" programs that seek to establish "racial equity," which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than on the basis of merit. Where adopted, however, such programs raise significant objection, including concern that the "anti-racist" programs are themselves deeply racist and otherwise discriminatory.
>
> Many companies have been found to sponsor and promote overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer, CVS, and many others. Starbucks has its own history of discrimination in the ostensible name of anti-discrimination, and of sponsoring ostensibly anti-racist programming.
>
> This concern, disagreement and controversy creates massive reputational, legal and financial risk. Companies should disclose to shareholders the materials that they use in employee-training programs so that shareholders can appropriately gauge executives' responses to and management of those risks. Training materials that are too controversial or toxic to release to shareholders are necessarily

> inappropriate for use with employees, so that publication will increase executive thoughtfulness and decrease overall company risk, to the benefit of all stakeholders.
>
> Should the Board elect to perform an audit and render a report, it is encouraged to assess whether Company employee-training programs treat any employees or class of employees as inferior to any others, as by overt or implicit signals that some employees or groups of employees will be offered additional mentoring or support programs denied to other employees on suspect grounds; that some employees will receive non-merit-related preferential treatment in hiring or promotion; or that some employees are encouraged to speak about their lived experiences and feelings – including their impressions of the employee-training itself – while others are constrained.
>
> [Footnotes omitted here, but included as part of the recital of the entire proposal above.]

The Company asserts that it has substantially implemented our Proposal because it has already implemented the race-, ethnicity-, and sexual orientation-based programs that we discussed as *creating* the reputational and financial risks that we raise in our Proposal, and has reported on them.[7] But the Company has by its own admission by omission failed do any of the things that our Proposal actually seeks: namely to pay attention to the fact that *all* employees have civil rights, and in light of that consideration (a) to publish for shareholders the content of employee-training materials that impinge on these issues; or (b) to publish a study to determine whether these suspect-classification-based programs,[8] or race-based restrictions on speech,[9] that the Company has both implemented and reported on, and particularly the materials that explain and support these programs to employees, create reputational and financial risk for the Company and/or a hostile work environment for those who are excluded from their benefits.

The Company has satisfied nothing of either the guidelines or the essence of our Proposal.

Part IV. Rule 14a-8(i)(3).

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal *in its entirety* "if the language of the proposal or the supporting statement render the proposal *so vague and indefinite* that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine *with any reasonable certainty* exactly what actions or measures the proposal requires."[10] When only portions of a proposal merit exclusion for causing vagueness or other difficulties, companies are only permitted "to exclude portions of

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[7] *See generally,* CRA 2021

[8] *See id.*

[9] *See id.* at 16 ("Modified Dress Code Policy [Exclusively] in Support of Black Lives Matter.")

[10] *See, e.g.,* Staff Legal Bulletin No. 14B (September 15, 2004)) ("SLB 14B") (emphasis added).

the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded."[11]

Part V. Our proposal can not be excluded on Rule 14a-8(i)(3).

Our proposal cannot be excluded on the grounds of vagueness. First, the whole of the Rule 14a-8(i)(3) claim applies only to one of the two options that our Proposal offers the Company, so the fact that the Company has produced no portion of the report that our Proposal seeks makes this claim irrelevant.

Second, there is no vagueness whatever about even that portion of our Proposal. The whole of our Proposal deals with civil rights and nondiscrimination. If the Company decided simply to publish, in response to our Proposal, training materials that impinge upon those considerations, then it would clearly have satisfied our Proposal. And since that's perfectly clear from the whole of our Proposal, the only even conceivably proper Rule 14a-(8)(i)(3) request that the Company could have brought to the Staff would be one asking for the insertion of the words "DEI-and-related," or something similar, before the words "employee-training." Because the addition of those words would have made indisputably clear what is already perfectly clear, the Company's failure to ask for the plausible addition to the text denies it the right to ask for omission of the whole proposal.

Finally, the Company knows, as all participants in the shareholder-proposal process know, that the inclusion of the phrase "prepared at reasonable cost and omitting confidential or proprietary information," or some similar formulation, works to give a company additional discretion in exactly situations like this. In other words, the inclusion of those terms grants the Company license; it doesn't make a proposal harder to understand or enact. At all events, if the Company is arguing that the *promulgation* of all of these suspect-classification-based programs are perfectly reasonable in cost, but that the cost of simply *posting* the relevant materials online is prohibitively expensive, we can reasonably conclude that the Company wants to hide those materials because it agrees with us that they do carry reputational and financial risks because they do discriminate against the employees who are excluded from participating in them or are otherwise adversely effected at work by them.

[11] *See id.*

Conclusion

For the above reasons, we urge the Staff to find that our Proposal may not be omitted under Rule 14a-8(i)(10) or Rule 14a-8(i)(3).

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Staff may have with respect to this letter, please do not hesitate to call me at (202)507-6398 or email me at sshepard@nationalcenter.org. If the Staff does not concur with our position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position.

Sincerely,

Scott Andrew Shepard

cc: Jennifer Kraft, Starbucks (jkraft@starbucks.com)