



DIVISION OF  
CORPORATION FINANCE

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

January 19, 2022

Lillian Brown  
Wilmer Cutler Pickering Hale & Dorr LLP

Re: The Walt Disney Company (the "Company")  
Incoming letter dated October 26, 2021

Dear Ms. Brown:

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 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.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

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

Lillian Brown

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[lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com)

October 26, 2021

**Via E-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

**Re: The Walt Disney Company  
Exclusion of Shareholder Proposal by National Center for Public Policy Research**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2022 annual meeting of shareholders (the “Proxy Materials”) the enclosed shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) requesting that the Company “commission a workplace non-discrimination audit analyzing Disney’s impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace.”

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Proposal relates to the Company’s ordinary business operations.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter, and the Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

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## Background

On September 21, 2021, the Company received the Proposal from the Proponent, which states in relevant part as follows:

### Assessing Non-Discrimination in the Workplace

RESOLVED: Shareholders of The Walt Disney Company (“Disney” or “Company”) request that the Board of Directors commission a workplace non-discrimination audit analyzing Disney’s impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on Disney’s business. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Disney’s website.

#### SUPPORTING STATEMENT:

Tremendous public attention has focused recently on workplace practices and employee training. All rhetorically agree that employee success should be fostered and that no employees should face discrimination, many are concerned that discrimination is pervasive.

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.<sup>1</sup> The adoption of such programs, though, demonstrates that these “anti-racist” programs are themselves deeply racist and otherwise discriminatory.<sup>2</sup>

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<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/10489111/000120677421002182/idx3894361-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/dl08785ddef14a.htm#rom108785\\_58](https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/dl08785ddef14a.htm#rom108785_58)

<sup>2</sup> <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>

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Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer, CVS, and many others.<sup>3</sup>

Disney has been similarly engaged, raising widespread concern that the Company discriminates on the basis of race and other metrics. In Disney-branded and -sponsored employee-training materials, the word “white,” designating the white race, remains in lowercase, while “black,” designating the black race, is capitalized. White employees are told, “[d]o not question or debate Black colleagues’ lived experience.”<sup>4</sup> They are not, meanwhile, encouraged to share their own indisputable lived experiences, but only to “[a]cknowledge and listen with empathy.”<sup>5</sup>

The programming explicitly declares that at Disney “It’s Equity, not Equality.”

Inequal treatment is discrimination.

This discriminatory instruction and treatment is not limited to a single employee-training program, but has become endemic throughout Disney.<sup>6</sup> This places our Company at significant reputational, legal and financial risk. Under the United States Constitution and laws, discrimination by race, sex and other categories is forbidden regardless of which groups are discriminated against. And a company that actively discriminates against the viewpoints of vast swathes of the American population creates needless reputational, financial, statutory and regulatory risks as well. Thoughtful study and deep remediation are required.

In creating its report, the Board 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

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<sup>3</sup> <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.cityjournal.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>

<sup>4</sup> <https://s3.documentcloud.org/documents/20700423/disney-resources.pdf>

<sup>5</sup> *Id.*

<sup>6</sup> <https://christopherrufo.com/the-wokest-place-on-earth/>

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encouraged to speak about their lived experiences and feelings – including their impressions of the employee-training itself – while others are constrained.

### **Basis for Exclusion**

***The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the subject matter of the Proposal directly concerns the Company’s ordinary business operations.***

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”). An exception to this principle may be made where a proposal focuses on significant policy issues (e.g., significant discrimination matters) that transcend the day-to-day business matters of the company. *See* 1998 Release.

As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The other consideration is that a proposal should not “seek[] to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The Proposal implicates both of these considerations and does not raise a significant policy issue that would transcend the ordinary business of the Company.

- A. *The Proposal may be excluded because it relates to ordinary business matters of managing the Company’s workforce, including with regard to employee training matters.*

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the Proposal relates to managing the Company’s workforce, in particular, the ordinary business matter of training the Company’s workforce. Notwithstanding the Proponent’s efforts to present the Proposal as relating to the topics of civil rights and non-discrimination more broadly, at heart, the Proposal is focused on the indisputably ordinary business topic of employee training and, in particular, the Proponent’s objection to the content of the Company’s training materials. In this regard, the Proposal’s “workplace non-discrimination audit,” would focus on the “impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on Disney’s business.” A review of the supporting

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statement further demonstrates the Proponent's single-minded focus on the content of the Company's training materials and, in particular, statements relating to anti-bias training. These descriptions and other statements throughout the supporting statement indicate the Proponent's focus on the content of Company training materials.

The Commission and Staff have long recognized that a shareholder proposal may be excluded pursuant to Rule 14a-8(i)(7) if it, like the Proposal, relates to the day-to-day operations of a company, such as the company's management of its workforce. The Commission recognized in the 1998 Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Similarly, in *United Technologies Corp.* (February 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "employee health benefits, general compensation issues not focused on senior executives, *management of the workplace*, employee supervision, labor-management relations, *employee hiring and firing*, conditions of the employment and *employee training and motivation*" (emphasis added). See *Walmart Inc.* (March 6, 2020), (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report "on the use of contractual provisions requiring employees of Walmart to arbitrate employment-related claims" where the proposal's supporting statement raised issues including discrimination, sexual harassment, and wage theft in which the company argued that the proposal's invocation of such issues was insufficient to preclude exclusion given the proposal's focus on the company's management of its workforce); and *Walmart, Inc.* (April 8, 2019) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting "that the board prepare a report to evaluate the risk of discrimination that may result from the [c]ompany's policies and practices for hourly workers taking absences from work for personal or family illness," noting that "the [p]roposal relates generally to the [c]ompany's management of its workforce"). See also *Starwood Hotels & Resorts Worldwide, Inc.* (February 14, 2012) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requiring management to verify U.S. citizenship for all workers in the U.S. by a stated deadline and that the company minimize required training for foreign workers in the U.S., on the basis that "the proposal relates to procedures for hiring and training employees [and that] [p]roposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)"). Further, a stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the company. See Exchange Act Release No. 20091 (August 16, 1983).

The Company's employee training policies and procedures and the content of training materials which apply broadly to the Company's approximately 203,000 employees around the world, are routine aspects of the Company's management of its employee workforce and employment

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environment and implicate the Company's day-to-day decisions regarding the conditions of employment and expectations for how employment-related decisions will be made. As such, and consistent with the above-referenced precedent, the Company may exclude the Proposal under Rule 14a-8(i)(7) as related to the ordinary business of the Company.

*B. The Proposal does not raise a significant social policy issue that transcends the Company's ordinary business operations.*

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The Commission has distinguished proposals pertaining to ordinary business matters from those involving "significant social policy issues." See 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole."). While "proposals . . . focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

The Proponent seeks to cast the Proposal as relating to a significant policy issue by asserting that the request is for a report on the impact of the Company's training programs on "civil rights and non-discrimination in the workplace"; however, the mere reference to a significant policy issue does not alter the fundamentally ordinary business focus of the Proposal. Here, the Proposal directly implicates the content of the Company's employee training materials and programs, and the request for a report on discrimination in the workplace as it relates to workforce management does not change the underlying ordinary business thrust of the Proposal.

The Staff has recognized that a wide variety of proposals relating to the management of a company's workforce are excludable under Rule 14a-8(i)(7), including proposals addressing potential or perceived discrimination in the workplace. See *Walmart, Inc.* (April 8, 2019) (discussed above). See also *PG&E Corp.* (March 7, 2016) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board institute a policy banning discrimination based

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on race, religion, donations, gender or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business operations); *CVS Health Corp.* (February 27, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting the company "to amend its equal employment opportunity policy . . .to explicitly prohibit discrimination based on political ideology, affiliation or activity," as relating to the company's "policies concerning its employees"); *Bristol-Myers Squibb Co.* (January 7, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting adoption of antidiscrimination principles "that protect employees' human right to engage, on their personal time, in legal activities relating to the political process. . .without retaliation in the workplace" as "relating to [the company's] ordinary business operations" and in particular "policies concerning [the company's] employees"). Moreover, the Staff's decisions make clear that the mere mention of a social policy issue is not enough for a proposal to avoid exclusion under Rule 14a-8(i)(7) – rather, the social policy issue must be the focus of the proposal. *See, e.g., McDonald's Corp.* (March 22, 2019) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal that touched on concerns about animal cruelty because the proposal was "focuse[d] primarily on" the company's ordinary business operations); and *Papa John's International, Inc.* (February 13, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal encouraging the company to add vegan options to its menu, which touched on significant policy issues such as animal welfare and sustainability, because the proposal related to the company's ordinary business and "[did] not focus on a significant policy issue").

Accordingly, despite the Proposal's inclusion of references to "non-discrimination" and civil rights, the overall text of the Proposal makes clear that the focus of the Proposal is on ordinary business matters. Accordingly, the Proposal is properly excludable under Rule 14a-8(i)(7).

## **Conclusion**

For the foregoing reasons, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company's ordinary business operations.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should

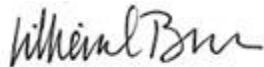


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the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

A handwritten signature in black ink, appearing to read "Lillian Brown".

Lillian Brown

Enclosures

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

Scott Shepard  
National Center for Public Policy Research

**EXHIBIT A**

RECEIVED

SEP 20 2021

ALAN BRAVERMAN



September 17, 2021

Alan N. Braverman  
Secretary  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521-1030

Dear Mr. Braverman,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in The Walt Disney Company (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 28, 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](mailto: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](mailto:sshepard@nationalcenter.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard

Enclosure: Shareholder Proposal

## Assessing Non-Discrimination in the Workplace

RESOLVED: Shareholders of The Walt Disney Company (“Disney” or “Company”) request that the Board of Directors commission a workplace non-discrimination audit analyzing Disney’s impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on Disney’s business. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Disney’s website.

### SUPPORTING STATEMENT:

Tremendous public attention has focused recently on workplace practices and employee training. All rhetorically agree that employee success should be fostered and that no employees should face discrimination, many are concerned that discrimination is pervasive.

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.<sup>1</sup> The adoption of such programs, though, demonstrates that these “anti-racist” programs are themselves deeply racist and otherwise discriminatory.<sup>2</sup>

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training programs, including Bank of America, American Express, Verizon, Pfizer, CVS, and many others.<sup>3</sup>

Disney has been similarly engaged, raising widespread concern that the Company discriminates on the basis of race and other metrics. In Disney-branded and -sponsored employee-training materials, the word “white,” designating the white race, remains in lowercase, while “black,” designating the black race, is capitalized. White employees are told,

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<sup>1</sup> <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](https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58)

<sup>2</sup> <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>

<sup>3</sup> <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>



“[d]o not question or debate Black colleagues’ lived experience.”<sup>4</sup> They are not, meanwhile, encouraged to share their own indisputable lived experiences, but only to “[a]cknowledge and listen with empathy.”<sup>5</sup>

The programming explicitly declares that at Disney “It’s Equity, not Equality.”

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This discriminatory instruction and treatment is not limited to a single employee-training program, but has become endemic throughout Disney.<sup>6</sup> This places our Company at significant reputational, legal and financial risk. Under the United States Constitution and laws, discrimination by race, sex and other categories is forbidden regardless of which groups are discriminated against. And a company that actively discriminates against the viewpoints of vast swathes of the American population creates needless reputational, financial, statutory and regulatory risks as well. Thoughtful study and deep remediation are required.

In creating its report, the Board 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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<sup>4</sup> <https://s3.documentcloud.org/documents/20700423/disney-resources.pdf>

<sup>5</sup> *Id.*

<sup>6</sup> <https://christopherrufo.com/the-wokest-place-on-earth/>

ORIGIN ID:TSGA (703) 863-6993  
SCOTT SHEPARD  
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SUITE 700  
WASHINGTON, DC 20001  
UNITED STATES US

SHIP DATE: 17SEP21  
ACTWGT: 0.10 LB  
CAD: 100230591/NET4400

BILL SENDER



TO ALAN N. BRAVERMAN  
WALT DISNEY COMPANY  
500 SOUTH BUENA VISTA STREET

BURBANK CA 91521

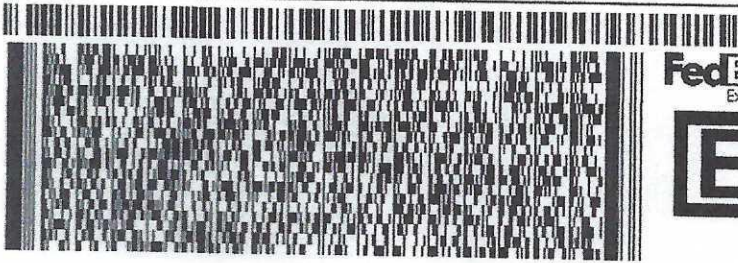
(855) 533-4763

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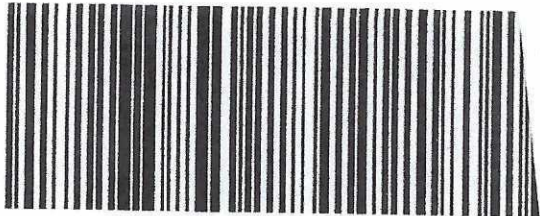
Extremely Urgent

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SH BURA



Facility Services and Support

To: Braverman, Alan N  
Bldg: STUDIO LOT - TEAMDIS  
Room: 606  
MailCode 1030  
Phone 818  
SL06



283815921694



**From:** [Nauta, Rebecca](#)  
**To:** [Sshepard@nationalcenter.org](mailto:Sshepard@nationalcenter.org)  
**Cc:** [Brown, Lillian](#)  
**Subject:** Notice of Deficiencies in Shareholder Proposal Submitted to The Walt Disney Company  
**Date:** Monday, October 4, 2021 3:41:29 PM  
**Attachments:** [Notice of Deficiency \(DIS\) \(National Center for Public Policy Research\) \(Final - Executed and Compiled\).pdf](#)

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Good afternoon, Mr. Shepard –

Please find attached a notice of certain deficiencies in the shareholder proposal you submitted to The Walt Disney Company for inclusion in the Company's proxy materials for its 2022 annual meeting of shareholders. Included with the notice of deficiencies are copies of Rule 14a-8 and Staff Legal Bulletins 14F and 14G for your reference.

If you have any questions, please do not hesitate to contact my colleague, Lillian Brown, at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743.

Best regards,

**Rebecca Nauta | WilmerHale**

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Boston, MA 02109 USA

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+1 617 526 5000 (f)

[rebecca.nauta@wilmerhale.com](mailto:rebecca.nauta@wilmerhale.com)

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For more information about WilmerHale, please visit us at <http://www.wilmerhale.com>.



Lillian Brown

+1 202 663 6743 (t)  
+1 202 663 6363 (f)  
lillian.brown@wilmerhale.com

October 4, 2021

**VIA EMAIL AND FEDERAL EXPRESS**

National Center for Public Policy Research  
20 F Street, NW, Suite 700  
Washington, DC 20001  
Attn: Scott Shepard  
sshepard@nationalcenter.org

Re: Notice of Deficiencies Relating to Shareholder Proposal

Dear Mr. Shepard:

I am writing on behalf of The Walt Disney Company (the “Company”). On September 20, 2021, the Company received a submission from you (the “Proponent”) containing a proposal for consideration at the Company’s 2022 Annual Meeting (the “Submission”). Based on the postmark of the Submission, the Company has determined that the date of submission was September 17, 2021 (the “Submission Date”).

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that, as of the Submission Date, a shareholder proponent must have continuously held:

- At least \$2,000 in market value of the Company’s securities entitled to vote on the proposal for at least three years; or
- At least \$15,000 in market value of the Company’s securities entitled to vote on the proposal for at least two years; or
- At least \$25,000 in market value of the Company’s securities entitled to vote on the proposal for at least one year.

Alternatively, a shareholder proponent must have 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 the shareholder proponent must have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date.

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement via any of these tests. Therefore, under Rule 14a-8(b), the Proponent must prove its eligibility by submitting either:

- A written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, as of the Submission Date, the Proponent (i) 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 or (ii) 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 the Proponent continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date. As addressed by the SEC staff in Staff Legal Bulletin 14G, please note that if the Proponent's shares are held by a bank, broker or other securities intermediary that is a Depository Trust Company ("DTC") participant or an affiliate thereof, proof of ownership from either that DTC participant or its affiliate will satisfy this requirement. Alternatively, if the Proponent's shares are held by a bank, broker or other securities intermediary that is not a DTC participant or an affiliate of a DTC participant, proof of ownership must be provided by both (1) the bank, broker or other securities intermediary and (2) the DTC participant (or an affiliate thereof) that can verify the holdings of the bank, broker or other securities intermediary. You can confirm whether a particular bank, broker or other securities intermediary is a DTC participant by checking DTC's participant list, which is available on the Internet at <http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>. The Proponent should be able to determine who the DTC participant is by asking the Proponent's bank, broker or other securities intermediary; or
- If the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that it (i) 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, or (ii) 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 the Proponent continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of Company shares for the requisite period.

Your cover letter indicated that certification of the Proponent's ownership from the record owner would be forthcoming. To date, the Company has not received proof that the Proponent has

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satisfied Rule 14a-8's ownership requirements as of the Submission Date. To remedy this defect, the Proponent must submit sufficient proof of its ownership of the requisite number of Company shares during the applicable time period preceding and including the Submission Date. For example, if the Proponent owns at least \$15,000 in market value of the Company's securities entitled to vote on the Proposal, the Proponent would need to submit sufficient proof of its continuous ownership of the requisite number of Company shares during the two years preceding and including the Submission Date. If, on the other hand, the Proponent 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 has continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date, the Proponent would need to submit sufficient proof of its continuous ownership of the requisite number of Company shares for at least one year as of January 4, 2021, and from that date through and including the Submission Date.

Rule 14a-8(d) of the Exchange Act requires that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words. The proposal (including the supporting statement) contained in the Submission exceeds 500 words. To remedy this defect, the Proponent must revise the Submission so that the proposal (including the supporting statement) does not exceed 500 words.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com). The failure to correct the deficiencies within this timeframe will provide the Company with a basis to exclude the proposals contained in the Submission from the Company's proxy materials for its 2022 Annual Meeting.

If you have any questions with respect to the foregoing, please contact me at the above noted email address or at 202-663-6743. For your reference, I enclose a copy of Rule 14a-8 as well as Staff Legal Bulletins 14F and 14G.

Sincerely,



Lillian Brown

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

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Enclosures – Exchange Act Rule 14a-8  
Staff Legal Bulletins 14F and 14G



Displaying title 17, up to date as of 9/30/2021. Title 17 was last amended 9/29/2021.



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# Title 17

## § 240.14a-8 Shareholder proposals.

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

- (a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- (b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*
  - (1) To be eligible to submit a proposal, you must satisfy the following requirements:
    - (i) You must have continuously held:
      - (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
      - (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
      - (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or
      - (D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and
    - (ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and
    - (iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:
      - (A) Agree to the same dates and times of availability, or

- (B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and
  - (iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:
    - (A) Identifies the company to which the proposal is directed;
    - (B) Identifies the annual or special meeting for which the proposal is submitted;
    - (C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;
    - (D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
    - (E) Identifies the specific topic of the proposal to be submitted;
    - (F) Includes your statement supporting the proposal; and
    - (G) Is signed and dated by you.
  - (v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.
  - (vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.
- (2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:
- (i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.
  - (ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - (A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or
    - (B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:
      - (1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;
      - (2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and
      - (3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

- (3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:
- (i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and
  - (ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.
  - (iii) This paragraph (b)(3) will expire on January 1, 2023.
- (c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.
- (d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.
- (e) *Question 5:* What is the deadline for submitting a proposal?
- (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
  - (2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
  - (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
- (f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?
- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).
  - (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- (g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- (h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

- (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
  - (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
  - (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- (i) **Question 9:** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?
- (1) **Improper under state law:** If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1):

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

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

Note to paragraph (i)(2):

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

- (3) **Violation of proxy rules:** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- (4) **Personal grievance; special interest:** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;
- (5) **Relevance:** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
- (6) **Absence of power/authority:** If the company would lack the power or authority to implement the proposal;
- (7) **Management functions:** If the proposal deals with a matter relating to the company's ordinary business operations;
- (8) **Director elections:** If the proposal:
  - (i) Would disqualify a nominee who is standing for election;
  - (ii) Would remove a director from office before his or her term expired;
  - (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
  - (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
  - (v) Otherwise could affect the outcome of the upcoming election of directors.
- (9) **Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9):



A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10):

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

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

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

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

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

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

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

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

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
- (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

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

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

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

- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
- (2) The company is not responsible for the contents of your proposal or supporting statement.

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

- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
- (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
- (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
  - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
  - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

*[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]*

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**EFFECTIVE DATE NOTE**

**Effective Date Note:** At 85 FR 70294, Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

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# 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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

## 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.<sup>4</sup> 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.<sup>5</sup>

## 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.<sup>6</sup> 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<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup>

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).<sup>10</sup> 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].”<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

### 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,<sup>14</sup> 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.<sup>15</sup>

## 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.<sup>16</sup>

## 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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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.”).

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] (“Net Capital Rule Release”), at Section II.C.

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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



<sup>15</sup> 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.

<sup>16</sup> 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*

# 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](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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

### 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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<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> 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*

**From:** [Scott Shepard](#)  
**To:** [Nauta, Rebecca](#)  
**Cc:** [Brown, Lillian](#)  
**Subject:** Re: Notice of Deficiencies in Shareholder Proposal Submitted to The Walt Disney Company  
**Date:** Wednesday, October 6, 2021 3:37:47 PM  
**Attachments:** [Disney 2022 UBS Letter.pdf](#)

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**EXTERNAL SENDER**

Rebecca,

Attached is our proof of ownership documentation. As for the word count, our count indicates that the proposal is 495 words long. That includes counting web addresses as a word apiece. Could you tell me what you think the word count to be and how you arrived at it? If our count is somehow in error, I will be happy to revise accordingly.

If you wish to discuss our proposal, I am available at (703) 863-6993, and will initially propose any time on October 20th to talk, though of course I am amenable to other suggestions as well.

Very best,

Scott

On Mon, Oct 4, 2021 at 3:46 PM Scott Shepard <[sshepard@nationalcenter.org](mailto:sshepard@nationalcenter.org)> wrote:  
Thanks, Rebecca. We'll get back to you with that directly.

Scott

On Mon, Oct 4, 2021 at 3:42 PM Nauta, Rebecca <[Rebecca.Nauta@wilmerhale.com](mailto:Rebecca.Nauta@wilmerhale.com)> wrote:

Good afternoon, Mr. Shepard –

Please find attached a notice of certain deficiencies in the shareholder proposal you submitted to The Walt Disney Company for inclusion in the Company's proxy materials for its 2022 annual meeting of shareholders. Included with the notice of deficiencies are copies of Rule 14a-8 and Staff Legal Bulletins 14F and 14G for your reference.

If you have any questions, please do not hesitate to contact my colleague, Lillian Brown, at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743.

Best regards,

**Rebecca Nauta | WilmerHale**  
60 State Street  
Boston, MA 02109 USA  
+1 617 526 6932 (t)  
+1 617 526 5000 (f)  
[rebecca.nauta@wilmerhale.com](mailto:rebecca.nauta@wilmerhale.com)

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Scott Shepard  
Director  
Free Enterprise Project  
National Center for Public Policy Research

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Scott Shepard  
Director  
Free Enterprise Project  
National Center for Public Policy Research



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Alan N. Braverman  
Secretary  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521-1030

10/06/2021

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

Dear Mr. Braverman,

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 The Walt Disney Company 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.





November 16, 2021

**Via email: [shareholderproposals@sec.gov](mailto: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 Lillian Brown on behalf of The Walt Disney Company (the “Company”) dated October 26, 2021, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

### **RESPONSE TO THE WALT DISNEY COMPANY’S CLAIMS**

Our Proposal asks the Board of Directors to

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

The Company seeks to exclude this Proposal pursuant to Rule 14a-8(i)(7), claiming that the Proposal implicates the ordinary business of the Company without transcending that ordinary business, and seeks to micromanage the Company.

Most or all of the Company's arguments have been superseded by SEC Staff Bulletin No. 14L (Staff Bulletin 14L), issued on November 3, 2021.<sup>1</sup> Any arguments possibly remaining are defeated by precedent not cited by the Company, and to which the precedent cited by the Company is no response. The Company is left with no grounds on which to exclude our Proposal.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

### **Analysis**

***Part I. Staff Bulletin 14L effectively eliminates the grounds on which the Company has relied in seeking a no-action decision.***

***A. The Staff Bulletin eliminates analysis on the grounds of the relevance of issues of significant social policy to particular companies.***

Staff Bulletin 14L radically changed the standards by which the Staff will make no-action determinations grounded in Rule 14a-8(i)(7). The Staff explained that it

will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.<sup>2</sup>

The staff in particular emphasized that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.”<sup>3</sup> Our proposal raises exactly such an issue: whether current employee training raises risks as a result of racially or otherwise discriminatory content.

At all events, the significant social policy issues raised in our Proposal are very much alive at the Company. As we explained in the supporting statement of our proposal,

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<sup>1</sup> See Division of Corporation Finance, Shareholder Proposals: Staff Legal Bulletin No. 14L (Nov. 3, 2021).

<sup>2</sup> *Id.* at B.2.

<sup>3</sup> *Id.*

[i]n Disney-branded and -sponsored employee-training materials, the word “white,” designating the white race, remains in lowercase, while “black,” designating the black race, is capitalized. White employees are told, “[d]o not question or debate Black colleagues’ lived experience.”<sup>4</sup> They are not, meanwhile, encouraged to share their own indisputable lived experiences, but only to “[a]cknowledge and listen with empathy.”<sup>5</sup>

The programming explicitly declares that at Disney “It’s Equity, not Equality.”

Inequal treatment is discrimination.

This discriminatory instruction and treatment is not limited to a single employee-training program, but has become endemic throughout Disney.<sup>6</sup>

Indeed. The Disney-branded and -distributed document referred to in our Proposal consistently insists that “white” Disney employees subordinate themselves to “Black” Disney employees in an effort partially to make recompense for an intergenerational, ineradicable guilt that is unique to white employees and people.<sup>7</sup>

This content, on its own, cannot but create the understanding among Disney employees that white employees are felt to be inferior to Black employees, and should comport themselves accordingly. Note in particular, in this regard, the Disney-branded and -sponsored claim, one that Disney distributed to its employees, that in order for white employees to oppose racism, they need to recognize that “[e]quality is a noble goal. Equal treatment and access to opportunities help each of us perform our best within a shared set of parameters. But we really need to be striving for equity, where we focus on the equality of the outcome, not the equality of the experience by taking individual needs and skills into account.”<sup>8</sup> In other words, Disney’s own content tells its white employees that they must agree to being treated unequally – in inferior ways – so that black employees can achieve equality of outcome with them, regardless of individual action or merit, if they want to be deemed by Disney to be fighting racism.

It does not appear that the Company has branded and distributed content that would counter this conclusion, or that would endorse or accommodate the adoption and expression of contrary

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<sup>4</sup> See THE WALT DISNEY COMPANY, ALLYSHIP FOR RACE CONSCIOUSNESS (undated) and THE WALT DISNEY COMPANY, WHAT CAN I DO ABOUT RACISM: AN ANTI-RACISM STUDY GUIDE (undated), both available at <https://s3.documentcloud.org/documents/20700423/disney-resources.pdf> (last accessed Nov. 12, 2021).

<sup>5</sup> See *id.*

<sup>6</sup> See Christopher Rufo, *The Wokest Place on Earth*, ChristopherRufo.com (May 6, 2021), available at <https://christopherrufo.com/the-wokest-place-on-earth/> (last accessed Nov. 12, 2021).

<sup>7</sup> See RACE CONSCIOUSNESS and ANTI-RACISM STUDY GUIDE, *supra* note 4.

<sup>8</sup> ANTI-RACISM STUDY GUIDE, *supra* note 4, at 11.

viewpoints by employees, and the Company in this proceeding points to none. If it has provided that balance of programming, or in any way sought to ameliorate the stark conclusions to be drawn from the programming cited in our Proposal, then this is exactly the sort of thing that would be established by the report contemplated by our Proposal. If they have not, that must be revealed to Disney executives and to shareholders so that all parties can proceed accordingly.

***B. The Staff Bulletin revises the Staff's micromanagement analysis, which even under the prior rules did not provide no-action grounds in this proceeding.***

With regard to the question of whether a proposal seeks to micromanage a company, the staff returned in its analysis to the Commission's clarification "in the 1998 Release that specific methods, timelines or details do not necessarily amount to micromanagement and are not dispositive of excludability." It explained:

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies' micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.<sup>9</sup>

The staff quoted the 1998 Release to establish that "some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to 'ordinary business.' We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations."

Staff Bulletin 14L thus renders the precedent cited by the Company relating to micromanagement nugatory. But even if that precedent had not been so rendered, the precedent would not have helped the Company's cause, because our Proposal does not seek to manage the company in any way. It simply asks the company for a report about what it is already doing, and the potential risks and effects associated with that behavior. And, again, our Proposal deals with an issue that the staff bulletin recognized as particularly appropriate for shareholder scrutiny, that of "human capital management."<sup>10</sup> We have sought only the information necessary to determine

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<sup>9</sup> *Id.* at B.3.

<sup>10</sup> The Company does cite one precedent that is at least in theory not entirely superseded by Staff Bulletin 14L. In *United Technologies Corp.* (Feb. 19, 1993), the Staff suggested the following as justifiable exclusions under Rule 14a-8(i)(7): "employee health benefits, general compensation issues not focused on

whether the Company, in the name of “anti-bias,” is in fact discriminating against groups of employees on constitutionally suspect and morally abhorrent bases.

***Part II. The remaining issue, whether the subject matter of our Proposal implicates a matter of significant social policy, is established by clear precedent.***

In the *Amazon.com, Inc.* (April 7, 2021) proceeding, the Staff established that proposals that raise issues of workplace discrimination – certainly on the grounds of race and other federally suspect characteristics – implicate issues of substantial social policy that transcend ordinary business. There, the proponents offered a proposal that sought that Amazon.com

commission a racial equity audit analyzing the Company’s impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company’s business. The audit may, in the board’s discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

Our Proposal likewise seeks disclosures to shareholders that will allow them to evaluate whether the company is engaging in racially discriminatory or otherwise discriminatory behavior in its employee training, under the guise of “anti-bias” training. In fact, our Proposal was explicitly modeled on the language and the import of the *Amazon.com* Proposal that the Staff found non-excludable even under the review regime that was in place prior to the issuance of Staff Bulletin 14L.

The precedents on which the Company relies to argue that the issues raised are not sufficiently substantial to transcend ordinary business are, of course, superseded by Staff Bulletin 14L, and can provide no independent guidance because it’s not clear whether they were decided on still-valid grounds, or grounds that the Staff has disposed of. But even were they still valid, they would not be applicable here. The issue that our Proposal addresses, and seeks a report to determine, is whether or not Disney’s ostensible “anti-bias” efforts in fact result in violation of the civil rights of groups of employees on the basis of race or other suspect classifications. Though after Staff Bulletin 14L evidence of particular fault by the companies to which proposals are submitted is no longer required, we have provided such evidence. Particularly in the face of

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senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.” We suspect that this precedent has largely been superseded by the explicit endorsement, in the new staff bulletin, of proposals that focus on human-capital management. But to the extent that it has not: our Proposal does not raise either minute or general questions about employee training. Rather we are, on the basis of clear evidence, raising the fundamental and substantial social-policy question of whether the Company, in the name of “anti-bias” training, is in fact grossly discriminating against groups of employees on the basis of race and other suspect grounds.

that evidence, the Company can hardly argue that our claim to be seeking a report about potential civil-rights violations and racial and other discrimination is anything other than exactly that. It therefore unquestionably raises pressing matters of significant social policy, and cannot be omitted.

### **Conclusion**

Given the new guidance offered by Staff Bulletin 14L, the Company's grounds for exclusion have been superseded. Our Proposal seeks only disclosures, not in any way the management of the Company, and it does so about matters that the Staff has unquestionably declared of significant social policy interest.

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 Apple's 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 Commission 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](mailto:sshepard@nationalcenter.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Andrew Shepard", with a long horizontal flourish extending to the right.

Scott Andrew Shepard

cc: Lillian Brown, WilmerHale ([lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com))  
Alan Braverman, The Walt Disney Company ([alan.braverman@disney.com](mailto:alan.braverman@disney.com))  
Jolene Negre, The Walt Disney Company ([jolene.negre@disney.com](mailto:jolene.negre@disney.com))

December 10, 2021

Lillian Brown

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[lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com)

**Via E-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

Re: **The Walt Disney Company**  
**Exclusion of Shareholder Proposal by National Center for Public Policy Research**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to (i) address new interpretive positions set forth in Staff Legal Bulletin No. 14L (“SLB 14L”), which was published on November 3, 2021, subsequent to the Company’s October 26, 2021 correspondence (the “No-Action Request”); and (ii) respond to correspondence from the National Center for Public Policy Research (the “Proponent”) dated November 16, 2021 in response to the Company’s No-Action Request (the “Reply Letter”). The Company continues to believe, both for the reasons set forth below and the reasons provided in the No-Action Request, that the Proposal may be excluded from the Company’s Proxy Materials (the latter as defined in the No-Action Request).

***The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the subject matter of the Proposal directly concerns the Company’s ordinary business operations.***

SLB 14L rescinds prior Staff Legal Bulletin Nos. 14I, 14J and 14K (together, the “Rescinded SLBs”) and provides that, going forward, the staff of the Division of Corporation Finance (the “Staff”) is “realigning its approach” to assessing whether a proposal relates to the ordinary business of a company. In particular, in assessing whether an issue transcends ordinary business, the staff “will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” SLB 14L.

December 10, 2021

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The Proponent incorrectly asserts that “[m]ost or all of the Company’s arguments have been superseded by SEC Staff Bulletin No. 14L . . . issued on November 3, 2021.” This statement misunderstands the impact of SLB 14L, which revised the Staff’s approach to assessing whether an issue transcends ordinary business to no longer focus on whether a policy issue is significant for a particular company and instead look at whether an issue is more broadly significant. The Company’s No-Action Request did not rely on the approach set out in the Rescinded SLBs (that an otherwise significant policy issue is not significant for the Company in particular), but rather asserted that the Proposal did not relate to a significant policy issue at all. That is still the case. At its core, the Proposal is not about a significant policy issue but rather the day-to-day business matter of training the Company’s workforce, and does not, therefore, “raise issues with a broad societal impact, such that they transcend the ordinary business of the Company.” A long line of precedent that predates the positions set out in the Rescinded SLBs makes clear that merely asserting or referencing a significant policy issue will not convert an otherwise fundamentally ordinary business topic to a significant policy issue that transcends ordinary business. To conclude otherwise would eviscerate the ordinary business exclusion, which remains sound in principle.

The Proponent’s Reply Letter seeks to escape the Proposal’s clear focus on day-to-day operations by trying to cast it in a civil rights and non-discrimination light. This is a cynical attempt to capitalize on a significant policy issue and does not alter the fact that the Proposal aims to influence the Company’s management of its workforce through limiting training material content related to “civil rights and non-discrimination in the workplace.” Indeed, the Reply Letter continues to highlight the Proposal’s single-minded focus on the “content” of the Company’s employee training materials by emphasizing the anti-bias training published in a “Disney-branded and -distributed [training] document.” As further discussed in the No-Action Request, the Staff has long recognized that employee training and management of the workforce is fundamental to management’s ability to run a company on a day-to-day basis. *See* SEC Release No. 34-40018 (May 21, 1998) (“1998 Release”). Current employee training, including the content of employee training manuals, falls squarely within this management function – a core principle that is not altered by SLB 14L.

Moreover, the Proponent’s Reply Letter, in light of the Staff’s guidance in SLB 14L, suggests a second basis for exclusion – micromanagement under Rule 14a-8(i)(7). In addition to citing anti-bias statements from an employee training document, the Reply Letter notes that the Company’s No-Action Request did not provide any additional Company “branded and distributed content . . . that would endorse or accommodate the adoption and expression of contrary viewpoints by employees.” By this statement, the Proponent makes clear that the Proposal seeks to compel a review – by shareholders – of the content of the Company’s training materials and other communications to its employees. SLB 14L specifies that a proposal may be excluded based on “the level of granularity sought in the proposal” and where a proposal



December 10, 2021

Page 3

“prob[es] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” A review of all anti-bias training materials and communications would require human resources expertise sufficient to contemplate the complexities related thereto and is therefore not a topic upon which shareholders as a group would be in a position to make an informed judgment. Accordingly, and consistent with SLB 14L, the Proposal may be excluded because it aims to micromanage the Company.

For these reasons, and notwithstanding the change in position expressed in SLB 14L and the assertions made in the Proponent’s Reply Letter, the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7) on the basis that the Proposal relates to the Company’s ordinary business operations.

### ***Conclusion***

For the foregoing reasons and the reasons set out in the No-Action Request, and consistent with the Staff’s prior No-Action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008), and copy the undersigned.

Best regards,



Lillian Brown

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company



December 15, 2021

**Via email: [shareholderproposals@sec.gov](mailto: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 supplemental no-action letter of Lillian Brown on behalf of The Walt Disney Company (the “Company”) dated December 10, supporting its original no-action letter of October 26 requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting. This letter is in turn in supplement to our no-action reply of November 16.

### **RESPONSE TO THE WALT DISNEY COMPANY’S SUPPLEMENTAL CLAIMS**

Our Proposal asks the Board of Directors to

commission a workplace non-discrimination audit analyzing Disney’s impacts, including the impacts arising from Disney-sponsored or -promoted employee training, on civil rights and non-discrimination in the workplace, and the impacts of those issues on Disney’s business. A report on the audit, prepared at reasonable

cost and omitting confidential or proprietary information, should be publicly disclosed on Disney's website.

The Company seeks to exclude this Proposal pursuant to Rule 14a-8(i)(7), claiming that the Proposal implicates the ordinary business of the Company without transcending that ordinary business, and seeks to micromanage the Company.

In its supplemental letter the Company notes that in SEC Staff Bulletin No. 14L, issued on November 3, 2021,<sup>1</sup>

[t]he Staff explained that it

will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.

The Company failed, though, to note additional, highly relevant Staff guidance in that Bulletin. There the Staff particularly emphasized that that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company,”<sup>2</sup> thus underscoring the special propriety of “raising human capital management issues with broad societal impact.”

That is exactly what our Proposal does – and in fact all that our proposal does. We seek an audit and report that will let shareholders know whether and to what extent the Company has recognized the fundamental fact that *all* employees have civil rights, and *all* deserve not to be discriminated against on the basis of race, sex, sexual orientation or other suspect classifications, regardless of whether they are included by the Company in a category that the Company has honored with the label “diverse,” or not. We explained in the supporting statement of our Proposal that we are concerned that some companies, in their rush to support “racial equity,” “anti-racism” or other social-justice goals have instead perpetuated racism or other discrimination against groups who are not the designated beneficiaries of those efforts. We then provided trenchant evidence that The Walt Disney Company has been guilty of just such discrimination, in violation of the civil rights of large categories of employees.

The Company's response to our Proposal in its supplemental reply was to assert that

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<sup>1</sup> See Division of Corporation Finance, Shareholder Proposals: Staff Legal Bulletin No. 14L (Nov. 3, 2021) at B2.

<sup>2</sup> *Id.*

[t]he Proponent's Reply Letter seeks to escape the Proposal's clear focus on day-to-day operations by trying to cast it in a civil rights and non-discrimination light. This is a cynical attempt to capitalize on a significant policy issue and does not alter the fact that the Proposal aims to influence the Company's management of its workforce through limiting training material content related to "civil rights and non-discrimination in the workplace.

This is completely wrong. We described the content of the Company's employee-training materials in order to demonstrate why we think that the possibility of civil-rights violations and discrimination against groups deemed "non-diverse" by the Company is very real. (Note that while Staff Bulletin 14L clarifies that when proposals raise issues of human-capital management, as ours does, company-specific reasons for concern need not be demonstrated. It does not say that they *may not* be demonstrated.) And we certainly do not intend to keep Disney from publishing training materials that are *related to* "civil rights and non-discrimination in the workplace." Rather, we seek an audit and report to ensure that the Company is properly considering and responding to concerns that its activities, including its training materials, employee programs, and other activities are not themselves violating the civil rights of some Company-disfavored employees or groups of employees, or otherwise discriminating against them.

The fact that the Company cannot understand that, or pretend not to understand, suggests that that The Walt Disney Company thinks that there are some employees and groups of employees that have no civil rights that the Company is bound to consider or respect. But this is terribly wrong. The Company may not discriminate on the basis of race – against anyone of any race. It may not discriminate on the basis of sex, be it against women or men. It may not discriminate on the basis of sexual orientation, be it against gay, bisexual or straight.

That the Company is or purports to be so confused about this is simply another illustration of why our Proposal is so important, is directly and wholly a question of civil rights, and deeply implicates vital "issues with a broad societal impact, such that they transcend the ordinary business of the company." We are not trying to micromanage the Company about anything, or to "limit" anything except Company discrimination. We are simply asking it do an audit and then provide a report to make sure it's not discriminating against or violating the civil rights of *any* employees, including the ones about whose civil rights the Company appears to have been heretofore unaware. The Staff's precedent, including precedent from earlier this year,<sup>3</sup> establishes that these are matters that are of transcendent societal importance, and thus not susceptible to exclusion on the grounds that the Company proposes, or any other.

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<sup>3</sup> See, e.g., *Amazon.com, Inc.* (April 7, 2021);

### Conclusion

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 Company's 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 Commission 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](mailto:sshepard@nationalcenter.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Shepard", with a long horizontal flourish extending to the right.

Scott Andrew Shepard

cc: Lillian Brown, WilmerHale ([lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com))

Lillian Brown

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January 7, 2022

**Via E-mail to shareholderproposals@sec.gov**

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

Re: **The Walt Disney Company**  
**Exclusion of Shareholder Proposal by National Center for Public Policy Research**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to respond to correspondence from the National Center for Public Policy Research (the “Proponent”) dated December 15, 2021 (“Proponent’s Supplemental Reply”) in response to the Company’s correspondence dated December 10, 2021 (the “Company’s Reply Letter”). All terms that are not otherwise defined herein are as defined in the Company’s October 26, 2021 correspondence (the “No-Action Request”).

The Company continues to believe, both for the reasons set forth below and the reasons provided in the Company’s Reply Letter and the No-Action Request, that the Proposal may be excluded from the Company’s Proxy Materials. We note that, while we are not restating in this letter our views set out in the Company’s Reply Letter and No-Action Request with regard to the true focus of the Proposal, nor otherwise addressing the Proponent’s arguments in this regard, we continue to strongly believe the Proposal falls well outside the significant policy issue that the Proponent seeks to assert. This correspondence solely addresses micromanagement.

The Proponent’s Supplemental Reply asserts that the Proponent is “not trying to micromanage the Company about anything” when in fact, this is precisely what the Proposal is aiming to accomplish. As discussed in the Company’s Reply Letter, the Staff recently reiterated its approach to micromanagement in Staff Legal Bulletin No. 14L (November 3, 2021) (“SLB 14L”), noting that the Staff will “assess whether a proposal probes matters ‘too complex’ for shareholders, as a group, to make an informed judgment.” In *Deere & Company* (January 3, 2022) (hereinafter, “*Deere*”), the Staff concurred in exclusion of a similar proposal, also

January 7, 2022

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submitted by the Proponent, on the basis that the proposal “micromanages the Company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company’s employment and training practices.” Though the Proposal seeks a report on its training materials rather than publication of such materials as in *Deere*, its intent and impact are the same, with the result that the Proposal “seek[s] disclosure of intricate details regarding the Company’s employment and training practices.”

The Proponent’s Supplemental Reply reiterates that the Proposal “seek[s] an audit and report” of the Company’s “activities, including its training materials, employee programs, and other activities” and focuses on the Company’s anti-bias and diversity, equity and inclusion efforts. In this regard, and similar to the Proponent’s asserted concerns in *Deere*, the Proponent asserts that the Company’s employee training materials and communications demonstrate a “rush to support ‘racial equity,’ ‘anti-racism’ or other social-justice goals.” Decisions concerning employment and training practices, including around anti-bias training efforts, are complex and are based on a range of considerations that are outside the knowledge and expertise of shareholders. A comprehensive review by shareholders of the Company’s training materials and employee programs is therefore inappropriate. Accordingly, and consistent with *Deere* and SLB 14L, the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7) because it aims to micromanage the Company.

For the foregoing reasons and the reasons set out in the Company’s Reply Letter and the No-Action Request, and consistent with the Staff’s prior No-Action letters and SLB 14L, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we

January 7, 2022

Page 3

request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008), and copy the undersigned.

Best regards,

A handwritten signature in cursive script, appearing to read "Lillian Brown".

Lillian Brown

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

Scott Shepard  
National Center for Public Policy Research





January 18, 2022

**Via email: [shareholderproposals@sec.gov](mailto: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 second supplemental no-action letter of Lillian Brown on behalf of The Walt Disney Company (the “Company”) dated January 7, 2022 supporting its original no-action letter of October 26 requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting. This letter is in turn in supplement to our no-action reply of November 16, 2021 and our supplemental no-action reply of December 15.

The Company’s second supplemental no-action letter is as unpersuasive as the previous one. The Company notes that the Staff determined that Deere & Co. could omit the proposal that we had submitted to it, which would if successful have required the company to publish some – or under the company’s interpretation, all – of its training materials. The Staff decided that that was too complex an undertaking for the company to face.

We disagree with that conclusion, of course, but whatever its merits it has no bearing on this proceeding. Our Proposal asks Disney to conduct an audit and report looking into matters of discrimination at the Company. Our Proposal is modeled on the proposal submitted – and found

non-omissible – in *Amazon.com, Inc.* (avail. April 7, 2021). The only distinction between our Proposal and the proposal in *Amazon.com* is that our Proposal focuses on discrimination against groups that the Company has not honored with the label “diverse,” while the *Amazon.com* proposal focused on the same concerns for groups that the proponents there had honored with that appellation. The Staff cannot allow or refuse to allow omission of materially indistinguishable proposals on the grounds that the Staff itself dislikes discrimination on suspect grounds against some groups, but doesn’t mind that same discrimination against other groups. And as there is no other way to distinguish these proposals, our Proposal is not omissible.

We have made this point throughout this proceeding. The Company has failed to respond to it because there is no response to make. Our Proposal cannot be omitted. The fact that we provide examples of Disney’s blatant and appalling discrimination in some of its employee-training materials does not make our Proposal explicitly “about” employee training; it’s about proven discrimination against groups of employees on the basis of suspect classifications. That’s very much a matter of substantial policy import, and an audit and report is a precedentially blessed method of inquiring into that proven discrimination.

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 Company’s 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 Commission 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](mailto:sshepard@nationalcenter.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Andrew Shepard", with a long horizontal flourish extending to the right.

Scott Andrew Shepard

cc: Lillian Brown, WilmerHale ([lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com))