



DIVISION OF
CORPORATION FINANCE

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

February 8, 2022

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: PepsiCo, Inc. (the "Company")
Incoming letter dated December 17, 2021

Dear Ms. Ising:

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

The Proposal requests that the Board of Directors adopt as policy, and amend the bylaws as necessary, to require hereafter that the Chair of the Board of Directors be an independent member of the Board, consistent with applicable law and existing contracts.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). We note that the Proposal is substantially duplicative of a previously submitted proposal that will be included in the Company's 2022 proxy materials. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(11).

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: Paul Chesser
National Legal and Policy Center

December 17, 2021

VIA E-MAIL

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

Re: *PepsiCo, Inc.*
Shareholder Proposal of the National Legal and Policy Center
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, PepsiCo, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Duplicate Proposal”) and statements in support thereof (the “Duplicate Proposal Supporting Statement”), received from the National Legal and Policy Center (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

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THE DUPLICATE PROPOSAL

The Duplicate Proposal, titled “Request for Board of Directors to Adopt a Policy for and Independent Chair,” states:

Shareholders request the Board of Directors adopt as policy, and amend the bylaws as necessary, to require hereafter that the Chair of the Board of Directors be an independent member of the Board, consistent with applicable law and existing contracts. If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time.

A copy of the Duplicate Proposal, the Duplicate Proposal Supporting Statement and related correspondence with the Proponent is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Duplicate Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates another proposal previously submitted to the Company that the Company intends to include in the 2022 Proxy Materials.

ANALYSIS

The Duplicate Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates An Earlier Submitted Proposal That The Company Intends To Include In Its 2022 Proxy Materials

A. Background

On October 18, 2021, the Company received a shareholder proposal titled “Independent Board Chairman” from John Chevedden on behalf of Kenneth Steiner requesting that the Company adopt a policy providing for an independent board chairman, and on November 24, 2021, Mr. Chevedden submitted revisions to Mr. Steiner’s proposal (Mr. Steiner’s proposal as revised, the “Prior Proposal”, and together with the Duplicate Proposal, the “Proposals”). The Prior Proposal and related correspondence are attached to this letter as Exhibit B.

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The Prior Proposal states:

The shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

The Chairman shall not be a former CEO of the company.

This policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

The Company received the Duplicate Proposal on November 16, 2021, which is after the date on which the Company first received the Prior Proposal. *See* Exhibit A and Exhibit B. The Company intends to include the Prior Proposal in its 2022 Proxy Materials.

B. Analysis

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it “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.” The Commission has stated that “the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (Nov. 22, 1976). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company may exclude the later of the proposals it received from its proxy materials, unless the initial proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

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A later proposal may be excluded as substantially duplicative of an earlier proposal despite differences in terms or breadth and despite the proposals requesting different actions. *See, e.g., Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring that a proposal seeking a review and report on the company’s loan modifications, foreclosures, and securitizations was substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations); *Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring that a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders substantially duplicated a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company’s outstanding stock to have one vote per share). The Staff has traditionally referred to Rule 14a-8(i)(11)’s substantial duplication standard as assessing whether the later proposal presents the same “principal thrust” or “principal focus” as a previously submitted proposal. *See Pacific Gas & Electric Co.* (avail. Feb. 1, 1993).

As demonstrated below, the Proposals share the same principal thrust or focus. In this regard, both Proposals seek adoption of a policy that the chairman (the “Chairman”) of the Company’s Board of Directors (the “Board”) be an independent director. The substantial similarities between the two Proposals include the following provisions:

- the titles of both Proposals refer to the Board having an independent Chairman;
- both Proposals request that the Board adopt a policy requiring the Chairman to be independent;
- both Proposals request amendments to the Company’s governing documents (as the Duplicate Proposal notes, the Company’s bylaws), as necessary, to implement the policy;
- both Proposals note that the policy may be phased in for the next Chief Executive Officer transition (as the Duplicate Proposal notes, applied on a prospective basis so as to not violate any existing contractual obligation);
- both Proposals discuss what steps the Board could take to replace a Chairman if that Chairman is determined to no longer be independent;

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- both Proposals address separating the positions of Chairman and Chief Executive Officer; and
- both Proposals discuss concerns related to combining the roles of Chairman and Chief Executive Officer.

Although the Duplicate Proposal and the Prior Proposal use some different words to phrase their shared request that the Company adopt a policy requiring that the Chairman be independent and deploy distinct arguments in their supporting statements in support of that request, these are not substantive differences that detract from the overall shared principal thrust or focus of the Proposals.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(11) of substantially duplicative proposals relating to an independent board chair. For example, in *The Southern Co.* (avail. Mar. 6, 2020), the Staff concurred with the exclusion of a proposal requesting that the board “adopt as policy, and amend [its] governing documents as necessary, to require that the [c]hairman of the [b]oard be an independent member of the [b]oard whenever possible” under Rule 14a-8(i)(11) where the principal thrust of both proposals was the adoption of a policy providing for an independent board chairman. *See also Comcast Corp.* (avail. Mar. 14, 2019) (concurring with the exclusion of a proposal requesting that the board adopt a policy to require that the chair of the board of directors be independent, whenever possible, under Rule 14a-8(i)(11) where the two proposals contained virtually identical resolved clauses); *Pfizer Inc.* (avail. Dec. 20, 2018) (same); *The Kroger Co.* (avail. Apr. 4, 2018) (concurring with the exclusion of a proposal requesting that the board adopt a policy and amend the company’s governing documents to require that the board chair, whenever possible, be an independent director and to phase in the policy for the next CEO transition so it does not violate any existing agreement, because it substantially duplicated a previously submitted proposal requesting that the board adopt a policy and amend the bylaws to require the board chair to be independent and to apply the policy prospectively so as not to violate any contractual obligation); *Pfizer Inc.* (avail. Jan. 11, 2018) (concurring with the exclusion of a proposal requesting that the board adopt a policy that, whenever possible, the board chair should be a director who has not previously served as an executive officer of the company and who is independent of management, and to implement the policy without violating any contractual obligation, because it substantially duplicated a previously submitted proposal requesting that the board adopt a policy and amend the bylaws to require the board chair, whenever possible, be an independent director and to phase in the policy for the next CEO transition); and *Nabors Industries Ltd.* (avail. Feb. 28, 2013) (concurring with the exclusion of a proposal requesting adoption of a policy to require the chair to be an independent director who has not previously served as an executive officer of the

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company and to implement the policy so as not to violate any contractual obligation, because it substantially duplicated a previously submitted proposal requesting adoption of a policy to require the board chair to be an independent director and to apply the policy prospectively so as to not violate any contractual obligation). As described above, the principal thrust of the Proposals is the adoption of a policy providing for an independent board Chairman. Accordingly, like the precedent cited above, even though the Proposals have certain inconsequential differences in their terms, the Duplicate Proposal substantially duplicates the Prior Proposal and is excludable pursuant to Rule 14a-8(i)(11).

Furthermore, the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(11) when the earlier and later-received proposals presented the same principal thrust or focus despite containing completely different supporting statements. For example, in *The Southern Co.*, as noted above, the Staff concurred with the exclusion under Rule 14a-8(i)(11) of an independent board chair proposal where the supporting statement outlined certain management-related benefits of an independent chair and expressed concern with the company's corporate governance practices, including the company's failure "to adopt a simple majority vote standard for company elections." In contrast, the earlier-received proposal's supporting statement raised concerns related to the company's "strategic transformation necessary for [the company] to capitalize on the opportunities available in the transition to a low carbon economy." Similarly, in *Comcast Corp.*, the Staff concurred that an independent board chair proposal, with a supporting statement outlining certain management-related benefits of an independent chair and expressing concern with the company's current employment practices, was duplicative of an earlier-received proposal, with a supporting statement raising concerns with a certain "beneficial owner of [company] class B common stock (with 100-to-one voting power)." Despite the different concerns expressed in the supporting statements of the proposals at issue, the Staff concurred that the proposals in *The Southern Co.* and *Comcast Corp.* shared the same principal thrust such that relief under Rule 14a-8(i)(11) was appropriate. See also *Pfizer Inc. (International Brotherhood of Teamsters General Fund)* (avail. Feb. 28, 2019) (concurring with the exclusion of a proposal requesting information on certain categories of lobbying expenditures and related company risks, with a supporting statement that "describe[d] the [p]roponents' concern that the lack of lobbying disclosure creates reputational risk when such lobbying contradicts public positions," as substantially duplicative of an earlier-received proposal with a supporting statement that "describe[d] lobbying in the context of [the company's] free speech and freedom of association rights") and *Danaher Corp.* (avail. Jan. 19, 2017) (concurring with the exclusion of a proposal to adopt goals for reducing greenhouse gas emissions, with a supporting statement describing reasons to do so, as substantially duplicative of an

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earlier-received proposal with a supporting statement describing risks and opportunities associated with climate change).

As noted above, while the resolved clauses of the Proposals vary in their phrasing, they both request that the Company adopt a policy and amend the Company's governing documents to require that the Chairman be independent. Aspects of the supporting statements in the Proposals are also similar. For example, both Proposals associate an independent Chairman with potential for improved corporate governance and advocate for the separation of the roles of Chairman and Chief Executive Officer. While the Proposals offer different arguments in support of their shared request, consistent with the aforementioned precedent, this does not change the conclusion that the Duplicate Proposal would have its key focus addressed through implementation of the Prior Proposal and shares the same principal thrust or focus.

Finally, as noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). As the Duplicate Proposal substantially duplicates the Prior Proposal, if the Company were required to include both Proposals in its 2022 Proxy Materials, there is a risk that the Company's shareholders would be confused when asked to vote on both Proposals. In such a circumstance, shareholders could assume incorrectly that there are substantive differences between the Proposals and the requested actions. In addition, if the voting outcome on the Proposals differed, the shareholder vote would not provide guidance on what actions shareholders want the Company to pursue, given that the same actions would be necessary to implement either the Duplicate Proposal or the Prior Proposal.

For the reasons discussed above, the principal thrust or focus of the Proposals is the same. Moreover, the Company intends to include the Prior Proposal in the 2022 Proxy Materials. Accordingly, the Company believes that the Duplicate Proposal may be excluded under Rule 14a-8(i)(11).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Duplicate Proposal from its 2022 Proxy Materials pursuant to Rule 14a-8(i)(11).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further

GIBSON DUNN

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assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Alicia Lee, the Company's Senior Counsel, Corporate Governance, at (914) 253-2198.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth A. Ising". The signature is written in a cursive, flowing style.

Elizabeth A. Ising

Enclosures

cc: Alicia Lee, PepsiCo, Inc.
Paul Chesser, National Legal and Policy Center

EXHIBIT A

From: Paul Chesser [REDACTED]
Sent: Tuesday, November 16, 2021 12:35 PM
To: Flavell, David {PEP} <david.flavell@pepsico.com>
Cc: [REDACTED]
Subject: Shareholder resolution for 2022 annual meeting

Dear Mr. Flavell/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at PepsiCo, Inc.'s 2022 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]

National Legal and Policy Center

"promoting ethics in public life"



November 16, 2021

Mr. David Flavell
Executive Vice President, General Counsel and Corporate Secretary
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577

VIA UPS & EMAIL: david.flavell@pepsico.com

Dear Mr. Flavell/Corporate Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in PepsiCo, Inc.'s ("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 U.S. Securities and Exchange Commission's proxy regulations.

National Legal and Policy Center (NLPC) is the beneficial owner of 74 shares of the Company's common stock with a value exceeding \$2,000, which shares have been held continuously for more than a year prior to this date of submission. NLPC intends to hold the shares through the date of the Company's next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to adopt a policy for an Independent Chair in corporate governance. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I am 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 proposal. I can be reached at [REDACTED] or at [REDACTED]. I am available Monday through Friday from 9am to 5pm, Eastern Time.

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me at [REDACTED]

Nat'l Headquarters: [REDACTED]

Phone: [REDACTED] Email: [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser". The signature is fluid and written in dark ink.

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Request for Board of Directors to
Adopt Policy for an Independent Chair" proposal

Request for Board of Directors to Adopt Policy for an Independent Chair

RESOLVED:

Shareholders request the Board of Directors adopt as policy, and amend the bylaws as necessary, to require hereafter that the Chair of the Board of Directors be an independent member of the Board, consistent with applicable law and existing contracts. If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time.

SUPPORTING STATEMENT:

The Chief Executive Officer of PepsiCo, Inc. is also Board Chairman. We believe these roles – each with separate, different responsibilities that are critical to the health of a successful corporation – are greatly diminished when held by a singular company official, thus weakening its governance structure.

Expert perspectives substantiate our position:

- According to the Council of Institutional Investors (<https://bit.ly/3pKrtJK>), “A CEO who also serves as chair can exert excessive influence on the board and its agenda, weakening the board’s oversight of management. Separating the chair and CEO positions reduces this conflict, and an independent chair provides the clearest separation of power between the CEO and the rest of the board.”
- A 2014 report from Deloitte (<https://bit.ly/3vQGqe1>) concluded, “The chairman should lead the board and there should be a clear division of responsibilities between the chairman and the chief executive officer (CEO).”
- Proxy adviser Glass Lewis advised (<https://bit.ly/2ZD4159>) in 2016, “an independent chairman...is better able to oversee the executives of the Company and set a pro-shareholder agenda without the management conflicts that exist when a CEO or other executive also serves as chairman.”

From: Lee, Alicia {PEP}
Sent: Monday, November 22, 2021 5:06 PM
To: [REDACTED]
Cc: Nastanski, Cynthia {PEP} <Cynthia.Nastanski@pepsico.com>
Subject: PepsiCo

Dear Mr. Chesser,

I am writing on behalf of PepsiCo, Inc., which received on November 16, 2021, the shareholder proposal you submitted on behalf of the National Legal and Policy Center. Please see the attached letter, which we will also send today by UPS overnight mail. Please confirm receipt of this email and the attached letter. Thank you and have a great Thanksgiving.

Best regards,
Alicia

Alicia Lee
Senior Counsel, Corporate Governance
PepsiCo, Inc.
700 Anderson Hill Road | Purchase | New York | 10577 | USA
Tel: [REDACTED]
alicia.lee@pepsico.com

From: Paul Chesser [REDACTED]
Sent: Tuesday, November 16, 2021 12:35 PM
To: Flavell, David {PEP} <david.flavell@pepsico.com>
Cc: [REDACTED]
Subject: Shareholder resolution for 2022 annual meeting

Dear Mr. Flavell/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at PepsiCo, Inc.'s 2022 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]



700 Anderson Hill Road, Purchase, New York, 10577 www.pepsico.com

ALICIA LEE
SENIOR COUNSEL, CORPORATE GOVERNANCE
Tel: [REDACTED]
alicia.lee@pepsico.com

November 22, 2021

VIA OVERNIGHT MAIL AND EMAIL

Paul Chesser
National Legal and Policy Center
[REDACTED]

Dear Mr. Chesser:

I am writing on behalf of PepsiCo, Inc. (the “**Company**”), which received on November 16, 2021, the shareholder proposal entitled “Request for Board of Directors to Adopt Policy for an Independent Chair” that you submitted on November 16, 2021 (the “**Submission Date**”) on behalf of the National Legal and Policy Center (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Shareholders (the “**Proposal**”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company’s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
- (3) \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- (4) \$2,000 of the Company’s shares entitled to vote on the Proposal for at least one year as of January 4, 2021, and that the Proponent has continuously maintained a minimum investment amount of at least \$2,000 of such shares from January 4, 2021 through the Submission Date (each an “**Ownership Requirement**,” and collectively, the “**Ownership Requirements**”).

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received proof that the Proponent has satisfied any of the Ownership Requirements.

To remedy this defect, the Proponent must submit sufficient proof that the Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and 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 the Proponent met at least one of the Ownership Requirements above, 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 amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that 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 that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone

Mr. Paul Chesser
November 22, 2021
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number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Under Rule 14a-8(b) of the Exchange Act, the Proponent must provide the Company with a written statement of the Proponent's intent to continue to hold through the date of Company's 2022 Annual Meeting of Shareholders the requisite amount of Company shares used to satisfy at least one the Ownership Requirements above. We acknowledge your November 16, 2021 statement that the Proponent is "the beneficial owners of 74 shares of the Company's common stock with a value exceeding \$2,000, which shares have been held continuously for more than a year prior to the date of submission" and that the Proponent "intends to hold the shares through the date of the Company's next annual meeting of shareholders." However, the Proponent's statement of intent to hold shares through the Company's 2022 Annual Meeting of Shareholders must be consistent with the Ownership Requirement that is satisfied. As we have not yet received any proof of ownership from the Proponent, and therefore do not know with certainty which of the Ownership Requirements above will be satisfied, we believe that the written statement in your November 16, 2021 correspondence may not be adequate to confirm that the Proponent intends to hold the required amount of the Company's shares through the date of the 2022 Annual Meeting of Shareholders.

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 700 Anderson Hill Road, Purchase, NY 10577. Alternatively, you may transmit any response by email to me at alicia.lee@pepsico.com.

If you have any questions with respect to the foregoing, please contact me at (914) 253-2198. For your reference, I enclose a copy of Rule 14a-8 as amended for meetings that occur on or after January 1, 2022 but before January 1, 2023, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,



Alicia Lee
Senior Counsel, Corporate Governance

Enclosures

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

[REDACTED]

Weight

0.10 LBS

Service

UPS Next Day Air®

Shipped / Billed On

11/22/2021

Delivered On

11/23/2021 9:54 A.M.

Delivered To

[REDACTED]

Received By

TAYLOR

Left At

Front Desk

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/15/2021 11:13 A.M. EST

From: [Paul Chesser](#)
To: [Lee, Alicia {PEP}](#)
Cc: [Nastanski, Cynthia {PEP}](#); [Peter Flaherty](#)
Subject: Re: PepsiCo
Date: Thursday, December 9, 2021 10:34:55 AM

Alicia,

We will let the SEC determine the eligibility of our proposal. Thanks for the information.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org

On Dec 7, 2021, at 2:58 PM, Lee, Alicia {PEP} <Alicia.Lee@pepsico.com> wrote:

Dear Mr. Chesser,

I am writing on behalf of PepsiCo, Inc., which received on November 16, 2021, the shareholder proposal entitled "Request for Board of Directors to Adopt Policy for an Independent Chair" that you submitted on November 16, 2021 on behalf of the National Legal and Policy Center (NLPC). I write to respectfully request that you withdraw NLPC's proposal because, as discussed below, it substantially duplicates another proposal that PepsiCo received before we received NLPC's proposal, and PepsiCo intends to include the first proposal in the proxy materials for our 2022 Annual Meeting of Shareholders.

Under SEC Rule 14a-8(i)(11), a shareholder proposal may be excluded if it 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. When two substantially duplicative proposals are received by a company, the SEC staff has indicated that the company may exclude the later of the proposals it received from its proxy materials.

On October 18, 2021, PepsiCo received a shareholder proposal titled "Independent Board Chairman." Part of the proposal subsequently was revised on November 26, 2021, but the changes did not change the proposal's title and both versions request that an independent director be Chair of the Board. We believe that this first proposal, which was received before PepsiCo received NLPC's proposal, has the same principal focus as NLPC's proposal. Accordingly, if PepsiCo were to include both proposals in the proxy materials for our 2022 Annual Meeting of Shareholders, PepsiCo shareholders would be required to consider two substantially duplicative proposals.

For these reasons, we believe that the SEC staff will agree that PepsiCo is permitted under SEC rules to exclude your proposal from the proxy materials for our 2022 Annual Meeting of Shareholders. Accordingly, in order to save PepsiCo and our shareholders

the time and expense associated with seeking no-action relief from the SEC, we respectfully ask that you withdraw NLPC's proposal. If you have any questions or wish to continue a dialogue, please do not hesitate to contact me.

Best regards,
Alicia

From: Paul Chesser [REDACTED]
Sent: Friday, December 3, 2021 2:45 PM
To: Lee, Alicia {PEP} <Alicia.Lee@pepsico.com>
Cc: Nastanski, Cynthia {PEP} <Cynthia.Nastanski@pepsico.com>; Peter Flaherty [REDACTED]
Subject: Re: PepsiCo

Alicia,
This email responds to your email alleging a deficiency in the submission of our "Request for Board of Directors to Adopt Policy for an Independent Chair" proposal. I have attached a verification letter from Fidelity of our holdings. If you could confirm receipt, I would appreciate it.

Sincerely,

Paul
Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[REDACTED]

On Nov 22, 2021, at 5:06 PM, Lee, Alicia {PEP} <Alicia.Lee@pepsico.com> wrote:

Dear Mr. Chesser,
I am writing on behalf of PepsiCo, Inc., which received on November 16, 2021, the shareholder proposal you submitted on behalf of the National Legal and Policy Center. Please see the attached letter, which we will also send today by UPS overnight mail. Please confirm receipt of this email and the attached letter. Thank you and have a great Thanksgiving.

Best regards,
Alicia

Alicia Lee
Senior Counsel, Corporate Governance
PepsiCo, Inc.
700 Anderson Hill Road | Purchase | New York | 10577 | USA
Tel: [REDACTED]
alicia.lee@pepsico.com

From: Paul Chesser [REDACTED]
Sent: Tuesday, November 16, 2021 12:35 PM

To: Flavell, David {PEP} <david.flavell@pepsico.com>

Cc: [REDACTED]

Subject: Shareholder resolution for 2022 annual meeting

Dear Mr. Flavell/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at PepsiCo, Inc.'s 2022 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul Chesser

Director, Corporate Integrity Project

National Legal and Policy Center

nlpc.org

[REDACTED]

<PepsiCo.pdf>

EXHIBIT B

From: John Chevedden [REDACTED]
Date: October 18, 2021 at 6:43:28 PM EDT
To: "Nastanski, Cynthia {PEP}" <Cynthia.Nastanski@pepsico.com>
Cc: "Lee, Alicia {PEP}" <Alicia.Lee@pepsico.com>, "Carriello, Amy {PEP}" <Amy.Carriello@pepsico.com>, "Hurley, Megan {PEP}" <Megan.Hurley@pepsico.com>, SPA - PepsiCo Investor Relations <PepsiCoInvestorRel@pepsico.com>
Subject: Rule 14a-8 Proposal (PEP)``

Dear Ms. Nastanski,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

If you confirm proposal receipt in the next day a broker letter can be promptly forwarded that will save you from making a formal request.

Sincerely,
John Chevedden

Kenneth Steiner

Ms. Cynthia Nastanski
Corporate Secretary
Alicia Lee <Alicia.Lee@pepsico.com>
PepsiCo, Inc. (PEP)
700 Anderson Hill Road
Purchase NY 10577
PH: [REDACTED]
FX: [REDACTED]

Dear Ms. Nastanski,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I intent to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

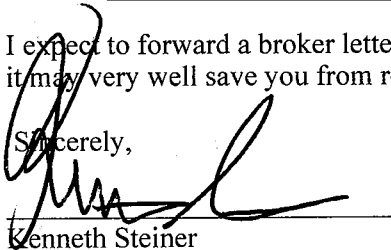
My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden at:

[REDACTED]
to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to [REDACTED]

I expect to forward a broker letter soon so if you acknowledge this proposal promptly in an email message it may very well save you from requesting a broker letter from me.

Sincerely,


Kenneth Steiner

10/12/21
Date

cc: Amy Carriello <amy.carriello@pepsico.com>
Senior Legal Director
PH: [REDACTED]
FX: [REDACTED]
FX: [REDACTED]
Alicia Lee <Alicia.Lee@pepsico.com>
Megan Hurley <Megan.Hurley@pepsi.com>
Jamie Caulfield <investor@pepsico.com>

Proposal 4 – Independent Board Chairman

The shareholders request that the Board of Directors adopt as policy, and amend the governing documents as necessary, to require the Chair of the Board of Directors to be an independent member of the Board. If an independent director is not available from inside or outside the company then a non-independent director from inside or outside the company, other than the CEO, can be named as Chairman for a term of 3 months to 6 months. This policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing then adopted this proposal topic in June 2020. The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

This proposal topic won 44%-support at our 2012 annual meeting. This 44%-support likely represented 51%-support from the shares that have access to independent proxy voting advice.

The role of the CEO and management is to run the company.
The role of the Board of Directors is to provide independent oversight of management and the CEO.

Thus there is a potential conflict of interest for a CEO to have the oversight role of Chairman.

A CEO serving as Chair can result in excessive management influence on the Board and weaker oversight of management. The CEO gets comfortable being his own boss. With the current CEO serving as Chair this means giving up a substantial check and balance safeguard that can only occur with an independent Board Chairman.

A lead director is no substitute for an independent board chairman. A lead director cannot call a special shareholder meeting and cannot even call a special meeting of the board. A lead director can delegate most of his lead director duties to the CEO office and then the lead director can simply rubber-stamp it.

The lack of an independent Board Chairman is an unfortunate way to discourage new outside ideas and an unfortunate way to encourage the CEO to pursue pet projects that would not stand up to effective oversight. Plus PepsiCo shareholders are restricted in bringing new ideas to management in a manner that has traction because shareholders have no right to act by written consent.

In an example from a company whose share price went from \$130 to \$200 in 10 months, the 2020 Lowe's annual meeting proxy said Lowe's independent directors determined that having a separate Chairman and Chief Executive Officer affords the CEO the opportunity to focus his time and energy on managing the business and allows the Chairman to devote his time and attention to Board oversight and governance.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

“Proposal 4” stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The color version of the below graphic is to be published immediately after the bold title line of the proposal.

Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.

No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.

No ballot electioneering text repeating the negative management recommendation.

Management will give me the opportunity to correct any typographical errors.

Management will give me advance notice if it does a special solicitation that mentions this proposal.



FOR

*Shareholder
Rights*

From: John Chevedden [REDACTED]
Date: November 24, 2021 at 7:50:23 PM EST
To: "Lee, Alicia {PEP}" <Alicia.Lee@pepsico.com>, "Nastanski, Cynthia {PEP}" <Cynthia.Nastanski@pepsico.com>
Subject: Rule 14a-8 Proposal (PEP)`` **REVISED**

Dear Ms. Lee,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Please confirm receipt.

Sincerely,

John Chevedden

[PEP – Rule 14a-8 Proposal, October 18, 2021, Revised November 23, 2021]

[This line and any line above it – *Not* for publication.]

Proposal 4 – Independent Board Chairman

The shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

The Chairman shall not be a former CEO of the company.

This policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing then adopted this proposal topic in June 2020. The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

This proposal topic won 44%-support at our 2012 annual meeting. This 44%-support likely represented 51%-support from the shares that have access to independent proxy voting advice.

A CEO serving as Chair can result in excessive management influence on the Board and weaker oversight of management. The CEO gets comfortable with being his own boss. With the current CEO serving as Chair this means giving up a substantial check and balance safeguard that can only occur with an independent Board Chairman.

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In an example from a company whose share price went from \$130 to \$200 in 10 months, the 2020 Lowe's annual meeting proxy said Lowe's independent directors determined that having a separate Chairman and Chief Executive Officer affords the CEO the opportunity to focus his time and energy on managing the business and allows the Chairman to devote his time and attention to Board oversight and governance.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]