



DIVISION OF
CORPORATION FINANCE

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

March 23, 2022

John C. Ericson
Simpson Thacher & Bartlett LLP

Re: Best Buy Co., Inc. (the "Company")
Incoming letter dated March 22, 2022

Dear Mr. Ericson:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the International Brotherhood of Teamsters General Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its February 4, 2022 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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: Louis Malizia
International Brotherhood of Teamsters

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VIA E-MAIL

February 4, 2022

Re: **Best Buy Co., Inc. – 2022 Annual Meeting of Shareholders, Omission of Shareholder Proposal Submitted by the International Brotherhood of Teamsters General Fund; Securities Exchange Act of 1934, Section 14(a); Rule 14a-8**

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

Ladies and Gentlemen:

We are filing this letter on behalf of Best Buy Co., Inc., a Minnesota corporation (“Best Buy” or the “Company”), in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, with respect to the shareholder proposal and supporting statement (together, the “Shareholder Proposal”) submitted by the International Brotherhood of Teamsters General Fund (the “Proponent”) in a letter dated December 17, 2021 for inclusion in the proxy materials to be distributed by Best Buy in connection with its 2022 annual meeting of shareholders (the “2022 Proxy Materials”). A copy of the Shareholder Proposal and related correspondence is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against Best Buy if Best Buy omits the Shareholder Proposal in its entirety from the Proxy Materials.

Best Buy intends to file the definitive proxy statement for its 2022 annual meeting of shareholders (the “Annual Meeting”) more than 80 days after the date of this letter. In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), this letter is being submitted by email to shareholderproposals@sec.gov in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j), and the undersigned has included his name and

telephone number both in this letter and in the cover e-mail accompanying this letter. In addition, pursuant to Rule 14a-8(j), a copy of this letter is also being sent simultaneously by email to the Proponent as notice of Best Buy's intent to omit the Shareholder Proposal from its 2022 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send to the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Shareholder Proposal, the Proponent must concurrently furnish a copy of that correspondence to Best Buy. Similarly, the Company will promptly forward to the Proponent any response received from the Staff or Commission related to this request that the Staff or Commission transmits only to Best Buy.

I. The Shareholder Proposal

The Shareholder Proposal states:

RESOLVED: Best Buy Co. Inc.'s ("Best Buy") Board of Directors should prepare a report on the financial, reputational, and human rights risks resulting from the use in the Company's supply chain and distribution networks of companies that misclassify employees as independent contractors. The report should be prepared at reasonable cost, omitting proprietary information and be available at least 90 days prior to the 2023 annual shareholders meeting.

A copy of the full text of the Shareholder Proposal and related correspondence, including the Proponent's supporting statement, is attached to this letter as Exhibit A.

II. Bases for Exclusion

As discussed more fully below, the Company believes that the Shareholder Proposal may be properly excluded from the 2022 Proxy Materials pursuant to the following provisions of Rule 14a-8:

- Rule 14a-8(b) and Rule 14a-8(f) because the Proponent failed to identify a specific time 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;
- Rule 14a-8(i)(7) as the Shareholder Proposal relates to Best Buy's ordinary business operations; and

- Rule 14a-8(i)(3) and Rule 14a-9 because the Shareholder Proposal is vague and indefinite, rendering the Shareholder Proposal in violation of the proxy rules.

III. Analysis

A. *The Shareholder Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f) because the Proponent's proposed meeting time with the Company did not fall within the required 10- to 30-day window.*

Under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(a)-(e). Under Rule 14a-8(b)(1)(iii), a proponent must provide the company with a written statement that the proponent is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after the submission of the shareholder proposal. This written statement must include the proponent's contact information as well as business days and specific times that the proponent is available to discuss the proposal with the company. Under Rule 14a-8(f), a company may exclude a proposal defective as to the Rule 14a-8(b)(1)(iii) requirement after it has notified the Proponent of the problem within 14 days of receipt of the Shareholder Proposal and the Proponent has failed to adequately correct it.

The Shareholder Proposal was received on December 17, 2021. In it, the Proponent provided two dates, January 21, 2022 and January 28, 2022, to discuss the Shareholder Proposal, which are more than 30 calendar days after the submission date of the Shareholder Proposal. In accordance with Rule 14a-8(f)(1), on December 29, 2021, within 14 calendar days of receiving the Shareholder Proposal, the Company sent a notice of deficiency, which is attached in Exhibit B to this letter, to the Proponent by electronic mail notifying the Proponent of this deficiency and requesting remediation. The Proponent failed to respond within 14 days from the date it received the Company's notification. Although the Company chose to speak with the Proponent on one of the days that the Proponent selected, this does not alter the fact that the Proponent did not comply with the requirements of Rule 14a-8(b) and did not correct this deficiency when notified. Accordingly, the Company may exclude the Shareholder Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f). *See The Walt Disney Company* (avail. Sep. 28, 2021) (concurring with the exclusion of a proposal under Rule 14a-8(b)/(f) where the proponent, among other deficiencies, failed to provide meeting times that complied with Rule 14a-8(b)(1)(iii)).

B. The Shareholder Proposal may be excluded under Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

1. Background on the "ordinary business" standard

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first was 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," which particularly includes "management of the workforce" and "retention of suppliers." The second consideration related to "the degree to which the proposal seeks 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." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

Further, a shareholder proposal seeking a report does not change the underlying nature of the proposal. Indeed, the Commission has stated that a proposal requesting the preparation and dissemination of a report may be excluded under Rule 14a-8(i)(7) if the subject matter of the proposed report involves a matter of ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). Similarly, in considering a proposal requesting that a company engage in an evaluation of risk, the Staff has indicated that it will "focus on the subject matter to which the risk pertains or that gives rise to the risk" and that "in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7)." *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E").

When the underlying subject matter of a proposal relates to ordinary business operations, the Staff has, consistent with the views pronounced in SLB 14E, continued to concur with the exclusion of shareholder proposals seeking the assessment of risk. *See, e.g., The TJX Companies, Inc.* (avail. Mar. 29, 2011) ("TJX") (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) requesting an annual risk assessment of the actions the company takes to avoid or

minimize applicable taxes and provide a report to shareholders on such assessment); *Amazon.com, Inc.* (avail. Mar. 21, 2011) (same proposal and outcome as *TJX*); and *Wal-Mart Stores, Inc.* (avail. Mar. 21, 2011) (same proposal and outcome as *TJX*).

2. *The Shareholder Proposal is excludable because it relates to the Company's litigation strategy and pending legal proceedings*

The Company believes that the Shareholder Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Shareholder Proposal involves the same subject matter as, and implicates the Company's litigation strategy in, a pending lawsuit involving the Company and therefore relates to the Company's ordinary business operations. Specifically, Best Buy is currently involved in litigation (the "Litigation") in the California Superior Court in Alameda County that rests on the classification of contract carriers, drivers and/or helpers as independent contractors or employees. In this action, *Christian Matute v. Pilot Air Freight LLC dba Pilot Freight Services, Best Buy Co., Inc. and Does 1 through 25*, the plaintiff, on behalf of itself and all similarly situated individuals, alleges that Best Buy, along with a co-defendant, unlawfully misclassified plaintiffs as independent contractors during a specified period and is therefore liable for alleged violations of several provisions of the California Labor Code relating to wages, overtime compensation, meal and rest periods, and related matters and of the California Unfair Competition Act. The crux of the pending litigation is whether the Company and its third-party business partner have misclassified plaintiffs as independent contractors, and the Company expects that a key defense against the plaintiffs' claims will be that no such misclassification has occurred. The Company has advised that no court decision has been taken in the case, and the lawsuit remains pending.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that implicate and seek to oversee a company's ordinary business operations when the subject matter of the proposal is the same as or similar to the gravamen of litigation in which a company is then involved. *See, e.g., Chevron Corp.* (avail. Mar. 30, 2021) ("Chevron Corp.") (concurring with the exclusion, as relating to litigation strategy, of a proposal requesting a report on how the company's policies and practices perpetuate racial injustice and inflict harm on communities of color where the registrant was involved in numerous outstanding lawsuits involving claims that alleged harms directly implicated by the report requested); *Walmart Inc.* (avail. Apr. 13, 2018) ("Walmart Inc.") (concurring with the exclusion, as relating to litigation strategy, of a proposal requesting a report on risks associated with emerging public policies on the gender pay gap where the registrant was involved in numerous pending lawsuits regarding alleged gender-based pay discrimination (and related claims before a U.S. regulator), as "affect[ing] the conduct of ongoing litigation relating to the subject matter of the [p]roposal to which the [c]ompany is a party"); *General Electric Co.* (Sisters of St. Dominic of Caldwell, N.J.) (avail. Feb. 3, 2016) ("General Electric") (concurring with the exclusion, as relating to pending

litigation, of a proposal sought a report assessing the registrant's potential liability in connection with discharges of chemicals into the Hudson River, with the registrant noting that such a report interfered with the registrant's "defense of both pending and potential litigation"); *Reynolds American Inc.* (avail. Mar. 7, 2007) ("*Reynolds American (2007)*") (concurring with the exclusion, as relating to litigation strategy, of a proposal requesting that the company provide information on the health hazards of secondhand smoke, where the company was currently litigating six separate cases alleging injury as a result of exposure to secondhand smoke and a principal issue concerned the health hazards of secondhand smoke); *AT&T Inc.* (avail. Feb. 9, 2007) ("*AT&T*") (concurring with the exclusion, as relating to ordinary business operations (*i.e.*, litigation strategy), of a proposal requesting that the company issue a report regarding the technical, legal and ethical policy issues surrounding alleged disclosure of customer communications and records to governmental agencies while the company was a defendant in multiple pending lawsuits alleging unlawful acts by the company in relation to such disclosures); *Reynolds American Inc.* (avail. Feb. 10, 2006) ("*Reynolds American (2006)*") (concurring with the exclusion, as relating to litigation strategy, of a proposal requesting that the company undertake a campaign to notify African-Americans of the unique health hazards to them associated with smoking menthol cigarettes, where the company noted that undertaking such a campaign would be inconsistent with positions it was taking in multiple lawsuits). As the Staff has recognized time and again, it is company management's responsibility to vigorously defend the company's interests in litigation as part of its ordinary business operations and to pursue the litigation strategy that management believes best serves that end.

The Shareholder Proposal requests that Best Buy prepare a report (the "Report") assessing the "financial, reputational, and human rights risks resulting from the use in the Company's supply chain and distribution networks of companies that misclassify employees as independent contractors." The Shareholder Proposal, therefore, is focused on precisely the sorts of arrangements underlying the Litigation, namely Best Buy's engagement of third parties that provide delivery services and other services.

If Best Buy were required to furnish the Report, it would first have to make a determination as to how its third-party business partners provide services, whether through employees or independent contractors. It would then need to assess the details of such relationships. Without such a determination, the Company would find it difficult to prepare a report on the associated financial, reputational and human rights risks that contains meaningful information and conclusions. In making any such determination, the Company would be required to weigh a variety of factors and factual questions that include those that are at issue in the Litigation and likely reach a legal conclusion with respect to the classification of the workers of this and other third parties. Doing so would interfere with the Company's conduct of its litigation and the pursuit of its litigation strategy. In *Johnson & Johnson* (avail. Feb. 14, 2012), the Staff concurred in the exclusion of a proposal where implementation would have required the

company to report on any new initiatives instituted by management to address the health and social welfare concerns of people harmed by LEVAQUIN®, a drug manufactured by the company, thereby taking a position contrary to the company's litigation strategy related to such drug. In *R.J. Reynolds Tobacco* (avail. Feb. 6, 2004), the company was involved in multiple lawsuits alleging deceptive advertising practices, and the Staff concurred in the exclusion of a proposal requesting that the registrant stop the use of the allegedly deceptive terms in their marketing. Here, the mere inclusion of a third-party business partner such as the co-defendant, or other third-party business partners performing similar services, among the companies addressed in the report could vitiate the position of Best Buy and the co-defendant in the ongoing Litigation, as the inclusion therein could be viewed as an admission that a misclassification has indeed occurred. The Shareholder Proposal asks Best Buy to assume a conclusion that its partners and vendors are engaged in employee misclassification in order to assess the risks of such a practice. Further, if Best Buy were to include only certain partners and vendors having specified characteristics or following specified practices, the report could be viewed as an admission that those characteristics and practices are evidence of a misclassification. Those factors could include characteristics and practices that are the subject of the Litigation. Indeed, the alleged misclassification is a legal determination for a court to make, a determination that, if made by Best Buy, could damage its position in the ongoing Litigation and the position of its business partner.

When a company is facing pending litigation, shareholder proposals that request a company to take action or comment on such lawsuits in a way that harms the company should be excluded. In *General Electric*, a shareholder proposal sought a report assessing the company's potential liability in connection with the discharge of chemicals into the Hudson River. The requested report in that instance would have assessed all sources of potential liability associated with the discharges, including potential restoration costs for damaged natural resources if the company were found liable. The registrant properly claimed that such a report would have interfered with its defense in both pending and potential litigation, and the Staff concurred with the exclusion of the proposal. Like the report requested in the *General Electric* proposal, the Report requested by the Shareholder Proposal would require the Company to disclose its assessment of risks that could arise in the Litigation or in any future, similar cases. Such an analysis would undermine its own defense in the outstanding Litigation and any potential future litigation and could inadvertently buttress the plaintiffs' claims.

Further, the publication of a report that assesses the risks of partnering with supply chain and distribution networks that misclassify employees as independent contractors would necessarily provide information that would aid the plaintiff in the ongoing Litigation and could also provoke future litigation. The Litigation alleges several fundamental obligations of Best Buy and the co-defendant that would be triggered as a result of the plaintiff's success on the merits, including regulated minimum and overtime wages and labor obligations such as meal and rest

periods. The Report would naturally weigh the specific details of each arrangement, make an overall assessment of risk and lay out the financial implications of such a misclassification, which could serve the perverse purpose of suggesting the potential damages at issue in the ongoing Litigation, including damages that may not have been sought by the plaintiffs. Any risk factors identified in the Report that weigh towards misclassification could, at worst, amount to admissions damaging to the Company's litigation strategy and, at best, could provide potential evidence or arguments for the plaintiffs.

Beyond the financial risks that could be highlighted in the Report, the Shareholder Proposal calls for the Report to address reputational and human rights risks related to such misclassification. Any narrative disclosures by Best Buy set forth in the Report related to the reputational or human rights implications of a third-party misclassifying employees could also be used against Best Buy in the Litigation or in future litigation. In particular, any detailed description of alleged human rights risks of any misclassification of employees by third-party business partners could be used by the plaintiffs in the Litigation to bolster their arguments or potentially introduce additional claims in the Litigation or in any future litigation. Actions similar to the Litigation are frequently brought or threatened against national corporations such as the Company, and the contents of such a report could become an issue in a future action.

3. *The Shareholder Proposal is excludable because it relates to the Company's general legal compliance*

As previously noted, the Shareholder Proposal requests that the Report assess the "financial, reputational, and human rights risks resulting from the use in the Company's supply chain and distribution networks of companies that misclassify employees as independent contractors." The Supporting Statement notes that it "is illegal for a company to 'misclassify' workers as self-employed 'independent contractors' if the company controls the manner and means of work, sets hours and wages, and otherwise treats them as 'employees,' who are entitled to a minimum wage, overtime pay protections, and other benefits and rights guaranteed employees under law." The Supporting Statement also states that "[m]isclassification risk extends to retailers" and cites a recently enacted California law that "makes customers of a port trucking company jointly liable for future violations of labor, employment, and health and safety law by a trucking company that the California Labor Commissioner's office has publicly identified as having previously violated these laws." These statements make clear that the Shareholder Proposal primarily relates to the Company's compliance with laws and regulations governing its contractors' classification of employees—issues that are core components of the Company's ordinary business operations.

The Staff has concurred in the past with the exclusion of proposals requesting reports relating to the classification of employees and contractors, recognizing that these matters relate

to a company's ordinary business operations in the conduct of a company's general legal compliance program. In *Lowe's Companies, Inc.* (avail. Mar. 12, 2008) ("*Lowe's Companies*"), the Staff concurred in the exclusion of a proposal that requested that the company establish an independent committee to prepare a report discussing the "compliance of both the company and its contractors—particularly those contractors and subcontractors performing store construction work for the company—with state and federal laws governing proper classification of employees and independent contractors." Like the Shareholder Proposal received by the Company, the proposal received in *Lowe's Companies* addressed not only matters of the Company's own legal compliance but also that of its third-party business partners. In the *Lowe's Companies* letter, the company argued that the proposal "impermissibly [sought] to subject this complex aspect of the Company's business operations – its business relationships with its contracts – to shareholder oversight" and that this "micro-managing" fell within the bases for exclusion articulated in the 1998 Release. The Staff also concurred in the exclusion of a proposal received by FedEx Corp. that requested that an independent committee prepare a report to shareholders "concerning proper classification of employees and contractors." See *FedEx Corporation* (avail. July 14, 2009). There, too, the Staff recognized that these matters related to the company's "ordinary business operations (i.e., general legal compliance program)." *Id.*

More broadly, the Staff has consistently concurred with the exclusion of proposals implicating a company's legal compliance program under ordinary business principles pursuant to Rule 14a-8(i)(7) when proponents requested reports on a variety of topics. See, e.g., *Navient Corp.* (avail. Mar. 26, 2015, recon. denied Apr. 8, 2015) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) requesting "a report on the Company's internal controls over its student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws" as "concern[ing] a company's legal compliance program"); *Raytheon Co.* (avail. Mar. 25, 2013) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) requesting a report on "the Board's oversight of the Company's efforts to implement the provisions of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act" with the Staff noting that proposals concerning a company's legal compliance program are generally excludable under Rule 14a-8(i)(7)); *The AES Corporation* (avail. March 13, 2008) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) seeking an independent investigation of "management's involvement in the falsification of environmental reports" as relating to the company's "general conduct of a legal compliance program"); *The Coca-Cola Co.* (avail. Jan. 9, 2008) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) seeking an annual report comparing independent laboratory tests of the company's product quality against applicable national laws and the company's global quality standards because the proposal related to the ordinary business matter of the "general conduct of a legal compliance program"); and *ConocoPhillips* (avail. Feb. 23, 2006) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) seeking a board report on "potential legal liabilities" arising from alleged omissions from the company's

prospectus in reliance on Rule 14a-8(i)(7) because it concerned the company's "general legal compliance program"). *See also Monsanto Company* (avail. Nov. 3, 2005) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) seeking an ethics oversight committee of independent directors for the purpose of monitoring the company's domestic and international business practices because the proposal related to the company's "general conduct of a legal compliance program").

Here, the Shareholder Proposal requests a report that involves the Company's management of a particular aspect of its legal compliance program with respect to workers in its supply chain and distribution network. The Supporting Statement not only references specific California legislation and actions by the California Labor Commissions but also makes broader statements regarding the illegality of the misclassification of workers, especially drivers delivering goods from U.S. ports. Accordingly, the Shareholder Proposal is intrinsically linked to the Company's compliance with laws and regulations governing the classification of workers. These determinations are not made on a whim but require intricate analysis of evolving law and policy in multiple jurisdictions. Although the Supporting Statement focuses largely on drivers at California ports, the Shareholder Proposal itself is broadly worded and appears to address the Company's supply chain and distribution networks as a whole. As Best Buy operates in all 50 states and all 10 Canadian provinces, any assessment of the risks of noncompliance is a complex matter that falls squarely within the Company's general legal compliance function. As noted above, that the Shareholder Proposal is phrased as a request for a report evaluating the financial, reputational and human rights risks of any misclassification of employees within the Company's distribution networks does not alter the appropriate analysis under SLB 14E, which calls for an evaluation of whether a proposal should be excluded based on the subject matter to which the risks pertain and whether they involve matters of ordinary business to the Company. A company's board of directors is better equipped than shareholders to evaluate the appropriateness of the Company's and its management's handling of such matters. Indeed, the Company's legal activities, and its compliance with laws and regulations, are the responsibility of the Company's management and board of directors. The Shareholder Proposal seeks to micro-manage the manner in which the Company complies with its legal obligations and is properly excludable under Rule 14a-8(i)(7).

4. *The Shareholder Proposal is excludable because it relates to the Company's relationship with its suppliers*

In addition to interfering with the Company's litigation strategy and the conduct of its legal compliance program, the Shareholder Proposal seeks to influence the Company's management of its supplier relationships, which clearly fall within Best Buy's ordinary business operations. In the 1998 Release, the Commission highlighted the "retention of suppliers" among the areas that "are so fundamental to management's ability to run a company on a day-to-day

basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Consistent with the 1998 Release, the Staff over the years has concurred in the exclusion of proposals that related to a company’s management of its relationships with suppliers and vendors, including third-party business partners providing services critical to the company’s ability to serve its customers. *See, e.g., Foot Locker, Inc.* (avail. Mar. 3, 2017) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) seeking a report on steps taken by the company to monitor overseas apparel suppliers’ use of subcontractors as relating “broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors”); *Kraft Foods Inc.* (avail. Feb. 23, 2012) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) that sought a report detailing the ways the company was “assessing water risk to its agricultural supply chain and action it intend[ed] to take to mitigate the impact on long-term shareholder value,” noting that the “proposal relate[d] to decisions relating to supplier relationships”); *PetSmart, Inc.* (avail. Mar. 24, 2011) (“*PetSmart*”) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) regarding the compliance of the company’s suppliers with certain animal rights statutes, as relating to the company’s ordinary business operations); *Southwest Airlines Co.* (avail. Mar. 19, 2009) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal regarding third-party contract aircraft maintenance facilities on the basis that it related to “decisions relating to vendor relationships”); and *PepsiCo, Inc.* (avail. Feb. 11, 2004) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal to, in part, “[s]top favoring one bottler over the other” as relating, in part, to “decisions relating to vendor relationships”).

Although the Shareholder Proposal is styled as a request for a report on the risks resulting from any misclassification of employees as independent contractors by companies in the Company’s supply chain and distribution network, it is clearly aimed at influencing the manner in which Best Buy selects, manages and interacts with its third-party business partners, a core function of the Company’s ordinary business operations. The Supporting Statement states that “Best Buy’s existing standards and disclosures fail to address an issue affecting reputational and financial risks and human rights concerns” and suggests that the Company is not adequately managing its vendor relationships to address those risks, seeking to micro-manage those relationships. However, the Staff has historically concurred that it is the function of management, overseen by the board of directors, to appropriately assess and manage any risks inherent in its ordinary business operations, including in its supplier and vendor relationships.

5. *Regardless of whether the Shareholder Proposal touches upon a significant policy issue, the entire Shareholder Proposal is excludable because it addresses ordinary business matters*

The fact that a proposal may touch upon a significant policy issue is not alone sufficient to avoid the application of Rule 14a-8(i)(7) when a proposal implicates ordinary business matters. The Commission stated in the 1998 Release that “proposals relating to such [ordinary

business] matters but focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” The key issue in the Staff’s analysis, therefore, is not whether the social policy issues are significant in themselves but rather whether they transcend a company’s ordinary business operations. The Staff has often concurred with the exclusion of proposals relating to ordinary business matters, even in cases where the proponent’s proposal and supporting statement argued for the social significance of the matters addressed in the proposal. *See, e.g., PetSmart* (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) regarding the compliance of the company’s suppliers with certain animal rights statutes, as relating to the company’s ordinary business operations, even though, as the Staff noted, “the humane treatment of animals is a significant policy issue”); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity,” noting that “some of the principles” reflected in the proposal related to the company’s “ordinary business operations”); *CVS Caremark Corp.* (avail. Jan. 31, 2008, recon. denied Feb. 29, 2008) (concurring with the exclusion of a proposal requesting the adoption of “principles for comprehensive health care reform” and annual reporting on how it is implementing such principles, as relating to the company’s “ordinary business operations (i.e., employee benefits),” even though the proposal addressed broader healthcare policy issues); *see also Chevron Corp.; Walmart Inc.; General Electric; Reynolds American (2007); AT&T; and Reynolds American (2006).*

Although the Staff recently issued guidance announcing a realignment of its approach in evaluating the significance of such social policy issues, the Staff’s guidance did not indicate that any proposal arguing for the significance of a policy issue must be included even though it relates to the ordinary business operations of a company. Rather, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“[SLB 14L](#)”), the Staff stated 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.” As an example, the Staff noted 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.” *Id.* However, consistent with the 1998 Release, the Staff reiterated that it “will consider whether the proposal raises issues with a broad societal impact, such that they *transcend the ordinary business of the company.*” *Id.* (emphasis added).

The Staff’s guidance in SLB 14L was clear that the Staff will no longer evaluate whether a policy issue is significant to a particular company, and it will no longer expect a company to demonstrate that its board of directors has analyzed whether or not the policy issue is significant

to that company. However, SLB 14L does not purport to rescind its prior guidance on proposals seeking risk assessments, such as SLB 14E, nor its prior no action letters concurring that proposals centered on matters of a company's ordinary business operations, including its litigation strategy, general legal compliance program or management of its suppliers, could be excluded. *See Deere & Co.* (avail. Jan. 3, 2022) (concurring with the exclusion of a proposal under Rule 14a-8(i)(7) relating to issues of anti-discrimination that sought the annual publication of the written and oral content of any employee-training materials offered to any subset of the company's employees by the company or with its consent and noting 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").

Here, although the Supporting Statement cites a newspaper editorial that "compared exploitative independent contractor arrangements at southern California ports to 'modern day . . . indentured servitude'" and alleges that Best Buy's Supplier Code of Conduct fails to address "human rights concerns," the Supporting Statement and the Shareholder Proposal are, at heart, focused on a reporting of an assessment of risks of any misclassification of employees by companies operating in Best Buy's supply chain and distribution networks. The Supporting Statement stresses the illegality of misclassification of workers and cites actions by the California Labor Commissioner's office to award damages to misclassified port drivers. The Supporting Statement concludes by highlighting the joint liability of customers of port trucking companies for future violations of labor, employment and health and safety laws by such companies under recent California legislation. That is, the Shareholder Proposal does not request that Best Buy take action to advance a particular policy or support any particular legislative initiative with respect to the classification of employees and independent contractors. Instead, the Shareholder Proposal is focused squarely on assessing any liabilities and financial and other risks that may arise in the ordinary course of the Company's management of its supply chain and distribution networks. That the Shareholder Proposal mentions "human rights risks" in its list of potential risks of misclassification of employees does not transform a proposal focused on customary business risks into one that "transcend[s] the ordinary business of the company."¹

¹ Staff Legal Bulletin No. 14C (June 28, 2005), which outlines the Staff's approach in analyzing whether proposals that reference environmental or public health issues are focused on significant policy issues is instructive in this regard. The Staff states that it will consider the proposal and the supporting statement as a whole:

To the extent that a proposal and supporting statement focus on the company engaging in an internal assessment of the risks or liabilities that the company faces as a result of its operations that may adversely affect the environment or the public's health, we concur with the company's view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7) as relating to an evaluation of risk. To the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public's health, we do not

Rather than transcend the ordinary business operations of the Company, the Shareholder Proposal seeks to insert the Company's shareholders into the management of the Company's ongoing general legal compliance program and its relationships with its suppliers and other business partners. Further, because the Shareholder Proposal implicates the subject matter of litigation in which the Company is currently involved, it further intrudes in matters of ordinary business operations that, consistent with past Staff positions, are properly left to management. For all these reasons, the Shareholder Proposal is excludable under Rule 14a-8(i)(7).

C. The Shareholder Proposal may be excluded under Rule 14a-8(i)(3) because it is vague and indefinite, rendering it in violation of the proxy rules.

1. Background

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a registrant's proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As described below, exclusion of the Shareholder Proposal is warranted because the inclusion of the proposed resolution contained in the Shareholder Proposal in the Company's forthcoming Proxy Materials would result in the Company's filing a proxy statement with misleading statements.

The Commission has explained that exclusion of a proposal may be appropriate where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004); *see also Cisco Systems, Inc.* (avail. Oct. 7, 2016) (concurring in the exclusion of a proposal, as vague and indefinite, that requested that the board of directors not take any action whose primary purpose was to prevent the effectiveness of a shareholder vote without a compelling justification) and *Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (concurring in the exclusion of a proposal, as vague and indefinite, that requested amendments to governing documents to require that management strictly honor alleged shareholders' rights in communications to its shareholders). The Staff has concurred in a registrant's exclusion on vague and indefinite grounds of a proposal requesting that the board of directors "implement a policy of improved corporate governance," where the registrant and its shareholders might interpret the proposed resolution differently such that actions taken by the

concur with the company's view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7).

Although the Shareholder Proposal is focused on a different area of policy, it would clearly fall in the former category of proposals seeking assessments of risks and liabilities that are excludable under Rule 14a-8(i)(7).

registrant could significantly differ from the action intended by the shareholders voting on the proposal. *See, e.g., Puget Energy Inc.* (avail. Mar. 7, 2002) (citing, among others, *Occidental Petroleum Corp.* (Apr. 4, 1990)). More recently, the Staff concurred in the exclusion of a shareholder proposal that sought to “improve guiding principles of executive compensation,” noting that such proposal “lack[ed] sufficient description about the changes, actions or ideas for the Company and its shareholders to consider that would potentially improve [such] guiding principles.” *Apple Inc.* (avail. Dec. 6, 2019). Additionally, courts have ruled on cases involving vague proposals, finding that “shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote” and that a proposal may be excluded when “it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.” *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

2. *The Shareholder Proposal is vague and indefinite so as to be misleading*

As with the proposals in the precedents cited above, and as discussed further below, the Shareholder Proposal is so vague and indefinite that neither Best Buy nor its shareholders would know with any reasonable certainty exactly what actions or measures the Shareholder Proposal requires. Specifically, the Shareholder Proposal asks Best Buy’s Board of Directors to “prepare a report on the financial, reputational, and human rights risks resulting from the use in the Company’s supply chain and distribution networks of companies that misclassify employees as independent contractors.” The Shareholder Proposal, in effect and without any guidance, asks Best Buy to make a legal determination as to the classification not of its own employees and independent contractors but those of its third-party business partners. Such a determination is a topic of debate at the local and national levels and involves legal interpretations and rules that are constantly in flux. Further, third-party business partners may reach various and conflicting outcomes depending on the jurisdictions in which they operate or the status of any disputes they may have. To the extent any third-party business partners are subject to pending litigation on matters of alleged misclassification of employees, the ultimate resolution of those disputes and any resulting changes in classification of their employees or independent contractors would be uncertain. It is unclear how, if at all, such a determination would factor into the preparation of the Report or how the Proponent proposes that management undertake any such determination.

In addition, although the Proponent’s supporting statement is primarily focused on alleged misclassification of drivers hauling goods from U.S. ports, and from California ports in particular, the Shareholder Proposal itself applies to the Company’s arrangements throughout its supply chain and distribution networks. As noted above, with operations in all 50 U.S. states and all 10 Canadian provinces, the Company’s supply chain and distribution networks touch numerous national, state, provincial and local jurisdictions. It is unclear from the Shareholder Proposal, which the Proponent has asked to be prepared “at reasonable cost,” whether the

Proponent is requesting that the Report focus on third-party trucking companies, especially in California, as the Supporting Statement requests, or whether the Proponent is truly seeking a multi-jurisdictional survey that touches all aspects of the Company's supply chain and distribution networks and its numerous contractual arrangements with third-party business partners. A shareholder voting on the Shareholder Proposal would have difficulty determining the scope of the Report on which it is being asked to vote and judging whether the use of the Company's resources to produce the Report is in its interest.

In light of the foregoing, Best Buy would face substantial uncertainty in implementing the Shareholder Proposal if it were adopted, and it is highly unlikely that Best Buy would be able to implement the Shareholder Proposal in a manner consistent with the understanding of each shareholder, or even a majority of the shareholders, who voted for it. For the foregoing reasons, the Shareholder Proposal is misleading because it is vague and indefinite and, therefore, violates Rule 14a-9.

IV. Conclusion

On behalf of the Company and based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its 2022 Proxy Materials.

If the Staff disagrees with the Company's conclusions regarding omission of the Shareholder Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-3520 or jericson@stblaw.com.

Very truly yours,



John C. Ericson

Enclosures

cc: Todd G. Hartman, Best Buy Co., Inc.
International Brotherhood of Teamsters General Fund

Exhibit A

Copy of the Shareholder Proposal and Related Correspondence


From: Olson, Hannah [REDACTED]
Sent: Wednesday, December 29, 2021 4:20 PM
To: [REDACTED]
Cc: Hartman, Todd; [REDACTED]; Rizzo, Marina
Subject: RE: [CAUTION! EXTERNAL] Shareholder Proposal

Dear Mr. Willett,

On behalf of Mr. Hartman, we confirm receipt of the proposal and your statement of ownership. We did want to note a minor technical deficiency in that your proposed times to meet are outside of the 10 to 30 calendar day window required under Rule 14a-8(b)(iii). We are happy to schedule a call to discuss the proposal. Could you please provide some additional options that meet the window requirement? We will then review our schedules to coordinate a mutually agreeable option. Thank you.

Regards,
Hannah

[Hannah G. Olson](#) | Senior Corporate Counsel, Corporate & Securities
[REDACTED]

BEST BUY  Let's talk about what's possible.
Be human. Make it real. Think about tomorrow.

From: Willett, Dan <[REDACTED]>
Sent: Friday, December 17, 2021 1:35:25 PM
To: Hartman, Todd <[REDACTED]@bestbuy.com>
Subject: [CAUTION! EXTERNAL] Shareholder Proposal

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Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED]

Dear Mr. Hartman,

Attached, please find the International Brotherhood of Teamsters General Fund's ("the Fund") shareholder proposal for submission to the Best Buy, Inc. 2022 annual meeting. Also attached are a cover letter and statement of ownership from the Fund's custodian, the Amalgamated Bank.

Please confirm receipt of this email. Thank you.

Sincerely,
Dan Willett
International Brotherhood of Teamsters

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President



KEN HALL
General Secretary-Treasurer



www.teamster.org

December 17, 2021

Via E-Mail: [REDACTED]

Via UPS Ground

Mr. Todd Hartman, General Counsel,
Chief Risk Officer & Corporate Secretary
Best Buy, Inc.
7601 Penn Avenue South
Richfield, MN 55423

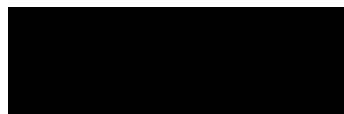
Dear Mr. Hartman:

On behalf of the International Brotherhood of Teamsters General Fund (the "Fund"), I am hereby submitting the enclosed proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8, to be included in the proxy statement of Best Buy, Inc., (the "Company") for its 2022 annual meeting of shareholders.

The Fund has continuously beneficially owned, for at least one year as of the date hereof, at least \$2,000.00 worth of the Company's common stock. Verification of this ownership is enclosed. The Fund intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

I have instructed Louis Malizia of Teamsters Capital Strategies Department to clear his schedule to meet with you via teleconference on January 21, between 11:30 a.m.-2:30 p.m. (E.D.T), and on January 28, from 2:00 p.m. - 4:30 p.m. (E.D.T), to discuss this proposal. You may contact Mr. Malizia directly by telephone at: [REDACTED] or by email at: [REDACTED], to decide on a mutually agreeable time.

Sincerely,



Ken Hall
General Secretary-Treasurer

KH/lm
Enclosures

RESOLVED: Best Buy Co. Inc.'s ("Best Buy") Board of Directors should prepare a report on the financial, reputational, and human rights risks resulting from the use in the Company's supply chain and distribution networks of companies that misclassify employees as independent contractors. The report should be prepared at reasonable cost, omitting proprietary information and be available at least 90 days prior to the 2023 annual shareholders meeting.

SUPPORTING STATEMENT:

Best Buy's Supplier Code of Conduct says its suppliers must ensure "Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits." Best Buy's 2021 Environmental Social and Governance Report explains that these principles are aligned with the United Nations Guiding Principles on Business and Human Rights.

Nonetheless, Best Buy's existing standards and disclosures fail to address an issue affecting reputational and financial risks and human rights concerns.

Supply chain disruptions are major challenges facing retailers amid the COVID-19 pandemic. Exacerbating this is the fact some of the trucking companies used by retailers may misclassify their drivers as "independent contractors" rather than "employees." Retailers using these companies can be directly liable for those companies' violations.

It is illegal for a company to "misclassify" workers as self-employed "independent contractors" if the company controls the manner and means of work, sets hours and wages, and otherwise treats them as "employees," who are entitled to a minimum wage, overtime pay protections, and other benefits and rights guaranteed employees under law. The forgone wages amount to "wage theft."

Misclassification is a significant problem as some trucking companies misclassify drivers hauling goods from U.S. ports.

Following an award-winning, investigative series by USA Today, the paper's editorial board compared exploitive independent contractor arrangements at southern California ports to "modern day ... indentured servitude," prompting four U.S. Senators to demand major retailers cut ties with trucking companies showing such a "brazen disregard for ... workers' safety and rights." The southern California ports process 40% of all U.S. shipping container traffic.

The California Labor Commissioner's office has over the past decade awarded more than \$50 million to misclassified port drivers. According to a 2014 report by the National Employment Law Project, the Californian port trucking industry is potentially liable for \$850 million in wage theft each year from misclassification. (<https://www.nelp.org/wp-content/uploads/2015/03/Big-Rig-OverhaulMisclassification-Port-Truck-Drivers-Labor-Law-Enforcement.pdf>)

Misclassification risk extends to retailers, given recent Californian legislation. A 2021 law, SB 338, indicates there could be 16,000 misclassified drivers in California's ports and calls this

largely “immigrant workforce” the “last American sharecroppers.” The law makes customers of port trucking companies jointly liable for future violations of labor, employment, and health and safety law by a trucking company that the California Labor Commissioner’s office has publicly identified as having previously violated these laws.

From: Louis Malizia <[REDACTED]>
Sent: Wednesday, January 26, 2022 1:18 PM
To: Olson, Hannah
Cc: Rizzo, Marina; Crist, Jodie; Michael Pryce-Jones
Subject: [CAUTION! EXTERNAL] RE: BBY/Teamsters Call

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Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED]

Ms. Olson

My colleague Michael Pryce-Jones and I are able to discuss the proposal with you on Friday at 2pm central. Thank you for arranging the meeting.

Regards,

Louis Malizia
Teamsters Capital Strategies
Sent from [Mail](#) for Windows

From: [Olson, Hannah](#)
Sent: Wednesday, January 26, 2022 12:35 PM
To: [Louis Malizia](#)
Cc: [Rizzo, Marina](#); [Crist, Jodie](#)
Subject: BBY/Teamsters Call


CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Malizia,

We received the shareholder proposal from the Teamsters and would like to schedule a time to discuss it. Would you be available this Friday, January 28th at either 12:00 pm or 2:00pm CT for a brief conversation?

Regards,
Hannah

[Hannah G. Olson](#) | Senior Corporate Counsel, Corporate & Securities
[REDACTED]

BEST BUY  Let's talk about what's possible.
Be human. Make it real. Think about tomorrow.

Capital Strategies Department

Email: [REDACTED]

Telephone: [REDACTED]

Mobile: [REDACTED]

Kornman, Jacob

From: Louis Malizia <[REDACTED]>
Sent: Wednesday, February 2, 2022 9:24 AM
To: Olson, Hannah
Cc: Rizzo, Marina; Crist, Jodie
Subject: [CAUTION! EXTERNAL] RE: BBY/Teamsters Call
Attachments: Best Practice Port Trucking Companies Jan 2022.xlsx; Copy of Final Judgments consolidated list 020122.xlsx

⚠ This message is from an external sender and could be a phish. ⚠

Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED].

Hannah,

Thanks once again for arranging our conversation last week. As promised I am attaching lists of best practice port/intermodal trucking firms (ones that have utilized an employee model for many years or have reclassified drivers to such a model over recent years and have stable labor-management relations) and the bad actors list (ones where the firm has received a final judgement from a state agency or court). The bad actor list most likely is missing some companies based on accessibility of court records. These companies reflect if continuing willful misclassification are high risk of violating the recently enacted California Law S338.

Please share with your colleagues. I look forward to continuing our dialogue.

Regards,

Louis

From: Olson, Hannah <[REDACTED]>
Sent: Wednesday, January 26, 2022 12:36 PM
To: Louis Malizia <[REDACTED]>
Cc: Rizzo, Marina <[REDACTED]>; Crist, Jodie <[REDACTED]>
Subject: BBY/Teamsters Call

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Malizia,

We received the shareholder proposal from the Teamsters and would like to schedule a time to discuss it. Would you be available this Friday, January 28th at either 12:00 pm or 2:00pm CT for a brief conversation?

Regards,
Hannah

Hannah G. Olson | Senior Corporate Counsel, Corporate & Securities
[REDACTED]



Let's talk about what's possible.

Be human. Make it real. Think about tomorrow.

Exhibit B

Notice of Deficiency


From: Olson, Hannah [REDACTED]
Sent: Wednesday, December 29, 2021 4:20 PM
To: [REDACTED]
Cc: Hartman, Todd; [REDACTED]; Rizzo, Marina
Subject: RE: [CAUTION! EXTERNAL] Shareholder Proposal

Dear Mr. Willett,

On behalf of Mr. Hartman, we confirm receipt of the proposal and your statement of ownership. We did want to note a minor technical deficiency in that your proposed times to meet are outside of the 10 to 30 calendar day window required under Rule 14a-8(b)(iii). We are happy to schedule a call to discuss the proposal. Could you please provide some additional options that meet the window requirement? We will then review our schedules to coordinate a mutually agreeable option. Thank you.

Regards,
Hannah

[Hannah G. Olson](#) | Senior Corporate Counsel, Corporate & Securities
[REDACTED]

**BEST
BUY**  Let's talk about what's possible.
Be human. Make it real. Think about tomorrow.

HITCHCOCK LAW FIRM PLLC
5614 CONNECTICUT AVENUE, N.W. • No. 304
WASHINGTON, D.C. 20015-2604
(202) 489-4813 • FAX: (202) 315-3552

CORNISH F. HITCHCOCK
E-MAIL: CONH@HITCHLAW.COM

3 March 2022

Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

By electronic mail: shareholderproposals@sec.gov

Re: Shareholder proposal to Best Buy Co., Inc. from
International Brotherhood of Teamsters General Fund

Dear Counsel:

This is a response on behalf of the International Brotherhood of Teamsters General Fund (the “Fund”) to the letter (“Best Buy Letter”) from counsel for Best Buy Co., Inc. (“Best Buy” or the “Company”) dated 4 March 2022, in which the Company advises of its intent to omit the Fund’s shareholder proposal (the “Proposal”) from Best Buy’s 2022 proxy materials. For the reasons below, we respectfully ask you to advise Best Buy that the Division does not concur with the Company’s view that the Proposal may be excluded from Best Buy’s proxy materials.

The Proposal.

The Proposal states:

RESOLVED: Best Buy Co. Inc.’s (“Best Buy”) Board of Directors should prepare a report on the financial, reputational, and human rights risks resulting from the use in the Company’s supply chain and distribution networks of companies that misclassify employees as independent contractors. The report should be prepared at reasonable cost, omitting proprietary information and be available at least 90 days prior to the 2023 annual shareholders meeting.

The Supporting Statement quotes Best Buy's *Supplier Code of Conduct* as saying that suppliers must ensure "Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits," while the Company's *Environmental Social and Governance Report* explains that those principles are aligned with the United Nations Guiding Principles on Business and Human Rights; nonetheless, the Company's standards and disclosures fail to address an issue with reputational, financial and human rights implications.

The Supporting Statement notes the challenges facing retailers amid the COVID-19 pandemic, a situation exacerbated by the practice of some trucking companies used by retailers to "misclassify" their drivers as "independent contractors" rather than employees, thus depriving them of legal benefits such as minimum wage, overtime pay protections and other benefits available under law.

The Supporting Statement states that misclassification is a significant problem at some companies that haul goods from U.S. ports. Following an award-winning, investigative series by *USA Today*, the paper's editorial board compared exploitive independent contractor arrangements at southern California ports to "modern-day ... indentured servitude," prompting four U.S. Senators to demand major U.S. retailers cut ties with trucking companies showing such a "brazen disregard for. . . workers' safety and rights." The Supporting Statement notes the millions of dollars awarded to misclassified drivers in recent years and the estimated potential liability of \$850 million a year based on the "wage theft" that comes from misclassification.

Misclassification poses a risk to trucking companies that extends to retailers such as Best Buy, the Supporting Statement adds. Southern California ports process 40% of all U.S. shipping container traffic, and a 2021 California law makes customers of a port trucking company jointly liable for future violations of labor, employment, and health and safety law by a trucking company if the Labor Commissioner's office has publicly identified that company as having violated these laws. That law states that there could be 16,000 misclassified drivers in California ports and calls this largely "immigrant workforce" the "last American sharecroppers."

In response Best Buy seeks no-action relief:

(a) under Rule 14a-8(b) and (f) for failure to provide proper notice of availability for a telephone call;

(b) under the "ordinary business" exemption in Rule 14a-8(i)(7), arguing that the Proposal (1) relates to risk assessment, (2) relates to the Company's litigation strategy and pending legal proceedings, (3) relates to Best Buy's general legal compliance, (4) relates to Best Buy's relationship with its suppliers, and (5)

addresses only ordinary business matters even if it may touch upon a significant policy issue; and

(c) under Rule 14a-8(i)(3) for being impermissibly vague and indefinite, so much so as to make the Proposal materially misleading.

We respond as follows.

A. The Proposal may not be excluded on technical grounds.

Best Buy first argues that the Proposal may be excluded because the cover letter identified dates that fell beyond the 10-30 day window specified in Rule 14a-8(b)(1)(iii). Best Buy claims that it notified the Fund of this deficiency and that the Fund failed to respond within the 14 days allowed under Rule 14a-8(f)(1). The Company's chronology is incomplete and misleading.

12/17/21: Letter received, specifying times to talk on the 21st or 28th of January.

12/29/21: Best Buy e-mail to the Daniel Willett of the Fund (the purported deficiency letter), the text of which states:

Dear Mr. Willett:

On behalf of Mr. Hartman, we confirm receipt of the proposal and your statement of ownership. We did want to note a minor technical deficiency in that your proposed times to meet are outside of the 10 to 30 calendar day window required under Rule 14a-8(b)(iii). We are happy to schedule a call to discuss the proposal. Could you please provide some additional options that meet the window requirement? We will then review our schedules to coordinate a mutually agreeable option. Thank you.

1/28/22: The Fund and Best Buy confer electronically.

A fair reading of Best Buy's e-mail is that the Company regarded this "minor technical deficiency" as no impediment to a substantive conversation on the Proposal, which after all is the goal of the notice requirement. In any event, Best Buy's objection is meritless because Best Buy failed to give proper notice of a deficiency. Rule 14a-8(f)(1) is quite clear that any communication claiming to be a deficiency notice must specify the time frame within which to correct the deficiency. That rule states in pertinent part:

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. (emphasis added).

No time frame was specified in the e-mail quoted above, and the Company's expressed willingness to "coordinate a mutually agreeable" time for a call surely suggested that the Company did not view the omission as fatal.

Best Buy's failure to comply with the notice requirements in Rule 14a-8(f)(1) thus waived any right to object to the Proposal on this technical ground. The Company's citation of *The Walt Disney Co.* (28 September 2021) (chart) is irrelevant because (a) Disney sent a proper notice of deficiency, (b) there was no further communication between the parties about a meeting time, and (c) the chart announcing the Division's determination did not differentiate which of the three objections under Rule 14a-8(b) and(f) was deemed convincing.

B. The Proposal raises a policy issue that transcends Best Buy's ordinary business.

To put our legal response to Best Buy's "ordinary business" arguments in proper perspective, we begin by providing the following factual background as to why misclassification of works in the retail supply chain presents a significant human rights issue that transcends ordinary business. We then respond in turn to each of Best Buy's specific objections.

Factual background.

"Indentured servitude."

"Sharecroppers."

If America's largest legislature and America's largest newspaper were to use those terms to describe worker exploitation in another country, the matter would surely be viewed as raising significant human rights concerns. Such concerns are no less salient when the exploitation occurs within the United States, and that is the issue addressed by this Proposal.

In June 2017 *USA Today* published a four-part series entitled *Rigged*, which shined a spotlight on the issues faced by "drayage" drivers at the Southern

California ports that handle 40 percent of the country's containerized cargo shipments.¹ The series opened:

Samuel Talavera Jr. did everything his bosses asked.

Most days, the trucker would drive more than 16 hours straight hauling LG dishwashers and Kumho tires to warehouses around Los Angeles, on their way to retail stores nationwide.

He rarely went home to his family. At night, he crawled into the back of his cab and slept in the company parking lot.

For all of that, he took home as little as 67 cents a week.

Then, in October 2013, the truck he leased from his employer, QTS, broke down.

When Talavera could not afford repairs, the company fired him and seized the truck -- along with \$78,000 he had paid towards owning it.

Talavera was a modern-day indentured servant. And there are hundreds, likely thousands more, still on the road, hauling containers for trucking companies that move goods for America's most beloved retailers, from Costco to Target to Home Depot.

These port truckers -- many of them poor immigrants who speak little English -- are responsible for moving almost half of the nation's container imports out of Los Angeles' ports. They don't deliver goods to stores. Instead they drive them short distances to warehouses and rail yards, one small step on their journey to a store near you.

Sixty-seven cents a week. In 21st century America.

The *USA Today* series, which followed a year-long investigation, added these specifics:

- Trucking companies force drivers to work against their will – up to 20

¹ Brett Murphy, *Rigged: Forced into debt. Worked past exhaustion. Left with nothing*, USA Today (June 2017), available at <https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/>.

hours a day – by threatening to take their trucks and keep the money they paid toward buying them. Bosses create a culture of fear by firing drivers, suspending them without pay or reassigning them the worst-paying routes.

- To keep drivers working, managers at a few companies have physically barred them from going home. More than once, Marvin Figueroa returned from a full day's work to find the gate to the parking lot locked and a manager ordering drivers back to work. "That was how they forced me to continue working," he testified in a 2015 labor case. Truckers at two other companies have made similar claims.

- Employers charge not just for truck leases but for a host of other expenses, including hundreds of dollars a month for insurance and diesel fuel. Some charge truckers a parking fee to use the company lot. One company, Fargo Trucking, charged \$2 per week for the office toilet paper and other supplies.

- Drivers at many companies say they had no choice but to break federal safety laws that limit truckers to 11 hours on the road each day. Drivers at Pacific 9 Transportation testified that their managers dispatched truckers up to 20 hours a day, then wouldn't pay them until drivers falsified inspection reports that track hours. Hundreds of California port truckers have gotten into accidents, leading to more than 20 fatalities from 2013 to 2015, according to the USA TODAY Network's analysis of federal crash and port trade data.

- Many drivers thought they were paying into their truck like a mortgage. Instead, when they lost their job, they discovered they also lost their truck, along with everything they'd paid toward it. Eddy Gonzalez took seven days off to care for his dying mother and then bury her. When he came back, his company fired him and kept the truck. For two years, Ho Lee was charged more than \$1,600 a month for a truck lease. When he got ill and missed a week of work, he lost the truck and everything he'd paid.

- Retailers could refuse to allow companies with labor violations to truck their goods. Instead they've let shipping and logistics contractors hire the lowest bidder, while lobbying on behalf of trucking companies in Sacramento and Washington D.C. Walmart, Target and dozens of other Fortune 500 companies have paid lobbyists up to \$12.6 million to fight bills that would have held companies liable or given drivers a minimum wage and other protections that most U.S. workers already enjoy.

Following publication of this series, *USA Today* editorialized that while many consumers “care deeply about the way their products are made,” what they “might not know is that some highly deplorable conditions exist right here in America, in the transport of goods rather than their manufacture.”² Continuing, *USA Today* wrote:

A huge volume of the nation's imports arrive by container ship in Southern California, where short-haul truckers take the merchandise to nearby rail yards or storage depots, a key step in the goods' journey to some of the nation's leading retail stores. A year-long investigation by the USA TODAY Network found that a good chunk of the port trucking industry relies heavily on a modern-day form of indentured servitude.³

A separate study summarized the demographics of these drivers as follows:

There are approximately 12,000 port truck drivers that haul goods to and from the Ports of Los Angeles and Long Beach. Most are working-class, Latino immigrants. Eighty five percent are foreign born and 91% are originally from Latin America. The majority of drivers do not have a higher education. They work for one of the over 1,000 trucking companies that are registered to do business at the ports.⁴

Why is this happening? As the Proposal points out, the reason stems from the fact that many of these drivers are misclassified as “independent contractors” rather than “employees.” As a result, they are not entitled to a minimum wage, overtime, unemployment compensation and other legal benefits that are associated with employee status; the average work week for port drivers may approach 60 hours, with median net earnings 20% below that of employees, and a requirement to pay all truck-related expenses such as fuel, repairs and maintenance.⁵

² *Rigged System Rips Off Port Truckers*, USA TODAY (20 June 2017), available at <https://www.usatoday.com/story/opinion/2017/06/20/rigged-system-rips-off-port-truckers-editorials-debates/103015290/>.

³ Id.

⁴ Los Angeles Alliance for a New Economy, *Out of Step: How Skechers Harms its California Supply Chain Workers* (2014), available at <https://www.laane.org/wp-content/uploads/2014/06/Skechers-Report.pdf>.

⁵ A study cited in both the Proposal and recent California legislation on this topic (see pp. 8-9, *infra*) explains in more detail the differentials in this area between an independent contractor and an employee. National Employment Law

Ironically, this situation has exacerbated the supply chain crisis that has been much in the news over the past year. Citing University of Pennsylvania economic sociologist Steve Viscelli, NBC News explained the economics this way:

In the port ecosystem, truck drivers are paid by the load, not by the hour, making them some of the most vulnerable workers, Viscelli said.

Other port workers get overtime pay and belong to unions, but truckers are classified as independent contractors. As such, they aren't considered employees and don't get any of the benefits or protections associated with that status.

"Truck drivers are the shock absorbers," he said. "If the cranes are running behind, you can just keep the trucker there idle. You can back them up for hours, because they're not being paid."

Because of how they're classified and compensated, truck drivers wait around until they're needed, at no cost to the shipping companies. That means there's little incentive to change and use them more efficiently, Viscelli said.

In contrast, efforts to reduce inefficiencies in other areas of the ports continue and have been successful. For instance, the ports of Los Angeles and Long Beach announced a plan last month to fine shipping companies that leave their cargoes on the docks for too long. The promise of fines proved so successful that the ports have delayed implementing them because early compliance led to a 26 percent drop in lingering containers.

If truckers were considered employees, their employers might be less inclined to let them sit idle for hours, because it would cost them in hourly wages and overtime, Viscelli said. Instead, the trucker-related inefficiencies in the supply chain and at the ports most severely cost the drivers themselves.

"They may wait hours to get there, wait hours to get a chassis they can use, and then if the port says, 'No, we don't want that load,' that driver who gets \$150 per load now has to find somewhere else to drop it, and a

six-hour job turns into 10,” Viscelli said. “The system is designed with that flexible free truck driver labor assumed.”⁶

Another story published earlier several weeks ago estimated that 7,000 of the 12,000 drivers who serve Southern California ports are misclassified and that conditions have deteriorated to the point that, according to the Executive Director of the Port of Los Angeles:

[F]ully 30 percent of the port’s 12,000 drivers no longer show up on weekdays, a percentage that rises to 50 percent on weekends. Once the waits exceed six hours, as they now sometimes do, drivers would run the risk of exceeding the 11-hour federal limit on trucker workdays if they then were to actually get a load—which means the port must turn them away, and they’ll have spent an entire workday for no pay at all.⁷

Other media reports have described these conditions and how they contribute to the current supply chain crisis.⁸

⁶ NBC News, *Poor conditions and low pay for truckers helped fuel supply chain crisis* (22 November 2021), available at <https://www.nbcnews.com/business/poor-conditions-low-pay-truckers-helped-fuel-supply-chain-crisis-rcna6216>.

⁷ Harold Meyerson, *Why Trucking Can’t Deliver the Goods*, THE AMERICAN PROSPECT (7 February 2022), available at <https://prospect.org/economy/why-trucking-cant-deliver-the-goods/>. Similarly, a guest column by an academic in *The Washington Post* stated that the treatment of independent contractors is part of a “fundamental and long-term crisis,” as drivers are paid poorly to begin with and are not paid for time waiting for a shipment to be ready; he added that current practices are “increasingly unsustainable for workers and the environment.” Benjamin L. McKean, *Delayed Christmas gifts are just the beginning. The supply chain crisis isn’t going away soon*, THE WASHINGTON POST (21 December 2021), available at <https://www.washingtonpost.com/politics/2021/12/21/supply-chain-christmas-workers-climate/>.

⁸ Alana Semuels, *The Truck Driver Shortage Doesn’t Exist. Saying There Is One Makes Conditions Worse for Drivers*, TIME (12 November 2021), available at <https://time.com/6116853/truck-driver-shortage-supply-chain/>; *Black Friday’s Supply Chain Problems Are Really Labor Problems*, THE NEW REPUBLIC (25 November 2021), available at <https://newrepublic.com/article/164523/black-friday-supply-chain-workers>.

The misclassification of employees in the “gig economy” has been a policy issue in other areas as well, most notably in California, which has been embroiled in a

What goes on in Southern California ports may seem far removed from a retailer such as Best Buy. The Supporting Statement points out that trucking companies that misclassify drivers may face significant liabilities, but isn't misclassification their problem? The answer is "no."

Last year the California legislature passed and the governor signed S.B. 338,⁹ which took effect on 1 January 2022 and which makes retailers such as Best Buy jointly and severally liable for liabilities and taxes owed by suppliers who misclassify port drivers. The legislative findings in that law underscore the policy significance of the human rights issues here.

Section 1(b) of S.B. 338 calls California's port drayage drivers "the last American sharecroppers, held in debt servitude and working dangerously long hours for little pay." Citing the *USA Today* series and several of the articles cited in this letter, A.B. 338 summarizes the practices cited there, adding that misclassification of a "largely immigrant workforce that is "particularly vulnerable to labor exploitation" can contribute to "wage theft and leaves drivers in a cycle of poverty." S.B. 338, § 1(c) – (h).

Despite prior legislation seeking to regulate the issue, S.B. 338 states (in § 1(k)) that misclassification "remains endemic in the industry." The findings in section 1 of that law continue:

(q) Customers of port drayage are some of the world's largest retail and manufacturing companies. After more than a decade of rulings, media stories, and independent reports, they should be aware of the widespread labor violations in the drayage industry.

(r) Customers of port drayage represent some of the wealthiest companies in the world. Many of these companies have reported record

multi-year "unending battle" over the status of Uber and Lyft drivers as independent contractors; a 2019 law declared those drivers to be employees, an industry-backed proposition overturned that statute, and a subsequent lawsuit declared the proposition to be invalid. The issue is being debated in other state legislatures. Maeve Allsup and Joyce E. Cutler, *Feud Over Uber-Lyft Worker Law Will Ripple Beyond California (1)*, BLOOMBERG LAW (24 August 2021), available at <https://news.bloomberglaw.com/us-law-week/feud-over-uber-lyft-worker-law-will-ripple-beyond-california>.

⁹https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20212022_0SB338.

profits even in the midst of a pandemic that has devastated businesses in other sectors and has resulted in employees across the country – including port truck drivers – losing work and having to rely on the social safety nets that motor carriers do not contribute to when they misclassify their drivers.

(s) The Legislature established, with the enactment of Assembly Bill 1897 in 2014, that business entities that are provided workers from subcontractors can be jointly liable for the nonpayment of wages and failure to provide unemployment insurance by the subcontractor.

(t) Holding customers of trucking companies jointly liable for future labor, employment, and health and safety law violations by port drayage motor carriers whom they engage and of whose prior violations of labor, employment, or health and safety laws the customers received advance notice will exert pressure across the supply chain to protect drayage drivers from further exploitation.

(u) Customers have the market power to exert meaningful change in the port drayage industry that has eluded California drivers for more than a decade.

As summarized in the digest accompanying S.B. 338, *supra* note 9, prior law required the state Division of Labor Standards Enforcement to post on its website a list of port drayage truckers with unpaid final judgments for wage theft and similar offenses, with joint and several liability for the trucker and its customers to satisfy those judgments. S.B. 338 strengthened the law to require posting the name of a prior offender who has a subsequent violation, even if the time for appeals had not expired – thus making information available within weeks, not years. S.B. 338 also expanded a customer’s liability to include legal liability owed to the state for violations that resulted in a failure to pay employment taxes (unemployment compensation) and for a failure to comply with health and safety laws.

* * *

The issue in the Proposal is too significant to be trivialized with the “ordinary business” label. The discussion here surely demonstrates that the Proposal presents substantially more than a question of labor relations or legal compliance. A 2019 report from an international human rights organization summarized the issue this way:

The proper classification of workers – which determines what rights and benefits they are legally entitled to – lies at the heart of business’s

responsibility to respect human rights.¹⁰

Analysis.

There is thus a solid factual basis for viewing the Proposal as raising “significant” and “transcendent” policy issues involving fundamental human rights. The issues here may superficially appear to involve only two ports (Los Angeles and Long Beach), but it is important to recall that 40% of the containerized cargo that comes into this country arrives at those ports. The practices described here are thus hugely relevant to large retailers such as Best Buy.

The Division has in the past recognized the policy significance of human rights violations in a company’s supply chain, including a company’s contractors and subcontractors. Consider, for example, *Nucor Corp.* (6 March 2008), where the proposal sought a review of company policy relating to “global operations and supply chain to assess areas where the company needs to adopt and implement additional policies to ensure the protection of fundamental human rights.” The concern there was Nucor was making pig iron using charcoal from a supplier who engaged in slave labor. Nucor argued that any such violations were too far away in the supply chain to affect Nucor, that the issue merely involved “remote producers of charcoal located deep in the Amazon jungle who sell charcoal to the Brazilian pig iron producers who in turn sell their pig iron to brokers in the United States from which the Company makes its purchases, not the pig iron producers themselves and not direct vendors of pig iron to Nucor, who have been identified by Brazilian labor officials as using slave labor.” *Id.* at p. 5. Nonetheless the Division denied relief. See also *PPG Industries, Inc.* (22 January 2001) (denying relief as to proposal seeking adoption of International Labor Organization human rights standards.)

Here, one need not travel to the jungles of Brazil to find human rights violations, only to the ports of Los Angeles and Long Beach.

Best Buy advances five arguments as to why the Proposal relates to Best Buy’s “ordinary business, but those claims all rest on the same view namely, that the human rights violations at stake here have no broader policy significance. We take Best Buy’s points in order.

¹⁰ Business and Human Rights Resource Centre, *The Future of Work*, at p. 8, available at https://media.business-humanrights.org/media/documents/files/documents/CLA_Annual_Briefing-FINAL.pdf.

1. The issue here involves more than ordinary risk assessment.

Best Buy quotes *Staff Legal Bulletin 14E* (27 October 2009) for the proposition that when “the underlying subject matter of a proposal relates to ordinary business operations, the Staff has, consistent with the views pronounced in SLB 14E, continued to concur with the exclusion of shareholder proposals seeking the assessment of risk. Best Buy Letter at p. 4. What Best Buy’s fails to note is that *Staff Legal Bulletin 14E* liberalized prior interpretations of the “ordinary business” exemption as applied to shareholder proposals entailing a risk assessment. Part B states:

On a going-forward basis, rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. The fact that a proposal would require an evaluation of risk will not be dispositive . . . [Instead] we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company. In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.

The factual discussion above plainly demonstrates that the subject of the Proposal involves a matter of policy significance. The letters cited by Best Buy all related to the specific topic of a company’s tax strategy and compliance with applicable tax laws, topics that the Division has traditionally viewed as an “ordinary business” concern and lacking in a “significant” policy component.¹¹

2. The Proposal cannot be excluded as relating to litigation strategy.

Best Buy next argues that the Proposal may be excluded because it relates to a proposed class action in California in which Best Buy and another defendant are alleged to have misclassified drivers. Best Buy Letter at pp. 5-8. We respond to Best Buy’s specific points below, but before doing so, we offer this response.

The “litigation strategy” argument generally involves a proposal that “would

¹¹ Best Buy’s Letter at pp. 4-5, citing *The TJX Companies, Inc.* (29 March 2011); *Amazon.com, Inc.* (21 March 2011); *Wal-Mart Stores, Inc.* (21 March 2011).

affect the conduct of ongoing litigation to which the company is a party.” *Chevron Corp.* (19 March 2013). Best Buy has failed to demonstrate that direct link here.

Best Buy fails to address a key factual point with respect to the case it cites. The Proposal focuses on port drayage drivers in southern California, whereas the plaintiff in the cited case works in a Best Buy warehouse in northern California as a “last mile” driver, whose job is to “pick up the merchandise at the merchants’ stores or warehouses and to deliver and install them at the customers’ homes or businesses.”¹²

Proper classification of “last mile” drivers is unquestionably important, but the Best Buy Letter fails to explain why misclassification issues affecting port drivers and last mile drivers have the sort of commonality to warrant treating them as identical for purposes of a class action or for purposes of this Proposal.

The point is underscored by various proposals that Best Buy cites that were addressed to tobacco companies in the 1990s and 2000s, when the industry was defending multiple, multi-billion-dollar lawsuits about the adverse health effects of tobacco and the companies’ marketing practices. In the letters Best Buy cites, the tobacco companies were able to show a more direct link between the various proposals and the possible effect of a proposal on litigation.¹³ However, there are decisions to the contrary that Best Buy fails to cite, such as *Lorillard, Inc.* (3 March 2014), where the Division denied relief to a tobacco company that was a defendant in thousands of pending cases, when the proposal asked the company to inform poor

¹² *Mutate v. Pilot Air Freight LLC*, Amended complaint ¶¶ 6-7 (filed 27 January 2022). The Best Buy Letter states that the case is pending in California state court, but Best Buy removed the case to federal court in late January 2022 where it is docketed as N.D. Cal. No. 4:22-cv-587-YGR. The amended complaint is available on PACER as Exhibit 1-1, pp. 167-202.

¹³ *Reynolds American Inc.* (7 March 2007) (proposal asked a tobacco company to make available the company’s “own clear statement” regarding the hazards of second-hand smoke at a time when the company was appealing a court order that the company issue “corrective communications” on five topics, including the “adverse health effects of exposure to secondhand smoke”); *Reynolds American Inc.* (10 February 2006) (proposal to notify African Americans of the health hazards of menthol cigarettes that were unique to that community at a time when the company was challenging those marketing practices); see also *R.J. Reynolds Tobacco* (6 February 2004) (multiple pending lawsuits alleging deceptive advertising practices, and proposal asked the company to stop using allegedly deceptive terms in its marketing).

and less well-educated tobacco users of tobacco users “of the health consequences of smoking” and information about “smoking cessation materials.”

The need to show a more direct connection between the Proposal and any cited litigation is important, given the fact that publicly traded companies are frequently involved in litigation on a variety of issues. The existence of pending litigation is not a trump card that can be played in every instance to exclude a shareholder proposal. A more direct showing of how the proposal would directly affect a company’s litigation strategy is needed.

Best Buy cites a variety of letters in which proposals have been excluded under the “litigation strategy” defense, but the situations there can be distinguished because they tended to have some or all of these characteristics:

- The proposal reflected an attempt – often an overt effort – by shareholders to steer a case towards a desired result or strategy.¹⁴
- The proposal addressed questions of the company’s fault or legal liability involving past actions of the company and is not forward-looking.¹⁵

¹⁴ *AT&T Inc.* (9 February 2007) (seeking report on legal and ethical aspects of sharing customer information with FBI and NSA when AT&T is facing litigation on that topic and cannot confirm or deny the facts publicly). Other decisions involving such efforts to steer a case include *Exxon Mobil Corp.* (21 March 2000) (requesting immediate payment of settlements associated with the Exxon Valdez oil spill litigation); *Microsoft Corp.* (15 September 2000) (proposal asking the registrant to sue the federal government); *CMS Energy Corp.* (23 February 2004) (asking CMS to void any agreements with two former executives and claw back money paid to them); *NetCurrents, Inc.* (8 May 2001) (asking the company to sue certain executives over financial irregularities); *Benihana National Corp.* (13 September 1991) (seeking a board report analyzing claims asserted in pending litigation); *Philip Morris Companies, Inc.* (4 February 1997) (asking company to conform to FDA regulations the company is challenging in court)..

¹⁵ *General Electric Co.* (3 February 2016) (seeking a report to quantify GE’s liabilities associated with discharging PCBs into the Hudson River, a topic in multiple pending cases with potentially significant liabilities); *Johnson & Johnson* (14 February 2012) (requesting a report on initiatives to address health and other concerns of consumers who used a J&J product and are suing the company over adverse impacts caused by that product); *AT&T, supra* note 14 (seeking report on a topic AT&T cannot disclose publicly); *Walmart Inc.* (13 March 2018) (seeking report on gender pay gap issues, which would have constituted an admission in a number of pending discrimination cases) (see discussion at pp. 11-13 of correspondence

BestBuy highlights a recent decision that falls into latter category, *Chevron Corp.* (30 March 2021) (chart), but the situation there is far different. The *Chevron* proposal sought a report “analyzing how Chevron’s policies, practices, and the impacts of its business perpetuate racial injustice and inflict harm on communities of color in the United States.” In response, Chevron discussed five pending cases in which various cities and states were alleging that Chevron’s facilities and business practices were a “public nuisance” involving communities of color. Unlike the Proposal here, the *Chevron* proposal did not focus on risk assessments, but was more backward-looking with its focus on how Chevron’s past practices, how they perpetuate” past racial injustice and continued to “inflict harm on communities of color.” The connection between “public nuisance” litigation and the proposal at issue in *Chevron* was thus closer than Best Buy has shown here.

With this framework we address Best Buy’s more specific claims as follows:

- *The exemption should apply if a proposal would “implicate and seek to oversee” litigation strategy.* Best Buy Letter at p. 5. The Proposal does not “implicate and oversee” a pending case to the same extent as was the situation in note 13 where relief was granted.
- *The Company would find it “difficult to prepare” the requested report without having to delve into a “variety of factors and factual questions” and “likely reach a legal conclusion” with respect to classification.* Best Buy Letter at p. 6. Best Buy misperceives the level of detail sought in a report on the human rights and other “risks resulting from the use in the Company’s supply chain and distribution networks of companies that misclassify employees as independent contractors.”
- *The Proposal asks Best Buy to “assume a conclusion that its partners and vendors” are engaged in misclassification.* Best Buy Letter at p. 7. A request for a risk assessment does not make such an assumption.
- *The Proposal asks Best Buy to “take action or comment on” this lawsuit in a way that harms the Company.* Best Buy Letter at p. 7. The Proposal makes no such request.
- *Publication of the report would “necessarily provide information that would aid the plaintiff in the ongoing litigation and could also provoke future litigation,” inasmuch as the report would “at worst, amount to admissions damaging to the Company’s litigation strategy,” with any “narrative disclosures” to be possibly used*

available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2018/jacobs041318-14a8.pdf>.

in future cases. Best Buy Letter at p. 8. Best Buy does not make the sort of more specific showing that was persuasive in *Chevron* as to why a report on risk assessments would “necessarily” provide such information.

3. The Proposal does not relate to Best Buy’s “general legal compliance.”

Noting the Proposal’s citation to a California law imposing penalties on retailers who engage in misclassification, Best Buy argues for exclusion on the ground that the proposal deals with the Company’s “general legal compliance.” Best Buy Letter at pp. 8-10.

The problem with this argument is that the letters cited by Best Buy (at p. 9) involved proposals that viewed compliance as an end in itself, for example, by asking the company to adopt a protocol or issue a report that would promote compliance with the law.¹⁶

We acknowledge that Best Buy cites (at p. 9) two decisions from more than a decade ago in which the Division concurred with the company as to proposals dealing with the classification of employees and independent contractors.¹⁷ Even so, the proposals there still fall into the same category as the other ones Best Buy cites, in that they focused on compliance as an end in itself. Indeed, the proponent’s argument in the *Lowe’s* letter was that shareholders “should be allowed to seek compliance to prospectively prevent violations.”¹⁸

¹⁶ *Navient Corp.* (26 March 2015) (seeking a report on whether internal controls were sufficient to satisfy applicable laws); *Raytheon Co.* (25 March 2013) (seeking report on board oversight of compliance with anti-discrimination laws); *The AES Corp.* (13 March 2008) (seeking independent investigation of possible false environmental reports); The Coca-Cola Co (9 January 2008) (seeking independent lab tests of company’s product quality); *ConocoPhillips* (23 February 2006) (seeking report on all legal liabilities that the proponent claimed had been omitted from the prospectus relating to the merger between Conoco and Phillips); *Monsanto Co.* (3 November 2005) (seeking board committee to monitor compliance with Foreign Corrupt Practices Act).

¹⁷ *Lowe’s Companies, Inc.* (12 March 2008) (seeking report to promote compliance with applicable labor laws, citing concerns about contractors used for store construction work); *FedEx Corp.* (14 July 2009) (seeking report on company’s compliance with applicable labor laws, citing pending investigations).

¹⁸ *Lowe’s*, *supra* note 17, at p. 11.

Moreover, and more importantly, neither of those proposals addressed the overriding human rights issues that have been identified with respect to the port drayage drivers discussed here. The situations in those cases did not involve the sort of “indentured servitude” or “sharecropper” relationships that lie at the heart of the concern in the present Proposals.

4. The human rights issue transcends ordinary supplier relationship issues.

Best Buy argues that the Proposal does not deal with the Company’s practices, but the practices of companies utilized by Best Buy; thus the Proposal relates to the Company’s selection of suppliers, which is a matter of “ordinary business. Best Buy’s Letter at pp. 10-11.

The problem with this argument is that when, as here, the supply chain presents serious human rights issues, those issues take the Proposal out of the “ordinary business” realm and into the “policy” realm, as discussed in greater length at part A of this letter. If there any doubt about that point, consider Best Buy’s own words on the topic, as expressed in the Company’s policy on *Human Rights*:

Doing business the right way means we understand how our operations, our products and services, and even our business relationships could affect employees, our customers and people in the communities where we operate.

Best Buy is committed to respecting human rights. We seek to avoid adverse human rights impacts, conduct remediation if impacts do occur and drive continuous improvement of our human rights management. Further, we seek to advance human rights through our actions and operations.

...

We partner with our suppliers and vendors across all procurement channels to improve working conditions and environmental practices in the supply chain.¹⁹

This document also notes Best Buy’s commitment to the U.N. Guiding Principals on Business and Human Rights, including the need for “due diligence measures designed to detect, prevent and mitigate adverse human rights impacts.”

¹⁹ *Human Rights*, available at <https://corporate.bestbuy.com/human-rights/>.

Best Buy's *Supplier Code of Conduct*²⁰ picks up the theme, stating that this Code is "a total supply chain initiative. At a minimum, we require our next tier suppliers to acknowledge and implement the Code." The Code adds, as is quoted in the Supporting Statement, the following: "Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits." The Company's *Environmental Social and Governance Report*²¹ similarly emphasizes the importance of human rights issues through the Company's supply chain..

Only one of the letters Best Buy cites involves supply chain issues (*Foot Locker, Inc.* (3 March 2017)), but is of limited precedential value for several reasons. First, the proposal raised in only general terms a concern about overseas sweatshop conditions and requested a report on company monitoring of working conditions, as well as compliance with company supplier codes of conduct. (In that regard, the proposal could be characterized as relating to compliance.) In granting relief, the Division's letter explained that the proposal "relate[d] broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors" and was thus far less focused than the Proposal here. Second, *Foot Locker* is out of step with other human rights letters, such as those discussed at p. __, *supra*, and on that point we note that the proponent in *Foot Locker* did not contest the exclusion, so at most *Foot Locker* stands for the proposition that the company there carried its burden of proof under Rule 14a-8(g). Apart from *Foot Locker*, the letters cited by Best Buy's involved proposals that did not come remotely close to dealing with the sort of type of significant supplier relationships we have here.²²

²⁰ Supplier Code of Conduct, available at <https://partners.bestbuy.com/documents/20126/3029894/Supplier+Code+of+Conduct.pdf/9d7062b9-2233-e7a9-c51a-2f1a34747927?t=1636037119495>.

²¹ *Environmental Social and Governance Report: Fiscal Year 2021*, available at https://corporate.bestbuy.com/wp-content/uploads/2021/06/ESG_Report_FY21_FINAL.pdf.

²² *Kraft Foods Inc.* (23 February 2012) (failure to establish overriding policy issue with respect to a food company's efforts to assure adequate water in its agricultural supply chain); *PetSmart, Inc.* (24 March 2011) (although animal welfare may be an important issue, the proposal as drafted focused on compliance as an end in itself and, as written, would have required reporting even of recordkeeping and administrative matters); *Southwest Airlines Co.* (19 March 2009) (domestic and foreign aircraft maintenance facilities should meet the same operational standards); *PepsiCo., Inc.* (24 February 2004) (no overriding policy component in proposal urging company not to favor one bottler over another).

5. The Proposal does focus on a significant social policy concern.

We come finally to the argument that even if the Proposal touches upon a “significant” policy issue, it still deals with Best Buy’s ordinary business. Best Buy Letter at pp. 11-14. This argument is simply more of the same.

As we noted in part 1, *supra*, Best Buy can find no support from the fact that *Staff Legal Bulletin 14L* re-affirmed the guidance in *Staff Legal Bulletin 14E* that risk assessment is a proper subject for a shareholder proposal so long as the subject matter is not ordinary business. As we pointed out previously, the topic of this Proposal – human rights – plainly transcends ordinary business concerns.

Best Buy relies (at p. 12) on a series of decisions where the Division granted relief when a proposal touched on a significant issue, but also dealt with a variety of ordinary business issues. Thus the proposal is *PetSmart, Inc.* (24 March 2011) sought a report that would have covered animal welfare, a significant issue, but would have also required reporting on a range of other issues, including recordkeeping and administrative issue that were ordinary business. The other letters Best Buy cites are to the same effect,²³ but here, by contrast, the focus is on an unquestioned policy issue involving human rights.

Best Buy next faults the Proposal for not having a “focus on human capital management issues that have a significant social policy, such as discrimination.” Best Buy Letter at p. 8. Is Best Buy seriously arguing that conditions amounting to “indentured servitude” is a run-of-the-mill issue that has less significance than discrimination?

Best Buy grudgingly acknowledges that the Proposal “mentions” human rights concerns, but seems to minimize the point, claiming that the Proposal is simply about addressing “financial and economic risks associated with its operations.” *Id.* Here again, however, the letters cites deal with concerns that

²³ *Apache Corp.* (5 March 2008) (proposal seeking non-discrimination policy based on sexual orientation omitted as the proposal covered a variety of topics that were plainly ordinary business, including advertising, marketing decisions, charitable giving); *CVS Caremark Corp.* (31 January 2008) (proposal seeking adoption of principles for health care benefits is excluded as focusing on employee benefits). But see *Bank of America Corp.* (17 February 2009) (denying relief on a similar health care-related proposal, given changed circumstances). After citing *Apache* and *CVS*, the Best Buy Letter adds a string cite to six additional letters the Company had previously cited; as to those letters we rely on our discussion earlier in this letter.

hardly rise to the policy significance the Proposal identifies here.²⁴

C. The Proposal is not vague and indefinite.

Finally Best Buy argues that the Proposal may be excluded in its entirety under Rule 14a-8(i)(3) because the Proposal is so vague and indefinite that neither the stockholders voting on the proposal, nor the Company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Best Buy Letter at pp. 15-16. The argument cannot be taken seriously.

Best Buy's argument is basically a generalized complaint, which stands in contrast to its prior argument that the Proposal relates to Best Buy's legal strategy because Best Buy can identify exactly the sort of disclosures that the Proposal have the Company make. The general weakness of this argument is demonstrated by the fact that the only phrase Best Buy challenges directly – the request that the report be made “at reasonable cost” – is hopelessly vague and indefinite. This phrase has been used for decades in hundreds if not thousands of shareholder proposals, so it is a bit surprising to read that Best Buy's board of directors is befuddled by a request to do something at “reasonable cost.”

Conclusion.

For these reasons, we respectfully ask the Division to advise Best Buy that the Division does not concur with the Company's view that the proposal may be omitted from the Company's proxy materials.

Thank you for your consideration of these points. Please do not hesitate to contact me if there is any further information we can provide.

Respectfully submitted,



Cornish F. Hitchcock

cc: John C. Ericson

²⁴ *Amazon.com, Inc.* (10 April 2018) (seeking report on efforts to manage food waste); *CVS Health Corp.* (8 March 2016) (urging retailer to increase renewable energy sourcing to achieve cost savings); *Exxon Mobil Corp.* (6 March 2012) (seeking report on oil company's oil sands operation, given risks from environmental regulations, possible litigation and public opposition).

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+1 (212) 455-3520

E-mail Address
jericsen@stblaw.com

VIA E-MAIL

March 22, 2022

Re: **Best Buy Co., Inc. – 2022 Annual Meeting of Shareholders, Omission of Shareholder Proposal Submitted by the International Brotherhood of Teamsters General Fund; Securities Exchange Act of 1934, Section 14(a); Rule 14a-8**

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

Ladies and Gentlemen:


This letter serves to inform you that, on behalf of our client, Best Buy Co., Inc. (the “Company”), we hereby withdraw our letter dated February 4, 2022 to the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) requesting that the Staff not recommend to the Commission that any enforcement action be taken if the Company excludes a shareholder proposal (the “Proposal”) submitted by the International Brotherhood of Teamsters General Fund (the “Proponent”) from its proxy materials for the Company’s 2022 Annual Meeting of Stockholders. The Proponent has indicated to the Company that it is withdrawing the Proposal. Attached hereto as Exhibit A is a copy of the Proponent’s notice withdrawing the Proposal.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission

-2-

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-3520 or jericson@stblaw.com.

Very truly yours,



John C. Ericson

Enclosures

cc: Todd G. Hartman, Best Buy Co., Inc.
International Brotherhood of Teamsters General Fund
Con Hitchcock, Hitchcock Law Firm PLLC

Exhibit A

Copy of the Proponent's Withdrawal Notice

Adoni, Brandon

From: Louis Malizia <[REDACTED]>
Sent: Monday, March 21, 2022 4:10 PM
To: Olson, Hannah; Michael Pryce-Jones
Cc: Hartman, Todd; Crist, Jodie; Marcia Jhingory
Subject: RE: [CAUTION! EXTERNAL] RE: Teamsters Shareholder Proposal Withdrawal proposal

Hannah,

I appreciate the clarification on the reporting schedule for 2023. I agree we can try to work on something that can disclose something prior to the ESG report when we resume discussions.

Regards,

Louis

From: Olson, Hannah <[REDACTED]>
Sent: Monday, March 21, 2022 3:34 PM
To: Louis Malizia <[REDACTED]>; Michael Pryce-Jones <[REDACTED]>
Cc: Hartman, Todd <[REDACTED]>; Crist, Jodie <[REDACTED]>; Marcia Jhingory <[REDACTED]>
Subject: RE: [CAUTION! EXTERNAL] RE: Teamsters Shareholder Proposal Withdrawal proposal


CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Louis,

This is great news! Thank you for the update. One minor point of clarification, our ESG report is typically published in June right around or within a few weeks following the shareholder meeting. While we will certainly update our board prior to the 2023 shareholder meeting, the external update may not occur prior to that vote. If this is a concern for you, please let me know and we can talk through solutions to address it. Our external counsel is preparing to notify the SEC of the withdrawal. We welcome the partnership and ongoing dialogue to come.


Kind Regards,
Hannah

Hannah G. Olson | Senior Corporate Counsel, Corporate & Securities
[REDACTED]

BEST BUY  Let's talk about what's possible.
Be human. Make it real. Think about tomorrow.

From: Louis Malizia <[REDACTED]>
Sent: Monday, March 21, 2022 12:57 PM

To: Olson, Hannah <[REDACTED]>; Michael Pryce-Jones <[REDACTED]>
Cc: Hartman, Todd <[REDACTED]>; Crist, Jodie <[REDACTED]>; Marcia Jhingory <[REDACTED]>
Subject: [CAUTION! EXTERNAL] RE: Teamsters Shareholder Proposal Withdrawal proposal

 **This message is from an external sender and could be a phish.** 

Slow down, read carefully and look for signs that it may be a phish. If you think it's malicious, click the report phish button or forward this email to [REDACTED].

Hannah,

On behalf of the International Brotherhood of Teamsters General Fund (“the Fund”), I hereby withdraw the Fund’s shareholder proposal calling on the Best Buy “the Company”) Board of Directors to furnish a report on the risks associated with the Company’s exposure to employee misclassification in its supply chain and distribution networks. The Fund is encouraged by the open engagement with the Company on these systemic risks affecting Best Buy, supply chain workers, investors and other key stakeholders. This engagement and subsequent commitment from Best Buy to: conduct a thorough review of risks related to contracting with Cal Cartage as the company’s principal port drayage provider; provide transparency and oversight to the Board of Directors Audit Committee; report findings to shareholders prior to the 2023 annual meeting and continue dialogue on how to strengthen the Company’s Supply Chain Code of Conduct is welcomed by the Fund.

We look forward to continuing our engagement with Best Buy and appreciate that the company will withdraw its no-action request to the Securities and Exchange Commission.

Thank you.

Regards,

Louis Malizia
Assistant Director
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001
Phone: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]

From: Olson, Hannah <[REDACTED]>
Sent: Friday, March 18, 2022 5:34 PM
To: Louis Malizia <[REDACTED]>; Michael Pryce-Jones <[REDACTED]>
Cc: Hartman, Todd <[REDACTED]>; Crist, Jodie <[REDACTED]>
Subject: FW: Teamsters Shareholder Proposal Withdrawal proposal

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Louis & Michael,

Thanks again for your time this week and ongoing collaboration and dialogue. Following up on our conversation on Wednesday, we have discussed internally and would like to propose the following for your consideration.

In exchange for withdrawal of your proposal, Best Buy agrees to the following:

- To conduct a review of the risks relating to the use of Cal Cartage as the Company's primary port drayage provider. The review shall be focused on Cal Cartage's compliance with contractual requirements related to classification of workers who provide services to Best Buy. The results of the review shall be reported to the Audit Committee of the Board of Directors at least 90 days prior to the 2023 annual shareholder meeting.
- Report on the Company's voluntary undertaking of the review within the 2023 ESG Report.
- Best Buy will engage in further dialogue with the Teamsters following withdrawal confirmation to evaluate the language within our Supplier Code of Conduct (attached) covering domestic wage theft and classification of workers that violates applicable law.

As discussed regarding enforcement language, our vendor website, portions of which are publicly available, already reflects the following enforcement provisions for violations of our Supplier Code of Conduct:

A finding is identified when a vendor's policies or operations or those of their suppliers / sub-contractors do not meet the standards set forth in our Supplier Code of Conduct. A finding is categorized according to the severity of the finding.

The most serious findings represent egregious labor, ethical or environmental practices that pose a significant, immediate threat to the rights, safety or life of workers and must be addressed in order to do business with Best Buy. In the highly unlikely case that a vendor is unwilling or unable to close the most serious findings, the relationship may be terminated.

We are happy to discuss the details further and would very much appreciate confirmation that we are on the right track toward withdrawal so that we can notify the SEC of the current status of our dialogue and whether the need for their No Action request review is still necessary.

Have a great weekend.

Regards,
Hannah

Hannah G. Olson | Senior Corporate Counsel, Corporate & Securities

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