WilmerHale

December 23, 2024

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Via Online Shareholder Proposal Form

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

Re: The Coca-Cola Company
Exclusion of Shareholder Proposal by National Legal and Policy Center

Ladies and Gentlemen:

We are writing on behalf of our client, The Coca-Cola Company (the "Company"), to inform you of the Company's intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2025 annual meeting of shareowners (the "Proxy Materials"), the enclosed shareowner proposal and supporting statement (collectively, the "Proposal") submitted by National Legal and Policy Center (the "Proponent").

The Company respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on the basis that the Company has substantially implemented the Proposal.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), the Company is submitting electronically to the Commission this letter, and the Proposal (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent.

Background

On October 18, 2024, the Company received the Proposal from the Proponent. The Proposal states as follows:

> **WHEREAS:** Since the June 2023 U.S. Supreme Court decision in *Students for Fair Admissions v. Harvard College,*[1] hundreds of higher education institutions have shuttered their diversity, equity and inclusion (DEI) programs and positions.[2]
>
> Consequently, "there has been a sharp uptick in litigation challenging corporate DEI programs and initiatives, alleging that they require unlawful employment and contracting decisions to be made on the basis of race, in violation of Title VII of the Civil Rights Act of 1964..."[3]
>
> Corporations' compliance lawyers now advise clients that "DEI initiatives and programs that are not open to all applicants or those that apply an explicit race- or gender-based focus will likely face continued and heightened scrutiny." Also: "We also expect to see ongoing scrutiny of perceived hiring quotas and set-asides, particularly those that may appear to be incentivized by bonuses for management or company leadership."[4]
>
> Further, "companies, and their management teams and boards, should be prepared for increased employment-related litigation including litigation that seeks to hold executive officers and directors personally liable for purported breaches of their fiduciary duties in connection with the corporation's DEI policies."[5]
>
> Many corporations dramatically reduced or eliminated their DEI programs,[6] and companies face retribution for their discrimination. For example, Starbucks was the subject of a $28.3 million judgment after a former worker claimed she was fired for being white.[7]

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[1] https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf
[2] https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei
[3] https://www.wilmerhale.com/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa
[4] https://www.skadden.com/insights/publications/2023/12/2024-insights/esg/the-supreme-courts-affirmative-action-opinion
[5] https://corpgov.law.harvard.edu/2024/02/14/how-boards-should-be-thinking-about-the-supreme-courts-sffa-affirmative-action-decision/
[6] https://nypost.com/2024/09/03/us-news/how-robby-starbuck-is-prompting-brands-1ike-ford-to-ditch-dei/
[7] https://www.cnn.com/2023/08/17/business/starbucks-payment-racial-discrimination-white/index.html

SUPPORTING STATEMENT: The Coca-Cola Company maintains "employee representation goals" designed to achieve diversity so the company "mirror[s] the markets we serve."[8] The Company expects "by 2030, our employee population across all job levels will align with U.S. census data by race/ethnicity: Black: 13%; Hispanic: 18%; Asian: 6%."

Pay for the Company's executives includes annual cash incentives for "progress toward diversity, equity and inclusion aspirations,"[9] which "reinforce their collective accountability" to reach those goals. These incentives account for "10% of the Business Performance Factor" and are based on predefined "Diversity, Equity and Inclusion Components." These components "foster the design and implementation of sustainable diversity, equity and inclusion strategies, as well as to encourage progress toward the Company's 2030 aspirations, for example, to be 50% led by women globally."

These discriminatory quotas leave Coca-Cola ripe for regulatory, reputational and litigation risk. Its attempt to cram DEI's non-GAAP nature into the proxy statement's compensation discussion demands either a legally dubious quota regime, or it fails SEC compliance.[10] The Council of Institutional Investors' general counsel stated that research shows "companies are engaging in an opportunistic use of non-GAAP earnings to justify higher executive pay."

FTI Consulting advises there is a "heightened focus" on "litigation risk," which "has transitioned from being merely an operational concern to becoming a strategic priority for the highest levels of corporate governance."[11]

RESOLVED: Shareholders request the Board of Directors' Talent and Compensation Committee to revisit its incentive guidelines for executive pay, to identify and consider eliminating discriminatory DEI goals from compensation inducements.

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[8] https://www.coca-colacompany.com/social/diversity-and-inclusion/black-representation
[9] https://www.sec.gov/Archives/edgar/data/21344/000155837024003468/ko-20240501xdef14a.pdf
[10] https://tax.thomsonreuters.com/news/council-of-institutional-investors-again-urges-sec-to-close-loophole-on-non-gaap-in-executive-pay/
[11] https://www.fticonsulting.com/insights/articles/de-risking-litigation-exposure-conflict-management-integral-business-administration

Basis for Exclusion

The Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

The purpose of the exclusion provided under Rule 14a-8(i)(10) is to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." Commission Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow exclusion of a shareholder proposal only when the proposal was "'fully' effected" by the company, the Commission has revised its approach to the exclusion over time to allow for exclusion of proposals that have been "substantially implemented." Commission Release No. 34-20091 (August 16, 1983) and Commission Release No. 34-40018 (May 21, 1998). In applying this standard, the Staff has noted that "a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (March 6, 1991, recon. granted March 28, 1991). In addition, when a company can demonstrate that it already has taken actions that address the "essential objective" of a shareholder proposal, the Staff has concurred that the proposal has been substantially implemented and may be excluded as moot, even where the company's actions do not precisely mirror the terms of the shareholder proposal. *See, e.g., Delta Air Lines, Inc.* (March 12, 2018) (concurring in exclusion under Rule 14a-8(i)(10) of a proposal requesting adoption of proxy access bylaws where the bylaws adopted by the company differed from the terms requested in the proposal); *Assembly Biosciences, Inc.* (February 26, 2018) (same); and *JetBlue Airways Corporation* (January 23, 2018) (same).

The Proposal requests that the Talent and Compensation Committee (the "Compensation Committee") of the Company's Board of Directors (i) "**revisit**" its incentive guidelines for executive pay to (ii) "**identify** and **consider**" eliminating certain goals from compensation inducements. (**emphasis added**). As discussed in more detail below and in the Company's proxy statements filed with the Commission, the Compensation Committee, in conjunction with its independent compensation consultant and other advisors, already revisits the Company's incentive compensation programs on an annual basis and, in doing so, identifies and determines the metrics to be used in structuring incentive awards, including non-financial metrics. Therefore, the Compensation Committee's practices address the Proposal's essential objective, and as a result, the Company has substantially implemented the Proposal for purposes of Rule 14a-8(i)(10).

Background on the Company's executive compensation structure.

The Company's executive compensation structure is primarily composed of three elements: base salary, annual incentive compensation and long-term incentive compensation. While base salary is fixed, annual incentive compensation and long-term incentive compensation are variable. The Company's annual and long-term incentive compensation programs are designed to reward performance and individual contributions that support business results and strategy. Because of this, awards are granted using certain financial and non-financial metrics that the Compensation Committee determines align with the Company's growth strategy as well as each executive's individual performance.

> *The Compensation Committee engages in ongoing review of the Company's executive compensation, including a yearly evaluation of all financial and non-financial metrics to be included in the determination of incentive awards.*

The Compensation Committee is tasked with overseeing executive compensation and does so using a robust year-round engagement, planning, review and approval process. As disclosed in the Company's prior proxy statements, in the first quarter of each fiscal year, the Compensation Committee reviews overall robustness and rigor of performance measures and targets for the prior year's performance cycles, finalizes performance measures and targets for upcoming performance cycles, approves annual and long-term incentive award opportunities for executive officers and discusses key components of its talent, leadership and culture strategy. In particular, typically at its meeting(s) held in the early part of each year, the Compensation Committee (i) sets targets and goals with respect to annual incentive compensation, (ii) grants long-term incentive awards, and (iii) determines achievement of previously-granted awards.

In order to carry out the foregoing, the Compensation Committee carefully considers a wide range of factors in determining which financial and non-financial metrics to include in structuring incentive awards. With respect to non-financial metrics, the Compensation Committee considered and determined in February 2023 and again in February 2024 to include certain metrics in the annual and long-term incentive awards that relate to the Company's sustainability aspirations, including diversity, equity and inclusion and environmental goals. As in prior years, the Compensation Committee will hold a meeting in February 2025 where it is scheduled once again to revisit and consider the Company's incentive compensation programs and determine which financial and non-financial metrics are appropriate for that year's annual and long-term incentive awards. Disclosure regarding this process and the resulting incentive programs have been, and will continue to be, included in the Company's applicable proxy statements.

The Staff has consistently concurred in the exclusion of proposals under Rule 14a-8(i)(10) that pertained to executive compensation when a company's actions compared favorably to the actions requested in the proposal, even when the company's actions were not in alignment with the proponent's desired position. For example, in *Amazon.com, Inc.* (March 27, 2020), the Staff concurred in exclusion of a proposal requesting the compensation committee report on "the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into performance measures or vesting conditions that apply to senior executives under the [c]ompany's compensation plans or arrangements." The supporting statement for this proposal made clear the proponent's promotion of, and agreement with, these sustainability metrics for executive compensation. The company argued that it had substantially implemented the proposal because the company explained in its prior proxy statements why it "does **not**, as [the proposal] requests, integrate specific performance measures or vesting conditions into [its] compensation arrangements" (**emphasis added**). *See also Visa, Inc.* (October 11, 2019) (concurring in exclusion of a proposal requesting the company reform its executive compensation philosophy to include social factors, such as CEO pay ratio, to enhance the company's social responsibility where the company disclosed in its proxy statement and sustainability report that its compensation committee considers social factors); *Wal-Mart Stores, Inc.* (March 25, 2015) (concurring in exclusion of a proposal requesting inclusion of "employee engagement" as a metric in determining senior executives' incentive compensation where the company already provided disclosure in a prior proxy statement noting that each executive officer's compensation under its annual incentive plan could be reduced by up to 15% based on the extent to which he or she contributed to diversity and inclusion); and *General Electric Co.* (January 23, 2010) (concurring in exclusion of a proposal requesting that the board explore with certain executive officers the renunciation of certain stock option grants, where the board discussed the request in the proposal with the specified executives, who declined to renounce the awards). Thus, under Rule 14a-8(i)(10), the determination is not whether a proposal has been implemented in the manner preferred by the proponent, but whether the company has addressed the proposal's essential objective.

The Proposal here requests the Compensation Committee engage in a review and consideration of its incentive compensation programs. As such, the Proposal does not request that the Compensation Committee do anything more than it has already done, and nothing more than what the Compensation Committee intends to continue to do in early 2025. This is true regardless of whether the Compensation Committee adjusts or removes any of the non-financial measures in its incentive compensation programs, as the Proposal does not request the Committee do anything other than "revisit", "identify" and "consider" the treatment of these non-financial measures. As the Company has disclosed, the Compensation Committee is responsible for reviewing the Company's executive compensation and a necessary part of that review is carefully considering and determining the metrics and goals to be used in incentive compensation. This review has been done on an annual basis and will be done again early next year. Indeed, it is not clear what else could be done to implement the Proposal's essential objective. Therefore, it would not be meaningful for the Company's Proxy Materials to include the Proposal.

Conclusion

For the foregoing reasons, and consistent with the Staff's prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10) on the basis that the Company has substantially implemented the Proposal.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at alex.bahn@wilmerhale.com or (202) 663-6198. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

Alex Bahn

Enclosures

cc: Jennifer Manning
Mark Preisinger
Anita Jane Kamenz
The Coca-Cola Company

Paul Chesser
National Legal and Policy Center

EXHIBIT A

NATIONAL LEGAL AND POLICY CENTER

October 18, 2024

Ms. Jennifer Manning
Senior Vice President, Associate General Counsel & Corporate Secretary
Office of the Secretary
The Coca-Cola Company
One Coca-Cola Plaza
Atlanta, GA 30313

VIA UPS & EMAIL: shareownerservices@coca-cola.com, [redacted],
[redacted]

Dear Ms. Manning/Corporate Secretary:

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

National Legal and Policy Center (NLPC) is the beneficial owner of 96 shares of the Company's common stock with a value exceeding $2,000, which shares have been held continuously for more than three years prior to this date of submission. NLPC intends to hold the shares through the date of the Company's next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to revisit the DEI goals in the Company's executive pay incentives. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the proposal on October 29 at 9:00 a.m. or October 31 at 9:00 a.m., in the Eastern Time Zone (U.S.). While we can potentially accommodate other dates and times that would align with Company representatives' availability, NLPC will *not* be able to meet with the Company outside the time window of 10 to 30 days from the date of the Proposal's submission, as specified by SEC guidelines.

Nat'l Headquarters: [redacted]
Phone: [redacted] Email: [redacted]

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

Sincerely,

Paul Chesser

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Revisit DEI Goals in Executive Pay Incentives" proposal

Revisit DEI Goals in Executive Pay Incentives

WHEREAS: Since the June 2023 U.S. Supreme Court decision in *Students for Fair Admissions v. Harvard College*,[1] hundreds of higher education institutions have shuttered their diversity, equity and inclusion (DEI) programs and positions.[2]

Consequently, "there has been a sharp uptick in litigation challenging corporate DEI programs and initiatives, alleging that they require unlawful employment and contracting decisions to be made on the basis of race, in violation of Title VII of the Civil Rights Act of 1964…"[3]

Corporations' compliance lawyers now advise clients that "DEI initiatives and programs that are not open to all applicants or those that apply an explicit race- or gender-based focus will likely face continued and heightened scrutiny." Also: "We also expect to see ongoing scrutiny of perceived hiring quotas and set-asides, particularly those that may appear to be incentivized by bonuses for management or company leadership."[4]

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[2] https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei
[3] https://www.wilmerhale.com/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa
[4] https://www.skadden.com/insights/publications/2023/12/2024-insights/esg/the-supreme-courts-affirmative-action-opinion
[5] https://corpgov.law.harvard.edu/2024/02/14/how-boards-should-be-thinking-about-the-supreme-courts-sffa-affirmative-action-decision/
[6] https://nypost.com/2024/09/03/us-news/how-robby-starbuck-is-prompting-brands-like-ford-to-ditch-dei/
[7] https://www.cnn.com/2023/08/17/business/starbucks-payment-racial-discrimination-white/index.html
[8] https://www.coca-colacompany.com/social/diversity-and-inclusion/black-representation
[9] https://www.sec.gov/Archives/edgar/data/21344/000155837024003468/ko-20240501xdef14a.pdf

well as to encourage progress toward the Company's 2030 aspirations, for example, to be 50% led by women globally."

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[10] https://tax.thomsonreuters.com/news/council-of-institutional-investors-again-urges-sec-to-close-loophole-on-non-gaap-in-executive-pay/

[11] https://www.fticonsulting.com/insights/articles/de-risking-litigation-exposure-conflict-management-integral-business-administration