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

DIVISION OF
CORPORATION FINANCE

April 22, 2025

Michael Hutchings
DLA Piper LLP (US)

Re: lululemon athletica inc. (the "Company")
Incoming letter dated February 26, 2025

Dear Michael Hutchings:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Oklahoma Tobacco Settlement Endowment Trust for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the board of directors report to shareholders an analysis of how the Company's charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(5).

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

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Jerry Bowyer
Bowyer Research, Inc.

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February 26, 2025

VIA ONLINE SUBMISSION

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

Re: lululemon athletica inc.
Stockholder proposal from Oklahoma Tobacco Settlement Endowment Trust
Securities Exchange Act of 1934 – Rule 14a-8
Request for No-Action Letter

Ladies and Gentlemen:

On behalf of our client, lululemon athletica inc., a Delaware corporation (the "Company"), we are submitting this letter in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934 (the "Exchange Act") to advise you of the Company's intent to exclude from its proxy statement and form of proxy for its 2025 annual meeting of shareholders (the "2025 Proxy Materials") the attached stockholder proposal (the "Proposal") and related statement in support (the "Supporting Statement") submitted by Bowyer Research, Inc., on behalf of the Oklahoma Tobacco Settlement Endowment Trust (the "Proponent").

For the reasons explained below, we request, on behalf of the Company, confirmation that the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "Commission") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal and the Supporting Statement from its 2025 Proxy Materials in reliance on the provisions of Rule 14a8-(i)(3), Rule 14a-8(i)(5), and Rule 14a-8(i)(7) under the Exchange Act. The Company has advised us as to the factual matters described below.

This letter is being submitted to the Commission via the Commission's online shareholder proposal portal. In accordance with Rule 14a-8(j), this letter and its attachments are concurrently being sent to the Proponent, through its designated agent, as notice of the Company's intent to omit the proposal from its 2025 Proxy Materials.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, by copy of this letter we hereby notify the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this

Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

A. The Proposal

The Proposal includes the following proposed resolution for the vote of the Company's shareholders at its 2025 annual meeting of shareholders:

> **Resolved:** Shareholders request that the Board of Directors of Lululemon Athletica report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how Lululemon's charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise.

A full copy of the Proposal and the Supporting Statement are attached as Exhibit A.

B. Basis for Exclusion

As discussed more fully below, the Company believes it may properly exclude the Proposal from its 2025 Proxy Materials under any of the following rules: Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite to the point of being inherently misleading; Rule 14a-8(i)(5), because the Proposal concerns a matter that is not economically significant or otherwise significantly related to the Company's business; and Rule 14a-8(i)(7), because the Proposal's subject matter directly relates to the Company's ordinary business operations, does not focus on a significant policy issue that transcends the Company's ordinary business operations, and seeks to micromanage the Company.

1. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite, Rendering It Inherently Misleading

The Proposal is excludable under Rule 14a-8(i)(3) because it is so vague and indefinite that neither shareholders voting on it nor the Company in implementing it (if adopted) would be able to determine with reasonable certainty what actions or measures it requires.

(a) Rule 14a-8(i)(3) and the Standard for Exclusion

Rule 14a-8(i)(3) permits exclusion of a shareholder proposal from a company's proxy materials if it violates the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitations. Specifically, Rule 14a-9(a) states:

"No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the

time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact…"

The Commission has long recognized that a proposal may be misleading if it is so vague that neither shareholders nor the company can determine what it requires. See *New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992) (holding that shareholders "are entitled to know precisely the breadth of the proposal on which they are asked to vote").

In Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"), the Staff clarified that a proposal may be excludable if it is so vague or indefinite that shareholders and the company could interpret it in multiple, conflicting ways. The Commission has consistently agreed with the exclusion of proposals where:

- The proposal lacks guidance on key terms, leading to differing interpretations, such that any action taken by the company may differ significantly from what shareholders intended. See *Fuqua Industries, Inc.* (Mar. 12, 1991).

- The language is so broad that it is unclear what specific actions or measures the company would be required to take. See *The Walt Disney Co.* (Grau) (Jan. 19, 2022) (excluding a proposal prohibiting communications reflecting "politically charged biases" because neither the company nor shareholders could determine what it required).

- Undefined terms create ambiguity as to the scope of the proposal. See *The Boeing Company* (Feb. 23, 2021) (excluding a proposal requiring 60% of directors to have an "aerospace/aviation/engineering executive background" because that term was undefined).

(b) The Proposal Fails to Clearly Define Key Terms, Making It Impossible to Determine Its Scope

The Proposal requests that the Company publish an annual report analyzing how its charitable partnerships impact "risks related to discrimination against individuals based on their speech or religious exercise." However, the Proposal is impermissibly vague because it does not define critical terms or provide meaningful guidance on key issues, making it impossible for shareholders to understand what they are voting on or for the Company to implement the Proposal in a manner consistent with shareholder expectations.

(1) The Proposal Fails to Define What "Risks" Should Be Included in the Report

The Proposal does not specify what types of "risks" the report should address. The Company faces numerous categories of risk, including business risks, legal risks, compliance risks, and reputational risks.

The Proposal does not clarify whether it is referring to financial risks, regulatory risks, litigation risks, or other forms of potential harm. Without such clarification, shareholders cannot determine the intended focus of the report, and the Company would have no way to ensure that its response aligns with shareholder expectations.

(2) The Proposal Creates Significant Ambiguity by Failing to Identify Which "Individuals" it Seeks to Protect

The Proposal is unclear about which "individuals" are purportedly at risk of discrimination based on their speech or religious exercise. It does not specify whether this term refers to the Company's employees, customers, suppliers, shareholders, or members of the public more broadly. Without this crucial clarification, shareholders cannot determine the intended scope of the requested report, and the Company would have no clear standard for implementing the Proposal. For example, does the Proposal seek an analysis of the risks faced by employees who express religious beliefs in the workplace? Customers whose views are controversial? Public figures affiliated with the Company in some way? Each of these interpretations could lead to materially different outcomes, making it impossible for the Company to produce a report that aligns with stockholder expectations.

Further complicating the issue, the Supporting Statement veers away from the Proposal's stated focus on risks related to speech and religious exercise and instead emphasizes the Company's alleged involvement in divisive political and social debates. Rather than addressing specific instances of discrimination against individuals for their speech or religious beliefs, the Supporting Statement appears to be concerned primarily with the public stances of the Company's "charitable partnerships" and charitable contributions on broader political issues. This disconnect creates further ambiguity about what shareholders would actually be voting on – whether they would be endorsing an analysis of risks to individuals' free expression or religious rights or, instead, taking a position on the Company's "charitable partnerships'" engagement in politically charged debates.

This inconsistency makes the Proposal inherently vague and misleading under Rule 14a-8(i)(3). Because shareholders may interpret the Proposal in different ways, and because the Supporting Statement introduces an entirely separate focus from the Proposal's stated objective, neither the Company nor shareholders can determine with reasonable certainty what actions the Proposal actually requires.

(3) The Proposal's Focus on "Speech" and "Religious Exercise" Are Inconsistent and Undefined

The Proposal claims to focus on risks related to discrimination against individuals based on their speech or religious exercise. However, the Supporting Statement shifts the emphasis away from this stated focus and instead highlights a broad and unrelated set of political and social issues, including topics such as abortion, economic systems, law enforcement policies, and gender-related rights and roles. Rather than

discussing specific risks related to the speech or religious exercise rights of individuals, the Supporting Statement appears more concerned with the public stances of the Company's "charitable partnerships" on controversial and divisive political debates.

This disconnect creates substantial ambiguity regarding the specific issues on which shareholders would be voting. A shareholder who supports analyzing risks related to discrimination based on speech or religion may not intend to endorse a broader examination of the involvement in contentious political matters of the recipients of the Company's charitable contributions. Likewise, if the Proposal were adopted, the Company would have no clear guidance on whether it is expected to produce a report about risks related to individuals' free expression and religious rights or, instead, to assess the consequences of the engagement in hotly debated social and political issues by the recipients of the Company's charitable contributions.

Because the Proposal and the Supporting Statement present two conflicting and potentially unrelated objectives, the Proposal is impermissibly vague and misleading under Rule 14a-8(i)(3). Neither shareholders nor the Company can determine with reasonable certainty what the Proposal actually requires, making its implementation inherently subjective and open to significantly different interpretations.

(c) The Proposal Cannot Be Amended Without Substantially Altering Its Meaning

The ambiguities in the Proposal cannot be resolved through minor revisions. To clarify its intent, the Proponent would need to introduce substantive definitions (e.g., defining "risks" and "individuals") and significantly revise the Supporting Statement to align with the Proposal's stated focus on speech and religious exercise.

As SLB 14B explains, the Staff allows minor edits to fix technical issues but does not permit extensive revisions that would materially alter the substance of a proposal. Here, the level of revision needed to clarify the Proposal's intent would be so extensive that it would transform it into a fundamentally different proposal.

(d) The Proposal is Impermissibly Vague and Misleading and Should be Excluded

Because the Proposal is impermissibly vague and indefinite, making it impossible for shareholders to understand what they are voting on or for the Company to implement it with any reasonable certainty, we respectfully request that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(3).

2. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates to Operations That Are Not Economically Significant or Otherwise Significantly Related to the Company's Business.

The Proposal may be excluded under Rule 14a-8(i)(5) because it relates to operations that are not economically significant or otherwise significantly related to the Company's business. The Proposal asks the Company to provide a report analyzing how its "charitable partnerships" impact risks related to discrimination against individuals based on their speech or religious exercise. However, the Proponent has not demonstrated how the Company's charitable contributions—or the vague and undefined risks of discrimination—are economically relevant to the Company's business or otherwise significantly related to its operations.

(a) Background on Rule 14a-8(i)(5)

Rule 14a-8(i)(5) allows a company to exclude a shareholder proposal if it relates to operations that account for:

- Less than 5% of the company's total assets at the end of its most recent fiscal year;
- Less than 5% of the company's net earnings and gross sales for its most recent fiscal year; and
- Are not otherwise significantly related to the company's business.

In adopting this rule, the Commission made clear that shareholder proposals should not be used to raise issues that have no meaningful connection to a company's operations. See Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission reaffirmed this approach in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), stating that proposals involving broad social or ethical concerns must still be significantly related to a company's business to avoid exclusion.

Further, the Commission's recent Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M") clarified that a proposal must demonstrate a clear economic impact on a company's business. If a proposal fails to meet the economic thresholds of Rule 14a-8(i)(5) and lacks a significant connection to the company's business, it may be excluded. Here, under SLB 14M, the Proposal does not meet the economic relevance test, as explained below.

(b) The Proposal Is Not Significantly Related to the Company's Business

The Company's charitable contributions are economically insignificant under the Commission's standards. The total amount contributed in the most recent fiscal year represents less than 1% of each of the Company's total assets and net revenue, and less than 2% of its net income. These figures

demonstrate that the Company's charitable giving is financially immaterial and does not have a meaningful economic impact on the business. See, e.g., *Reliance Steel & Aluminum Co.* (Apr. 2, 2019) (concurring with exclusion of a proposal on political contributions that fell below the 5% economic threshold and was not otherwise significantly related to the company's business).

Moreover, the Proposal does not raise social or ethical concerns that are significantly related to the Company's business. The Commission has consistently granted no-action relief when proposals do not demonstrate a meaningful connection to a company's core operations. See *AT&T Co.* (Jan. 19, 1990) (concurring with exclusion of a proposal addressing worker relocation where the economic impact on the company was de minimis).

While the Proposal claims to address risks related to discrimination based on speech or religious exercise, the Supporting Statement largely focuses on unrelated political and social issues. For instance, it discusses certain advocacy organizations and their influence on corporate decision-making, but it does not establish any connection between these organizations and the Company's operations. The Proposal's significance to the Company's business is not apparent on its face, and the Proponent makes no attempt whatsoever to tie the political and social issues on which the Proposal focuses to a significant effect on the Company's business. The Commission's guidance in SLB 14M makes clear that a proposal like this – which merely raises the possibility the Company's charitable contributions could "expose itself to reputational risk," but makes no attempt to demonstrate a significant connection to the Company's core business operations – should be excluded under Rule 14a-8(i)(5). See SLB 14M (The mere possibility of reputational or economic harm alone will not demonstrate that a proposal is "otherwise significantly related to the company's business").

Given that the Company's charitable contributions are financially insignificant, and the Proposal does not even attempt to demonstrate that it is otherwise significantly related to the Company's business, it does not meet the Commission's standard for relevance to the Company's business under Rule 14a-8(i)(5).

(c) The Proposal Is Not Economically Significant and Should Be Excluded

The Proposal relates to operations that are economically insignificant to the Company and does not demonstrate that the Proposal is otherwise significantly related to the Company's business. Moreover, the Supporting Statement strays far from the Proposal's stated focus, making broad claims about social and political issues that have no clear connection to the Company's operations. Under Rule 14a-8(i)(5) and the Commission's recent guidance in SLB 14M, the Proposal is not significantly related to the Company's business and should be excluded from the Company's 2025 Proxy Materials. Accordingly, we respectfully request that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(5).

3. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals with Matters Relating to the Company's Ordinary Business

The Proposal is excludable under Rule 14a-8(i)(7) because its subject matter directly relates to the Company's ordinary business operations—specifically, its charitable contributions, does not focus on a significant policy issue that transcends the Company's ordinary business operations, and seeks to micromanage the Company. As discussed below, Rule 14a-8(i)(7) permits the exclusion of shareholder proposals that relate to fundamental day-to-day management decisions that are impracticable for shareholder oversight.

(a) Background on Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations." The Commission has explained that the term "ordinary business" is rooted in the principle that management must have flexibility to direct certain core business matters without shareholder interference. See Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). The 1998 Release further states that the policy underlying the 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." The Commission identified as a key consideration 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." Id.

The Commission has reaffirmed this principle in its latest guidance. SLB 14M clarifies that a proposal is excludable under Rule 14a-8(i)(7) when it addresses matters that are so central to management's ability to run the company that any significant policy issue it implicates does not transcend the company's ordinary business operations.

This principle applies regardless of whether a proposal is framed as a request for a report. The Commission has consistently held that proposals requesting reports are excludable under Rule 14a-8(i)(7) if the subject matter of the report relates to the company's ordinary business. See Exchange Act Release No. 34-20091 (Aug. 16, 1983). Further, in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Commission emphasized that a proposal seeking a risk assessment does not avoid exclusion if the underlying subject matter concerns ordinary business operations. See, e.g., *The TJX Companies, Inc.* (Mar. 29, 2011); *Amazon.com, Inc.* (Mar. 21, 2011); *Wal-Mart Stores, Inc.* (Mar. 21, 2011).

Finally, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole").

(b) The Proposal Deals with Matters Relating to the Company's Ordinary Business Operations

The Proposal implicates the "ordinary business" exception as outlined in the 1998 Release, as its subject matter is "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," and does not present a significant social policy issue that transcends ordinary business matters. This is evident in both the Company's decisions regarding its charitable contributions and its associations with specific types of organizations.

Additionally, while the Proposal requests a report analyzing "how [the Company's] charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise," the Staff clarified in SLB 14E that "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… we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company." The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. See, e.g., *McDonald's Corp.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal asking the company to "disclose the economic risks" it faced from "campaigns targeting the [c]ompany over concerns about cruelty to chickens" because it "focuse[d] primarily on matters relating to the [c]ompany's ordinary business operations"); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state, and local taxes and provide a report to shareholders on the assessment).

The Proposal requests that the Company "report to shareholders annually… an analysis of how [the Company's] charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise."

The Proposal may be excluded under Rule 14a-8(i)(7) because it relates to political and charitable contributions to specific types of organizations, which is a well-established component of a company's "ordinary business." See, e.g., *JPMorgan Chase & Co.* (avail. Feb. 28, 2018) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company provide an annual report disclosing the company's standards for choosing recipients of charitable donations); *PG&E Corp.* (avail. Feb. 4, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company limit its "anti-traditional family political and charitable contributions" that support same-sex marriage); *The Walt Disney Co.* (avail. Nov. 20, 2014) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal relating to charitable contributions to the Boy Scouts of America); *BellSouth Corp.* (avail. Jan. 17, 2006) (concurring with the exclusion under Rule l4a-8(i)(7) of a proposal requesting that the board make no direct or indirect contributions from the company to any legal fund used in defending any politician);

Wachovia Corp. (avail. Jan. 25, 2005) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal recommending that the board prohibit charitable contributions to Planned Parenthood and similar organizations); *American Home Products Corp.* (avail. Mar. 4, 2002) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company form a committee to study the impact of its charitable contributions in the context of specific prior charitable contributions to Planned Parenthood); *Minnesota Mining and Manufacturing Co.* (avail. Jan. 3, 1996) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requiring a company to "make charitable/political contributions to organizations/campaigns defending unborn persons' right[s]").

While the Proposal appears facially neutral, the Supporting Statement clarifies that it targets the Company's association with specific types of organizations focused on social justice, racial equity, and policy reform, particularly in areas such as policing, criminal justice, and community investment. The Staff has consistently permitted the exclusion of facially neutral proposals under Rule 14a-8(i)(7) when supporting statements reveal an intent to influence company decisions regarding specific types of organizations. For example, in *The Home Depot, Inc.* (avail. Mar. 18, 2011), the Staff concurred that a facially neutral proposal requesting the company to disclose the recipients of corporate charitable contributions on the company website related to the company's ordinary business operations – and could therefore be excluded under Rule 14a-8(i)(7) – because the supporting statement focused on LGBT issues. See also *AT&T Inc.* (avail. Jan. 15, 2021) (concurring with excluding a facially neutral proposal requesting a report on charitable contributions where the supporting statement made clear the focus was on organizations supporting the Black Lives Matter movement); *Johnson & Johnson* (avail. Feb. 12, 2007) (concurring with excluding a facially neutral proposal requesting disclosure of charitable contributions where the supporting statement targeted Planned Parenthood and organizations supporting abortion and same-sex marriage).

Similarly, while the Proposal's broadly worded resolution refers to the Company's "charitable partnerships," the Supporting Statement demonstrates that its actual focus is on a particular category of contribution – those to organizations advocating for social justice, racial equity, and policy reform.

The Staff has consistently concurred that proposals seeking details on corporate contributions to specific types of charitable or political organizations, even when framed in facially neutral terms, are excludable under Rule 14a-8(i)(7). Here, the Supporting Statement explicitly seeks disclosure regarding the Company's support for organizations advocating in certain policy areas. The Staff has repeatedly affirmed that such decisions are within management's purview and that allowing shareholder involvement in these matters constitutes inappropriate interference in the Company's ordinary business operations.

Even if the Proposal touches on broader policy issues related to free speech or religious freedom, it remains excludable because it does not transcend the Company's ordinary business operations. The Staff recently updated its approach to how it evaluates significant social policy issues, providing that a

"case-by-case" approach to evaluating significance is appropriate, "rather than focusing solely on whether a proposal raises a broad societal impact or whether particular issues or categories of issues are universally 'significant'." See SLB 14M. Under SLB 14M, a proposal must do more than reference a significant policy issue—it must transcend the company's ordinary business operations. SLB 14M explicitly rejects prior Staff interpretations that automatically allowed proposals to proceed if they implicated a significant policy issue, reinstating the approach taken in the Commission's 1998 Release.

In this case, the underlying purpose of the report sought by the Proposal is to have shareholders dictate how the Company selects its charitable partners—a core business decision that is "fundamental to management's ability to run the company." See SLB 14M. Accordingly, under both long-standing Commission precedent and the renewed guidance in SLB 14M, the Proposal is excludable under Rule 14a-8(i)(7).

(c) The Proposal Seeks to Micromanage the Company

The Proposal is also excludable under the Commission's micromanagement standard. The Commission has long recognized that a proposal is excludable if it seeks to micromanage the company by probing too deeply into complex matters best left to management. See 1998 Release. SLB 14M expressly reinstates the Commission's pre-SLB 14L micromanagement framework, which had been articulated in Staff Legal Bulletins 14J (Oct. 23, 2018) ("SLB 14J") and 14K (Oct. 16, 2019). See SLB 14M (reinstating Staff Legal Bulletin No. 14J Section C.2. Micromanagement and Staff Legal Bulletin No. 14K Section B.4. Micromanagement, which were "previously rescinded by Staff Legal Bulletin No. 14L").

The Commission has routinely excluded proposals that would require a company to disclose detailed information about its operations or constrain management's discretion in routine decision-making. See, e.g., *Paramount Global* (Apr. 19, 2024) (excluding a proposal requesting details on charitable contributions that would result in excessive disclosure of the company's policies and practices); *Merck & Co., Inc.* (Mar. 29, 2023) (excluding a similar proposal).

Here, the Proposal does not merely seek a high-level review of risks associated with charitable donations—it seeks to dictate how the Company engages with specific charitable organizations. The Supporting Statement makes clear that the Proponent is opposed to certain organizations, including those purporting to advocate for social justice, racial equity, and policy reform, and that a goal of the Proposal is for the Company to sever any ties it may have with these groups. A company's decisions regarding charitable contributions involve complex considerations, including strategic business objectives, community impact, and legal compliance, making them matters of management's routine decision-making rather than shareholder oversight. This level of shareholder intervention into routine business operations constitutes micromanagement under SLB 14M and SLB 14J.

(d) The Proposal Deals With Matters Relating to the Company's Ordinary Business Operations and Seeks to Micromanage the Company and Should Be Excluded

Although the Proposal and the Supporting Statement make brief references to "the rights to free speech and religion," the Proposal's primary focus is on the disclosure of the Company's charitable contributions. Accordingly, the Proposal concerns an ordinary business matter that is not transcended by a significant social policy issue, and it seeks to micromanage the Company's operations. Under Rule 14a-8(i)(7) and the Commission's reaffirmed guidance in SLB 14M, the Proposal is excludable. Accordingly, we respectfully request that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(7).

C. Request for Waiver of 80-Day Requirement Under Rule 14a-8(j)(1)

The Company respectfully requests that the Staff waive the 80-day filing requirement under Rule 14a-8(j) for good cause.

Rule 14a-8(j)(1) requires a company seeking to exclude a shareholder proposal from its proxy materials to submit its reasons to the Commission at least 80 calendar days before filing its definitive proxy statement and form of proxy. The Company is currently preparing its definitive proxy statement for the 2025 annual shareholder meeting and expects to begin the printing process on or before April 22, 2025. The Company currently intends to file its 2025 Proxy Materials with the Commission on or about May 1, 2025. As a result, the Company's filing date for the 2025 Proxy Materials is expected to be less than 80 days from the date of this letter.

However, Rule 14a-8(j)(1) allows the Staff to permit a later submission if the Company demonstrates good cause for missing the deadline. As stated in SLB 14M, the Staff considers the publication of SLB 14M itself to constitute "good cause" when a request relies on legal arguments affected by the guidance. Because the legal arguments in this letter include considerations specific to SLB 14M, the Company believes it has demonstrated good cause for its inability to meet the 80-day requirement. Accordingly, we respectfully request that the Staff waive the 80-day requirement for this submission.

D. Conclusion

For the reasons discussed above, the Company believes that the Proposal may properly be excluded from its 2025 Proxy Materials under Rule 14a-8(i)(3), Rule 14a-8(i)(5), and Rule 14a-8(i)(7), each of which independently provides a basis for exclusion, and that the Company has demonstrated good cause under Rule 14a-8(j)(1) for missing the 80-day deadline. Accordingly, we respectfully request that (1) the Staff concur with our view and confirm that it will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2025 Proxy Materials, and (2) the Staff waive the 80-day filing requirement under Rule 14a-8(j)(1) for good cause with respect to this submission.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance in this matter, please do not hesitate to call me at (206) 295-4633.

Respectfully,

DLA Piper LLP (US)

Signed by:
Michael Hutchings
ADB044CCED3C445...

Michael Hutchings
Partner

Enclosures

Cc: Shannon Higginson, Chief Legal & Compliance Officer, lululemon athletica inc.
shigginson@lululemon.com

Jerry Bowyer, Bowyer Research, Inc.
jerrybowyer@bowyerresearch.com

EXHIBIT A

Report on Charitable Partnerships

Supporting Statement:

Corporations routinely use their platforms to voice support for humanitarian causes and human rights. Some of the most fundamental are the rights to free speech and religion, which are recognized by the First Amendment to the United States Constitution and the UN Declaration of Human Rights[1]. Unfortunately, many companies are supporting organizations that are undermining these freedoms.

The 2024 edition of the Viewpoint Diversity Score Business Index found that 62% of some of the largest companies in America support non-profits that are influencing public policy by actively attacking free speech and religious freedom, as well as pressuring companies into public stances on divisive political issues.

That list includes Lululemon. The company is currently listed[2] as a member of the Don't Ban Equality coalition, which describes its purpose as "making the case that abortion access is a workforce and economic issue." By taking a public stance on politically charged issues, the company exposes itself to reputational risk. The choice to politicize the Lululemon brand carries the increasing possibility of alienating employees and customers alike of diverse political and religious views, as well as negatively impacting shareholder return.

This record of divisive stances is not limited to the issue of abortion, with the company having taken flack previously[3] for hosting events urging attendees to 'resist capitalism' and discussing ways of 'decolonizing gender.' Additionally, Lululemon donated[4] $300,000 to organizations such as Black Lives Matter and Reclaim the Block (the latter being a group formed to encouraging defunding[5] of the Minneapolis Police Department), although it later admitted[6] that it was no longer donating to either organization.

Lululemon needs to assure its shareholders that it is committed to a business-first model of political neutrality, avoiding taking divisive stances on social/political issues, and putting shareholder value first in keeping with its fiduciary duty. Eschewing charitable partnerships with organizations designed to politicize the Lululemon brand is an essential facet of doing so.

Resolved: Shareholders request that the Board of Directors of Lululemon Athletica report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how Lululemon's charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise.

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[1] https://www.un.org/en/about-us/universal-declaration-of-human-rights
[2] https://dontbanequality.com/
[3] https://freebeacon.com/culture/lululemon-promotes-decolonizing-gender-workshop-to-resist-capitalism/
[4] https://claremont.shinyapps.io/BLM_Funding/
[5] https://takeactionminnesota.org/policy-organizer-reclaim-the-block/
[6] https://takeactionminnesota.org/policy-organizer-reclaim-the-block/

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

April 17, 2025

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

RE: Shareholder Proposal of Oklahoma Tobacco Settlement Endowment Trust at lululemon athletica inc. under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing for the Oklahoma Tobacco Settlement Endowment Trust ("Proponent" or "Oklahoma") to defend its shareholder proposal ("Proposal") to lululemon athletica inc. ("Lulu" or the "Company"). Michael Hutchings, counsel for Lulu, wrote to you on February 26, 2025, to ask you to concur with Lulu's view that it can exclude Oklahoma's shareholder proposal from its 2025 Annual Meeting of Shareholders under 17 CFR § 240.14a-8 ("Rule 14a-8"). Lulu has the burden of demonstrating it is entitled to exclude the Proposal under Rule 14a-8(g). But it cannot bear this burden.

The Proposal asks Lulu to report to shareholders how its charitable partnerships impact its risks related to speech and religious discrimination. Lulu says that it can exclude the Proposal under Rule 14a-8(i)(3) because the language is too vague. But Staff rejected a materially identical set of arguments in *Deere and Co.* (Jan. 6, 2025). The plain terms of the Proposal provide plenty of certainty about what is sought: a risk report on the civil rights impacts of Lulu's charitable partnerships.

Lulu also argues under Rule 14a-8(i)(5) that it does not relate to operations that are economically significant or "otherwise significantly related to the company's business." This argument fails because Lulu ties its charitable partnerships to core brand values and because Lulu does not carry its burden to show that the Proposal fails to satisfy the 5% thresholds.

Lulu next argues under Rule 14a-8(i)(7) because it deals with matters relating to the company's ordinary business. But Staff have long recognized that charitable contributions do not relate to ordinary business matters and that religious and political discrimination are significant social policy issues for many companies in many different contexts.

Lastly, it argues that the Proposal micromanages the company. But the Proposal asks for a risk report, which is one of the least intrusive ways for shareholders to seek action on an issue. Staff regularly reject micromanagement challenges to such requests and should do so here too.

The Proposal

The Proposal provides as follows:

> **Resolved:** Shareholders request that the Board of Directors of Lululemon Athletica report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how Lululemon's charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise.

The Supporting Statement explains that "[c]orporations routinely use their platforms to voice support for humanitarian causes and human rights" and notes that the rights to free speech and religion are "recognized by the First Amendment . . . and the UN Declaration of Human Rights." Unfortunately, Lulu and other companies are associating with non-profits that are actively working against these two fundamental human rights, free speech and religious freedom, as well as pressuring companies into public stances on divisive political issues. The Statement notes that many of America's largest companies "support non-profits that are influencing public policy by actively attacking free speech and religious freedom" and "pressuring companies into public stances on divisive political issues."

The Statement singles out the Don't Ban Equality coalition, Black Lives Matter, and Reclaim the Block, all three of which Lulu has supported, as three notable examples. It explains that Don't Ban Equality believes that "abortion access is a workforce and economic issue," and that this political stance exposes the company to reputational risk, politicizes the brand, and risks alienating employees and customers with different political and religious views, which could harm shareholder return. The Statement also explains that Lulu has seen these risks realized with other charitable partnerships that it has since admitted to dropping (Black Lives Matter and anti-Minneapolis Police Force group Reclaim the Block). The Statement notes that Lulu "[took] flak" for hosting events to "resist capitalism" and "decoloniz[e] gender." The Statement then says Lulu needs to "assure its shareholders that it is committed to a business-first model of political neutrality," and that "[e]schewing charitable partnerships with organizations designed to politicize the [Lulu] brand is an essential facet of doing so." Making its charitable partnerships truly inclusive will open the Lulu brand to all Americans, regardless of political preference or religious creed. This support of fundamental human rights will expand Lulu's customer base and therefore "put[] shareholder value first in keeping with its fiduciary duty."

Discussion

A. The Proposal is not so vague as to be inherently misleading under Rule 14a-8(i)(3) because shareholders and the Company readily understand that it asks for a risk report on charitable partnerships.

Lulu complains that the Proposal is so vague that it can be excluded as inherently misleading. But Staff rejected nearly the exact same arguments in *Deere and Company* (Jan. 6, 2025). And rightly so. The bar to exclude on this ground is high: the Proposal must lack even basic guidance so that there is no "reasonable certainty exactly what actions or measures the proposal requires." Division of Corporate Finance, Staff Legal Bulletin 14B (Sep. 15, 2004) ("SLB 14B"). This is typically reserved for proposals that request vague actions like "reforming" or "improving" an issue, not transparency like the Proposal here and not terms that characterize the social topic at issue.

Lulu quibbles with the plain meaning of words like "individuals" and "risks." But the former plainly means any affected person and the latter is common business parlance that Staff agree is not vague. Lulu admits that the proposal "focus[es]" on "speech" and "religious exercise," but claims it does so in an "inconsistent and undefined" manner because it deals with topics including "abortion, economic systems, law enforcement policies, and gender-related rights and roles." But the study would show whether these "divisive political issues" may be the subject of speech that various non-profits are actively attacking. And many of the views being targeted are religious views. Americans are increasingly wary of this, so Lulu's association with Don't Ban Equality and similar groups raises serious risks for the Company. Shareholders deserve to know more about this contentious issue.

1. A proposal and supporting statement are impermissibly vague only when the two, taken together, lack a basic level of clarity or request no specific action.

Under Rule 14a-8(i)(3), a proposal and its supporting statement may not make a "materially false or misleading statement." This includes making statements that are impermissibly vague. As Staff have explained, a proposal may be excluded if it and the supporting statement are "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." SLB 14B.

Staff relies on commonsense meanings that are readily understood by investors and the context provided by the supporting statement. Indeed, (i)(3) is the only ground for exclusion that explicitly includes the supporting statement in its text. Accordingly, Staff rejected vagueness challenges to terms like "the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social

and political matters," *Kohl's Corp.* (Mar. 14, 2024), "impacts on civil rights and non-discrimination" across all aspects of the company, *CVS Health Corp.* (Mar. 17, 2022), "viewpoint diverse board" regarding political bias, *DICK'S Sporting Goods, Inc.* (Apr. 22, 2024), "economic and humanitarian effects" of a climate transition policy, *JPMorgan Chase & Co. (NLPC)* (Mar. 29, 2024), "human rights impacts" associated with "high-risk products and services," *Northrop Grumman* (Mar. 26, 2021), and "risks" related to anti-competitive practices. *Alphabet Inc. (CtW)* (Apr. 16, 2021).

Notably, Staff also rejected vagueness challenges to "risks," "individuals," and "based on their speech or religious exercise" in *Deere and Co.* (Jan. 6, 2025) at 4–5.[1] There, like here, the proposal asked about "risks related to discrimination against individuals based on their speech or religious exercise" arising from the company's charitable partnerships with divisive political organizations. *Id.* at 16.

Contrast these with other proposals where the actual action, rather than the characterization or social issue behind the action, was unclear. See *eBay Inc.* (Apr. 10, 2019) ("reform the company's executive committee"); *Apple Inc. (Zhao)* (Dec. 6, 2019) ("improve guiding principles of executive compensation"); *Cisco Systems, Inc.* (Oct. 7, 2016) ("not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification"). In *Apple*, Staff even noted that "[a] proposal that described the nature of improvements that the company could consider, without prescribing the particular result, would be less likely to be viewed as vague and indefinite."

Lulu cites several decisions to state that "failing to define key terms" is one way that a proposal can be impermissibly vague. But Staff give leeway for a proponent to characterize social issues and do not expect a 500-word proposal to define every term with dictionary-level precision. Rather, Staff will rightly reject a proposal for vagueness where the supporting statement lacks a basic level of precision or focus such that it confuses, rather than clarifies, the requested action. For example, as Lulu pointed out, in *The Boeing Co.* (Feb. 23, 2021) at 10, the proponent requested that the company require 60% of board members to have an "aerospace/aviation/engineering executive background." These terms are highly technical. But the supporting statement did not elaborate on their meaning and instead used seven different and conflicting phrases to describe these same qualities. *Id.* at 3. Additionally, the proposal did not explain whether the slashes were conjunctive or disjunctive, i.e. whether a candidate would need any of the above three types of experience or all three types. *Id.* at 2–3.

In *AT&T Inc.* (Feb. 21, 2014), the proposal asked for disclosures on "the company's policies and procedures relating to directors' moral, ethical and legal fiduciary duties" to protect "the privacy rights of American citizens." But the supporting statement

[1] Page numbers refer to pdf page numbers of the no-action packets available on the SEC's website at https://www.sec.gov/rules-regulations/shareholder-proposals?.

refused to elaborate on what "privacy rights" meant beyond "voluminous media coverage of this issue provides all the context necessary." *Id*. at 8. And the company noted that it was unclear whether "moral, legal, and fiduciary" modified "opportunities" and, if so, what exactly "moral, legal, and fiduciary opportunities" were. *Id*. Lulu also points to "politically charged biases" in *Walt Disney Co. (Grau) (Jan. 1 9, 2022)*. NAR at 3. But there, the proposal submitted was replete with grammatical and syntactical errors, made references to a "woke cult" and "supremacy innuendos," and made several conflicting requests throughout the proposal. *Id*. at 13–14.

2. The Proposal asks for a typical risk report on Lulu's impacts on free speech and religious freedom, so Lulu cannot come close to showing it is impermissibly vague.

Here, Lulu cannot come close to its burden of showing that the Proposal is so vague that it fails to provide reasonable certainty about what it is asking for. It asks for a risk report, not some indefinite reform, on the Company's charitable partnerships. This is materially identical to Staff's decision in *Deere and Co.* (Jan. 6, 2025). There, like here, the proposal focused on the company's support for controversial nonprofit organizations and asked for a report detailing the "risks related to discrimination against individuals based on their speech or religious exercise" arising from that support. Deere argued that the terms "risks," "individuals," and "based on their speech or religious exercise" were vague under Rule 14a-8(i)(3). *Id.* at 7. But Staff rightly rejected that argument.

Lulu argues that the terms "risks" and "individuals" are undefined and that the Supporting Statement is inconsistent and undefined as to "free speech and religious exercise." But "risks" is a term readily understood in the business world. "Individuals" needs no definition and refers, like many proposals, to broad stakeholder impacts. And the Supporting Statement readily identifies numerous examples of conservative and religious speakers and views that are being censored for their free speech and religious exercise on a wide variety of social and political issues.

First, Staff have recently rejected vagueness challenges to the term "risks." *Deere and Co.* (Jan. 6, 2025); *Meta Platforms, Inc. (H.E.S.T.)* (Apr. 2, 2022) ("report on (1) the risks created by Company business practices that prioritize internal financial returns over healthy social environmental systems . . . "); *Alphabet, Inc. (CtW)* (Apr. 16, 2021) ("risks" related to anticompetitive board practices). In both instances, Staff were unpersuaded by the companies that argued, just like Lulu here, that the term "risks" was imprecise because it did not specify which of the many types of "business," "legal," or other categories of risk it included. *Meta* at 6; *Alphabet* at 16.

That is because businesses often evaluate many types of risks on particular issues. Lulu, of course, also understands this, which is why it notes that it "faces numerous categories of risk as a business, including business risks, legal risks, compliance risks,

and reputational risks." Although Lulu argues that because the Proposal "does not clarify whether it is referring to financial risks, regulatory risks, litigation risks, or other forms of potential harm," the type of risks needing to be studied is somehow unknowable. But it seems likely that Lulu would object that a more specific request for a study on a particular type of risk is trying to "micromanage" the company. The term "risk" is not vague or imprecise simply because Lulu, like most companies, faces multiple risk categories. Indeed, Lulu has a very thorough understanding of the term risk as demonstrated in its response. The Proponent here appropriately defers to Lulu to identify the appropriate risks that politically biased charitable giving presents to the Company, a function for which Lulu has ample expertise and experience.

Lulu, of course, also understands this, which is why in every annual report it lists all of the various risk factors to its business.[2] The SEC's own guidance for companies in filing their annual reports even identifies and defines "risk factors" to broadly include information about the most significant risks that apply to the company or to its securities."[3] Staff Bulletin 14E also discusses "proposal[s] related to risk" at length without ever suggesting that "risk" evaluations present any vagueness issues. Division of Corporate Finance, Staff Legal Bulletin 14E (Oct. 27, 2009).

Second, the term "individuals" is plain and commonly understood to mean individual persons. Lulu proceeds to outline several types of individuals: "the Company's employees, customers, suppliers, shareholders, or members of the public more broadly" and is unsure to which subset of those persons it applies. The answer is that it applies to any and all persons, indeed any American citizen, affected by the SPLC, HRC, or other nonprofit groups that are trying to censor conservative and religious views. This includes not only persons that are directly targeted, but individuals who support those persons or agree with their views. And it is purposefully broader than Lulu's existing customers or direct victims of corporate censorship through "hate speech" labels.

The broad focus surprises Lulu, but it is entirely consistent with numerous Staff recommendations that have rejected vagueness challenges to proposals seeking information on broad discrimination and political bias impacts that extend beyond a company's direct business relationships. See, e.g., *Deere and Co.* (Jan. 6, 2025); *Warner Bros. Discovery, Inc.* (Apr. 8, 2024) ("review the impact of the Company's policy positions and advocacy on matters relating to the Company's financial sustainability," particularly regarding "executive political/social preferences over sound business judgment"); The *Travelers Co., Inc.* (Mar. 30, 2023) (third-party audit on "improving the racial impacts of its policies, practices, products, and services" and

[2] SEC, Form 10-K, lululemon athletica inc. at 10–23, https://corporate.lululemon.com/~/media/Files/L/Lululemon/investors/annual-reports/lululemon-2023-annual-report.pdf.

[3] SEC Investor Bulletin: How to Read a 10-K at 2 (Sept. 2011), https://www.sec.gov/files/reada10k.pdf.

receiving "[i]nput from stakeholders, including civil rights organizations, employees, and customers"); *CVS Health Corp.* (Mar. 17, 2022) (audit on "the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business").

Although Lulu claims to have a difficult time understanding the meaning of this term in light of the Proposal and Supporting Statement, the terms are easily understood, as is the request. The Proposal highlights a study that "found that 62% of some of the largest companies in America *support non-profits* that are influencing public policy by *actively attacking free speech* and *religious freedom*, as well as pressuring companies into public stances on *divisive political issues*." If Lulu does not support such non-profits, why not say so? If Lulu is partnered with non-profits that might be actively attacking free speech and/or religious freedom, or which might pressure it to take a public stance on a divisive political issue, then its shareholders deserve an analysis of how these partnerships impact Lulu's risks related to discrimination against individuals based on their speech or religious exercise. Given Lulu's focus on upstream influences to social problems, as well as its commitment to inclusion, it is surprising that the Company would seek to exclude a proposal to study whether its partnerships are contributing to human rights discrimination.

Indeed, a key component of Lulu's brand and business initiatives is its "Inclusion, Diversity, Equity, and Action (IDEA) mission.[4] Lulu seeks to "Expand being well to encompass a culture of inclusion where diversity is celebrated, equity is the norm, and action is the commitment." Global Head of IDEA, Stacia Jones, states that "Inclusion puts our employees, guests, ambassadors, and business partners at the center of everything we all do." And indeed, the Inclusion for All page lists four key groups: Employees, Guests, Business Partners, and Communities. Although "Business Partners" and "Communities" may not be individuals, the descriptions are instructive. "Business Partners" notes that Lulu works "with partners who *share our values* and collaborate with us to uphold robust standards, *address systemic challenges*, and support the wellbeing of people who make our products or otherwise support our business." (emphasis added). The communities tab notes that Lulu is "committed to creating positive change in the communities we serve through positive engagement and by partnering with organizations that address wellbeing inequities. " Accordingly, Lulu has spelled out at least two groups of individuals that will be affected by its charitable partnerships and believes in selecting charitable partnerships that share its values. The Proposal is not vague: instead, it is squarely within the types of issues that concern Lulu and its board.

Third, Lulu says that the Supporting Statement "shifts the emphasis away" from speech and religious exercise "and instead highlights a broad and unrelated set of political and social issues, including topics such as abortion, economic systems, law enforcement policies, and gender-related rights and roles." NAR 4. The clear point of

[4] Lululemon, *Inclusion for all,* https://corporate.lululemon.com/about-us/inclusion-for-all

the entire Proposal is that groups like Don't Ban Equality are trying to push companies to adopt divisive stances that alienate millions of customers, employees, and other stakeholders who hold mainstream conservative and religious views.[5] Whether employees who disagree with this stance because of religious views, customers who wish to boycott companies that take this view, or others who believe that abortion is an important social debate but is not a workforce or economic issue, there are plenty of people whose disagreement with Don't Ban Equality's position may mean that Lulu's partnership risks discrimination or silencing speech. Put another way, no one can express any views on a political issue without free speech. Taking a corporate position on such a polarizing social topic runs the risk of discrimination or quashing human rights. The Proposal requests a study to better understand that risk.

The Supporting Statement also flags Lulu's involvement with Black Lives Matter, Reclaim the Block, and hosting anti-capitalism and decolonizing gender events. Each of these may be tied to polarizing social issues that touch on the freedom of speech and of religion, and directly pressuring corporations to promote, and thus normalize, what the Proponent thinks are harmful and partisan social practices. Staff showed that they understood the relationship between free speech and political engagement when they approved of the proposal in *DICK'S Sporting Goods, Inc.* (Apr. 22, 2024), which asked for a "viewpoint diverse board" to remedy the "hyper-politicized business climate" at Dick's.

This also includes direct efforts to censor speech and religious views. For example, Black Lives Matter activists have pressured social media companies to censor alleged "misinformation" resulting from the George Floyd riots[6] and pressured a New York Times journalist into resigning because he approved an op-ed from a Republican Senator on the riots.[7]

A reasonable shareholder and company would understand this. Recent press has shown and the Supporting Statement states that there has been a public outrage over companies like and including Lulu because, in addition to promoting DEI, they have partnered with organizations like Don't Ban Equality and Black Lives Matter, which

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[5] For example, no one should be surprised that Americans who are religious show a much higher likelihood of believing that there are only two genders, compared to non-religious Americans. Yonat Shimron, Poll: Most religious Americans believe there are only two genders and oppose abortion. RNS (June 8, 2023), https://religionnews.com/2023/06/08/poll-most-religious-americans-believe-there-are-only-two-genders/; Pew Research Center, *Public Opinion on Abortion* (May 13, 2024), https://www.pewresearch.org/religion/fact-sheet/public-opinion-on-abortion/.

[6] Cheryl Corley, *Black Lives Matter Fights Disinformation to Keep the Movement Strong*, NPR (May 25, 2021), https://www.npr.org/2021/05/25/999841030/black-lives-matter-fights-disinformation-to-keep-the-movement-strong.

[7] Rishika Dugyala, *NYT opinion editor resigns after outrage over Tom Cotton op-ed*, The New York Times (June 7, 2020), https://www.politico.com/news/2020/06/07/nyt-opinion-bennet-resigns-cotton-op-ed-306317.

many perceive as far-left groups. The mere fact that the Proposal discusses these partnerships from a different perspective than what Lulu may hold does not mean it is vague, much less so vague that it amounts to a materially false or misleading proposal.

3. If any deficiency exists, it is curable.

Staff have a longstanding practice of allowing "shareholders to make revisions that are minor in nature and do not alter the substance of the proposal." SLB 14B. Absent that, Staff have also allowed companies to "exclude portions of the supporting statement, even if the balance of the proposal and the supporting statement may not be excluded." *Id.*

Here, there are no defects that need curing. But even if there were, they would be amenable to minor revisions. Proponent offers the following revisions, should the Staff deem it necessary, as one way to revise the Proposal without excluding it: changing "individuals" to "any stakeholder or other individual," changing "risks" to "reputational, legal, and other risks the Company sees as relevant," and changing "based on their speech or religious exercise" to "based on their speech, religious exercise, or other exercise of civil rights."

B. The Proposal is not irrelevant under Rule 14a-8(i)(5) because significant policy issues like charitable giving are "otherwise significantly related to the company's business."

Lulu argues that the proposal is not relevant to the company under Rule 14a-8(i)(5) because it does not meet the 5% threshold. But a Proposal can independently satisfy the Rule by being "otherwise significantly related to the company's business." The Commission and Staff have consistently effectuated this part of the Rule by approving of Proposals that deal with issues of broad social concern, like and including charitable giving, discrimination, and upholding civil rights. The Proposal here falls well within these contours and easily satisfies (i)(5).

Under Rule 14a-8(i)(5), a company may exclude a proposal for lack of relevance "[i]f the proposal relates to operations which account for less than 5 percent" of the company's sales, assets, and earnings, and the proposal "is not otherwise significantly related to the company's business." In Staff Legal Bulletin 14M, Staff stated that it would not rely on *Lovenheim v. Iroquois Brands, Ltd., 618 F. Supp. 554 (D.D.C. 1985)* and subsequent interpretations of the rule by Staff, but would instead focus on "the Commission's prior statements on the rule." Division of Corporate Finance, Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M").

In 1976, the Commission stated that it did "not believe that subparagraph (c)(5) should be hinged solely on the economic relativity of a proposal." Securities Exchange Act Release No. 12,999, 41 Fed. Reg. 52,994, 52,997 (1976). This is because "there are many instances in which the matter involved in a proposal is significant to an issuer's

business, even though such significance is not apparent from an economic viewpoint." Id. This includes "proposals dealing with cumulative voting rights or the ratification of auditors," *id*., and may include "political contributions" as well as other "political, racial, religious, social" or similar issues that have a significant, though not readily quantifiable, impact on the company.

In its 1982 proposed amendments for economic relevance, which were eventually adopted in 1983, the Commission explained that "while a particular corporate policy" may involve "an arguably economically insignificant portion of an issuer's business, the policy may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities." 1982 Proposed Rule, Securities and Exchange Commission, 47 Fed. Reg. 47420-01, 47428 (Oct. 26, 1982) ("1982 Proposed Rule").

The Commission cited several proposals as examples of ones that would satisfy the new rule. These included proposals asking a power company to "cease the planning and construction of nuclear power plants" due to controversy over nuclear power concerns, *Long Island Lighting Co.* (Feb. 11, 1980), and asking a pharmacy and medical goods company to make "changes in the company's marketing and distribution of infant formula products" because of significant controversy over public health issues from formula. *Am. Home Prods. Corp.* (Feb. 13, 1976); see also 1982 Proposed Rule at 47428 n.44. Around the same time, Staff also approved a proposal asking shareholders to be informed as to all aspects of a company's business in European communist countries, presumably because of the political, regulatory, and legal ramifications extant at the time.

Further, "the burden is on the issuer to demonstrate that this or any other provision of Rule 14a-8 may properly be relied upon to omit the proposal." *Id*. Consistent with SLB 14M, this means that a company must show both that the proposal is not related to 5% of the company's assets, net earnings, or sales, and that it is not otherwise significantly related to the company's operations.

Lulu cannot carry its burden. It states without elaboration that the "total amount contributed in the most recent fiscal year represents less than 1% of each of the Company's total assets and net revenue, and less than 2% of its net income." But given Lulu's focus on charitable partnerships, not just on charitable giving, and its focus on effecting social change more generally, it is not clear from Lulu's response whether its charitable partnerships might encompass more than mere donations and might therefore rise to the 5% threshold. For example, Lulu's charitable partnerships relate closely to its public relations and reputation, which would very likely satisfy the 5% economic threshold. More importantly and as explained below, charitable giving, discrimination, and civil rights are consistently recognized as "issues of broad social or ethical concern." Sec. C, infra.

The rule requires the Company to tally any operations "the proposal relates to," which includes not only charitable donations, but in-kind donations and other non-monetary support, related compliance and public relations costs, strategy, risk assessment, and other various operations around reputation and brand management. But Lulu does not appear to have included any of these costs in its count. These related expenses could bump the significance to north of 5% of Lulu's assets or revenue.

Even more than other companies, Lulu treats its charitable partnerships as a key piece of its culture and business. CEO Calvin McDonald is quoted on the "Our Impact" page, saying, "Impact is an essential part of our culture and our business. Our Impact Agenda is the ultimate opportunity to live into our purpose."[8] Lulu's homepage includes the following headers: Sustainability; Social Impact; Diversity and Inclusion. Under the "About Us" section, "Our Business" starts with the header "Innovating for Success," which notes that "We are constantly looking for new ways to support our guests, our collective, and our planet." The "Our Impact" tab says that the company brings "A holistic approach to equity, wellbeing, and sustainability." It continues: "Our purpose comes to life every day through our actions to drive meaningful, positive change in the world. For over 25 years, we have worked to create value in our communities through movement, mindfulness, and connection, and in the face of global challenges, we are on a journey to address social and environmental barriers to collective wellbeing." The About Us page makes clear in bold font: "We are a purpose-driven brand and our values guide us in all that we do – from our business strategy and innovation, to how we connect and build our strong culture."

Even if Lulu met its burden on the 5% analysis, this issue is still "otherwise significant." Abortion, Black Lives Matter, police funding/Reclaim the Block, resisting capitalism, and decolonizing gender have each generated intense public controversy. Similar to the above precedent from the 1976 proposed rule, this raises a significant risk, well beyond mere possibility, of reputational and economic harm. Lulu tries to avoid this by obscuring the possible connections between the Proposal and the Supporting Statement. But as the Proposal notes and as explained below, the Proposal and the Supporting Statement may well be connected and Lulu's risks may be outweighing any purported benefits.

Lulu, incredibly, argues that the Proposal "is not significantly related to the Company's business." NAR 6. Lulu relies on its charitable giving falling beneath the 5% threshold and states without supporting evidence that "the Proposal does not raise social or ethical concerns that are significantly related to the Company's business." This might have worked had the burden remained with the shareholders offering the proposal. But Lulu bears the burden to show that the Proposal meets the

[8] Lululemon, *Our Impact*, https://corporate.lululemon.com/our-impact.

criteria for exclusion and it has not done so in light of the extensive focus on charitable partnerships and social change visible throughout its website.

Instead, Lulu offers a *see* citation to *AT&T Co.* (Jan. 19, 1990), in which a proposal addressing worker relocation was excluded where the economic impact was de minimis. But the Company itself has said that each of its partners shares its values and collaborates with Lulu to "uphold robust standards, address systemic challenges, and support the wellbeing of people who make our products or otherwise support our business." Accordingly, by its own boast, Lulu's charitable partnerships are significantly related to its business.

Lulu's brief reference to AT&T glosses over its own emphasis on its values orientation as a brand, which is the subject of the Proposal. Staff have regularly approved of proposals that were otherwise significantly related to the company's business even though they may not have met the economic relevance test of the rule. See, e.g., *McDonald's Corp.* (Mar. 28, 2025) (risk report on discriminating against ad buyers and sellers based on political or religious status or views); *The Gap* (Mar. 4, 2012) (seeking to end the company's trade partnership in Sri Lanka because of its human rights violations); *Corning Inc.* (Feb. 11, 2015) (governance of Israeli workforce even though Israeli operations accounted for less than 1% of company's assets, earning, and sales). If the Company's charitable partnerships are creating risk related to speech and religious exercise, a report to the shareholders would assist the owners in taking corrective action.

Lulu also mentions *Reliance Steele & Aluminum Co.* (Apr. 2, 2019), which is also misplaced. There, Staff itself took special note that the company made no political contributions, direct or indirect, on a proposal asking for disclosure on said contributions. Much more relevant are *Citigroup, Inc. (Miller/Howard Investments)* (Feb. 26, 2021), and *Devon Energy Corp.* (Mar. 27, 2012), where Staff agreed that proposals focused on political giving met the relevance test even though it did not meet the 5% relevance test.

Next, Lulu claims that the Proposal does not raise social or ethical issues related to its business. But as explained both in the earlier and later sections of this response, groups like Don't Ban Equality make a single viewpoint on a controversial social issue into a workplace issue, which could put the company at risk of religious discrimination against employees who disagree. This and other of Lulu's charitable partners like Black Lives Matter and Reclaim the Block promote what many see as divisive and partisan political issues at companies that negatively impact both the companies that work with them and civil rights broadly.

C. The Proposal focuses on speech and religious discrimination, which the SEC has long recognized as significant social policy issues.

To exclude the Proposal, Lulu must show that the Proposal both relates to the Company's ordinary business operations and that it fails to focus on a significant policy issue. It cannot do either one. Staff have consistently recognized that charitable support does not relate to ordinary business operations. And it has consistently recognized that religious and political discrimination are policy issues significant to many companies in many different contexts.

1. Proposals that focus on a significant social policy issue transcend a company's ordinary business operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." This includes "management of the workforce . . . decisions on production quality and quantity, and the retention of suppliers," which are "tasks 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." Exchange Act Release No. 40018, 63 Fed. Reg. 29106, 29108 (May 21, 1998) (the "1998 Release"). And when assessing a proposal, the Commission looks at the underlying "subject matter" of the proposal, not whether it prescribes a particular policy, board action, or for transparency to address that subject matter. Exchange Act Release No. 20091 (Aug. 16, 1983).

Notwithstanding the above, proposals that "focus[] on sufficiently significant social policy issues" are not excludable under Rule 14a-8(i)(7) even if they relate to ordinary business operations. 1998 Release at 29108. This is because they "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* When determining whether a proposal focuses on a matter of significant social policy, Staff focus on "the significance in relation to the company," Division of Corporate Finance, Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M"), and the "presence of widespread public debate," Division of Corporation Finance, Staff Legal Bulletin No. 14A (July 12, 2002) ("SLB14A"). Staff clarified this approach in Bulletin 14H to correct the misunderstanding that a proposal must both focus on a "significant social policy" and be "divorced from how a company approaches the nitty-gritty of its core business." Division of Corporate Finance, Staff Legal Bulletin No. 14H (Oct. 22, 2015) ("SLB 14H").

Based on this, Staff have approved a variety of proposals that touch on discrete and varying aspects of a company's operations. See, e.g., *Johnson & Johnson* (Mar. 3, 2022) (recommending that company "discontinue global sales of its talc-based Baby Powder" in light of public health risks to customers); *Alphabet, Inc. (Mims Trust)* (Apr. 12, 2022) (report on how company is "address[ing] the human rights impacts of its content management policies to address misinformation and disinformation across its platforms"); *Meta Platforms, Inc. (Cortese)* (Apr. 2, 2022) (report on "potential psychological and civil and human rights harms" from "the use and abuse" of

company's "metaverse project"); *Caesars Entertainment, Inc.* (Apr. 19, 2024) (report on "adoption of a smokefree policy for Company properties").

Were the rule otherwise, shareholders would never be able to address virtually any discrete parts of a company's operations, from advertising to supply chain issues to workforce management. But that is not the case, which is why Staff have consistently and repeatedly approved proposals focusing on different parts, policies, or practices of the company.

2. The Commission and Staff have consistently recognized that proposals focusing on discrimination in civil rights transcend ordinary business operations.

The Commission's and Staff's interpretations of the "significant social policy exception" repeatedly cite discrimination in civil rights matters as prototypical examples of significant social policy issues that transcend ordinary business matters. For example, the Commission's 1998 Release explained that proposals "focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable." 1998 Release at 29108 (emphasis added).

Staff have consistently approved proposals that relate to discrimination in civil rights matters on a wide range of protected characteristics and in many contexts across a company. *See, e.g.*, *JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023) (report on how customer-facing policies "related to discrimination against individuals based on their . . . religion . . . and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights"); PayPal Holdings, Inc. (Apr. 10, 2023) (same); *CVS Health Corp.* (Mar. 17, 2022) (audit on "Company's impacts on civil rights and non-discrimination" arising from employment practices); *McDonald's Corp.* (Apr. 5, 2022) (audit analyzing the "adverse impact" of the company's "policies and practices on the civil rights of company stakeholders"); *CorVel Corp.* (Apr. 10, 2019) (report on "risks associated with omitting 'sexual orientation' and 'gender identity' from its written equal employment opportunity policy").

The Proposal falls in line with the Commission's guidance and Staff's consistent understanding that human rights issues, including speech and religious exercise, are significant policy issues. To the extent that Lulu's charitable partnerships are harming human rights, that is a significant social policy issue that transcends the Company's ordinary business operations.

3. The Proposal focuses on a significant social policy issue and not ordinary business operations.

Consistent with other no-action decisions and other precedent, bulletins, and Commission guidance above, the Proposal here cannot be excluded for relating to

ordinary business operations. Lulu disagrees and says that the Proposal relates to ordinary business matters. This misconstrues the Proposal and its subject matter.

The above shows that Staff and the Commission consider civil rights discrimination, and particularly religious discrimination, to be significant policy issues. And by any measure, they are issues that generate "widespread public debate." SLB 14A. Political/speech and religious discrimination are prohibited by numerous laws.[9] They are becoming increasingly relevant in corporate America through issues like de-banking and de-platforming, which have taken center stage at the Supreme Court and the biggest news outlets in the last year alone.[10]

The Proposal focuses on the risks of religious and political discrimination from controversial charitable partnerships.[11] It is also significant to Lulu. For better or worse, Lulu is not listed on Don't Ban Equality's home page, despite being a member. Might this exclusion have come at Lulu's request and be a sign that Lulu knows this membership increases the risks of discrimination? Further, Lulu is focused on inclusion and equity, among other principles, which surely encompass human rights recognized by the United Nations Guiding Principles on Business and Human Rights. These human rights of course include "freedom of expression" and "freedom of religion and belief." The Proposal is therefore significant to Lulu, whether measured by external impact or its commitment to free speech and religious freedom.

Lulu does not contest that religious or political discrimination are significant social policy issues. Instead, it argues that the Proposal does not focus on a significant policy issue because it instead focuses on matters relating to the Company's ordinary business operations. Lulu says this focus is "evident in both the Company's decisions

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[9] *See, e.g.*, U.S. Const. amend. I; 42 U.S.C. §§ 2000a, 2000e-2, 3604; 15 U.S.C. § 1691; Justia, *Public Accommodations Laws: 50-State Survey*. Political discrimination is also an emerging field in nondiscrimination law. *See, e.g.*, D.C. Code § 2-1402.11; N.Y. Lab. Law § 201-d; Wash. Rev. Code Ann. § 42.17A.495(2).

[10] Justin Jouvenal, *Supreme Court rules official likely violated NRA's free speech rights*, The Washington Post (May 30, 2024), https://www.washingtonpost.com/politics/2024/05/30/nra-first-amendment-rights-supreme-court-vullo/; Abbie VanSickle, David McCabe, and Adam Liptak, *Supreme Court Declines to Rule on Tech Platforms' Free Speech Rights*, The New York Times (July 1, 2024), https://www.nytimes.com/2024/07/01/us/supreme-court-free-speech-social-media.html; Thomas Catenacci, *State financial officers put Bank of America on notice for allegedly 'de-banking' conservatives*, Fox News (Apr. 18, 2024), https://www.foxnews.com/politics/state-financial-officers-put-bank-of-america-on-notice-for-allegedly-de-banking-conservatives; *see also* Jathon Sapsford, *JPMorgan Targeted by Republican States Over Accusations of Religious Bias*, The Wall Street Journal (May 13, 2023), https://www.wsj.com/articles/jpmorgan-targeted-by-republican-states-over-accusations-of-religious-bias-903c8b26.

[11] For an example on company membership in a nonprofit creating risks of discrimination, see *McDonald's Corp. (Bahnsen)* (Mar. 28, 2025) (risk report on advertising censorship based on participation in Global Alliance for Responsible Media).

regarding its charitable contributions and its associations with specific types of organizations." NAR at 9. This analysis errs.

First, taking divisive public stances on controversial social issues and charitable partnerships toward the same are not "ordinary business operations." The Proposal focuses on risks related to speech and religious discrimination. Lulu's operations are focused on creating and selling high-end athleisure wear. It claims in the 14a-8(i)(5) section that its charitable efforts are de minimis and therefore unworthy of shareholder attention. But Lulu has also focused its brand on particular values based around inclusion and equity. The shareholder Proposal asks whether the charitable partnerships Lulu has chosen are undercutting those values and its ultimate profitability by increasing risks of religious and speech discrimination. Presumably, Lulu could incorporate its values through any number of partnerships and charitable groups. The Proposal asks Lulu to evaluate its choices for risk.

Staff have long understood that charitable contributions generally are not part of a company's ordinary business operations. *Wells Fargo & Co.* (Feb. 19, 2010) ("we note that the proposal relates to charitable contributions, which the Division has generally found to involve a matter of corporate policy which is extraordinary in nature and beyond a company's ordinary business operations."). Under this rubric, Staff have consistently approved proposals like the one, which requests a report on the risks associated with discrimination in charitable giving. *See, e.g.*, *Wells Fargo & Co.* (Feb. 19, 2010); *Target Corp. (NCPPR)* (April 19, 2024); *Dell Technologies Inc.* (April 24, 2024); *JPMorgan Chase & Co.* (Mar. 21, 2023); *Levi Strauss & Co.* (March 8, 2024); *Kohl's Corp.* (March 14, 2024).

The cases Lulu cites focus on things squarely within the core operations of a business: cruelty to chickens at *McDonald's* (Mar. 22, 2019) and tax strategy at *The TJX Companies* (Mar. 29, 2011). *See* NAR at 9. But the Proposal does not seek to examine religious and speech discrimination in Lulu's Luon supply chain; nor does it seek to understand whether Lulu's accounting strategy is harming individuals. Instead, the Proposal focuses on significant social policy issues that are not ordinary business operations but could pose significant risks to Lulu and its shareholders. Although charitable contributions may be part of Lulu's corporate strategy, that is an insufficient basis on which to reject the Proposal. *See supra*. Lulu is particularly focused on its brand and partnership identity in fighting for certain social change that it wishes to see and which the Proposal is concerned may be creating discrimination risks. But consider the website for Don't Ban Equality, which lists some businesses that stand with Don't Ban Equality. Surely fighting for abortion access is not part of the ordinary business of an athleisure company? Instead, this is the kind of charitable and corporate activity that relates to significant social policy issues, as it may implicate the foundational human rights of speech and religion.

Second, the Proposal is focused on religious and political discrimination and is similar to the precedent in subsection 2 above. This includes its supporting

statement. See *The Walt Disney Co.* (Jan. 22, 2025) at 17–18; *Johnson & Johnson* (Feb. 28, 2025) at 11–12; The *Coca-Cola Co.* (Mar. 10, 2025) at 13–14; *American Express Co.* (Mar. 12, 2025) at 13–14. All the proposals cite "the US Constitution," censoring religious and political speech, and ultimately ask for a report on "risks related to discrimination" against "political or religious status or views" or "based on [individuals'] speech or religious exercise." These freedoms, and the discrimination against them, are the clear "subject matter" and focus of both proposals. Exchange Act Release No. 20091 (Aug. 16, 1983). Thus, even if the Proposal relates to ordinary business matters, it still focuses on a significant social policy issue and cannot be excluded.

Third, Lulu claims that the Proposal may be excluded "because it relates to political and charitable contributions to specific types of organizations," which it says is "a well-established component of a company's "ordinary business." *See* NAR *at 9.* But "specific types of organizations" is Lulu's phrasing, not the Staff's. Instead, the long list of cases shows that there is no single subject that is on- or off-limits, but instead, Staff makes the determination on a case-by-case basis. Lulu seems to believe that matters related to charitable donations, same-sex marriage, the Boy Scouts, legal funds to defend politicians, Planned Parenthood, and organizations defending unborn persons' rights are somehow off limits because of their subject matter. But Lulu misses the point. Not only are none of these subject matters at issue in the Proposal, many of these cases asked the companies at issue to limit or prohibit their charitable contributions to particular charities or in certain directions. The Proposal here asks no such thing. The Proposal requests a report not on the results or effects of charitable giving, or of donations to any one group, but to look at the partnerships and assess whether there is risk of religious or speech discrimination. That does not, as Lulu claims, "target[] the Company's association with *specific types of organizations* focused on social justice, racial equity, and policy reform, particularly in areas such as policing, criminal justice, and community investment." Lulu again tries to build a string cite (this time "on LGBT issues," "organizations supporting the Black Lives Matter movement," and "organizations supporting abortion and same-sex marriage") insinuating that the Staff takes a position on "specific types of organizations" to obscure that it cannot carry its burden on the 14a-8(i)(7) standard.

D. The Proposal asks for a typical risk report, which is far afield from micromanaging the Company.

Lulu also argues that the Proposal report would micromanage it by claiming that "the Proposal does not merely seek a high-level review of risks associated with charitable donations—it seeks to dictate how the Company engages with specific charitable organizations." Of course, the Proposal does no such thing. It asks for a typical risk report.

This is typical of the proposals for transparency reports that Staff regularly approve. Lulu's strange allegations that "the Supporting Statement makes clear that

the Proponent is opposed to certain organizations . . . and that a goal of the Proposal is for the Company to sever any ties it may have with these groups" doth protest too much. This request does not prescribe specific policies or actions or ask for voluminous amounts of data to second-guess management. Instead, this report would rely on Lulu's expertise to evaluate its charitable partnerships for risk related to speech and religious discrimination so that shareholders can assess Lulu's.

The Commission requires that shareholder proposals not "'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." 1998 Release at 29108. This may happen "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies," *id.*, which would "supplant[] the judgment of management and the board," Division of Corporate Finance, Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K"). "Thus, a proposal framed as a request that the company consider, discuss the feasibility of, or evaluate the potential for a particular issue generally would not be viewed as micromanaging matters of a complex nature." *Id.*

This reading of the rule appropriately accounts for each company's and proposal's particular circumstances while ameliorating the dilemma of crafting a proposal specific enough that the company has not substantially implemented it while being general enough to avoid micromanaging the company.

For this reason, Staff regularly reject micromanagement challenges to proposals asking for a transparency report on particular policies and aspects of a company's business. This includes a report on median gender pay gaps and associated risks, *Bank of America Corp. (Cassily)* (Feb. 21, 2019), a "Human Rights Impact Assessment examining the actual and potential impacts of one or more high risk products sold by Amazon or its subsidiaries," *Amazon.com, Inc. (Oxfam)* (Apr. 1, 2020), "a report on the potential cost savings through adoption of a smokefree policy for Company properties," *Boyd Gaming Corp.* (Mar. 18, 2024), *Caesars Entertainment, Inc.* (Apr. 19, 2024) (same), a "third-party Human Rights Impact Assessment" on Alphabet's "content management policies to address misinformation and disinformation across its platforms," *Alphabet Inc. (Mims)* (Apr. 12, 2022), the misuse of products in war-torn conflict-affected areas, *Texas Instruments Inc.* (Mar. 4, 2024), and underwriting clients who contribute to new fossil fuel supplies, *see, e.g.*, *Citigroup Inc.* (Mar. 7, 2022).

This makes sense. The above transparency reports do not prescribe voluminous disclosures or micromanage the content of the report. Nor are they prescriptive requests for policy changes, unlike many proposal requests. Instead, they are general requests for the company to "consider, discuss the feasibility of, or evaluate the potential for a particular issue." SLB 14K.

Of course, some reports seek such an intricate level of detail that they run afoul of the rule. For example, *Deere and Co.* (Jan. 3, 2022), asked for "annual publication of the written and oral content of any employee-training materials." And *Delta Air Lines, Inc.* (Apr. 24, 2024), sought disclosure of "expenditures," personnel, Board oversight, and company policies related to union suppression. But these proposals sought voluminous disclosures, mostly of raw data and content, that evinced an intent to second-guess management instead of relying on its reasoned business evaluations.

Here, Lulu cites *Paramount Global* (Apr. 19, 2024) and *Merck & Co. Inc.* (Mar. 29, 2023)as instances where the Staff excluded proposals "that would require a company to disclose detailed information about its operations or constrain management's discretion in routine decision-making." NAR at 11. But this Proposal seeks no such thing. In fact, the proposal states that the report should be done "at reasonable expense *and excluding confidential information*." Lulu's objections are inapposite and show a reflexive defensiveness against the Proposal, rather than an understanding of its objectives or the standards consistently set forth by Staff.

Instead, the Proposal is exceedingly deferential to management. It allows Lulu to set the parameters and report, or not, on risks based on what it thinks are material. And rather than seeking voluminous disclosures of raw data to second guess management, the Proposal asks for management's reasoned evaluation of the data. It is just like the other proposals asking for risk reports which the Staff have regularly said do not micromanage. Staff should reject Lulu's challenge.

Conclusion

For these reasons, we request that the Staff reject Lulu's request for relief from Oklahoma's Proposal. A copy of this correspondence has been timely provided to lululemon athletica. If we can provide additional materials to address any queries the Commission may have on this letter, please feel free to contact me.

Sincerely,

Michael Ross

Cc: Michael Hutchings

Partner

DLA Piper LLP