

December 22, 2023

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

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

**Re: The Coca-Cola Company  
Exclusion of Shareowner Proposal by Achmea Investment Management**

Ladies and Gentlemen:

We are writing on behalf of our client, The Coca-Cola Company (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareowners (the “Proxy Materials”), the enclosed shareowner proposal and supporting statement (collectively, the “Proposal”) submitted by Achmea Investment Management (the “Proponent”).

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Proposal is inherently vague and indefinite, and subject to multiple interpretations, or, alternatively, Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company’s ordinary business operations.

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

**Background**

The Proposal submitted by the Proponent states as follows:

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Shareholders request that The Coca-Cola Company (“Coca-Cola” or the “Company”) adopt an enterprise-wide policy to move toward more healthy products, to be defined in the discretion of the Company and beyond sugar reduction. The policy should include an assessment of the current healthiness of its portfolio, targets with timelines and metrics for measuring implementation and disclosure.

A copy of the Proposal and the supporting statement is attached hereto as Exhibit A.

### **Bases for Exclusion**

***The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because the Proposal is inherently vague and indefinite, and subject to multiple interpretations.***

Rule 14a-8(i)(3) permits a company to exclude a shareowner proposal “if the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials.” The Staff has determined that shareowner proposals may be excluded pursuant to Rule 14a-8(i)(3) where “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” See Staff Legal Bulletin No. 14B (September 15, 2004) (“SLB No. 14B”).

The Staff has noted that a proposal may be excludable when the “meaning and application of terms and conditions in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations” such that “any action ultimately taken by the company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal.” See *Fuqua Industries, Inc.* (March 12, 1991). The Staff has also noted that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal fails to define key terms. See, e.g., *The Boeing Company* (February 23, 2021) (permitting exclusion of a proposal requiring that 60% of the company’s directors “must have an aerospace/aviation/engineering executive background” where such phrase was undefined); *Apple Inc.* (December 6, 2019) (permitting exclusion of a proposal seeking to “improve guiding principles of executive compensation” that did not provide an explanation or definition of the key term “executive compensation”); and *AT&T Inc.* (February 21, 2014) (concurring in the exclusion of a proposal requesting a review of policies and procedures related to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined).

The Staff has also consistently permitted exclusion of shareowner proposals under Rule 14a-8(i)(3) as impermissibly vague and indefinite where the proposal contained an essential term or

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phrase that, in applying the particular proposal to the company, was unclear such that neither the company nor shareowners would be able to determine with any reasonable certainty what actions or measures the proposal requires. *See, e.g., Ebay Inc.* (April 10, 2019) (concurring in exclusion of a proposal requesting that the company “reform the company’s executive compensation committee” because “neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the ‘reform’ the [p]roposal is requesting,” and that, therefore, “the proposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading”); and *Cisco Systems, Inc.* (October 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board “not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action,” where it was unclear what board actions would “prevent the effectiveness of [a] shareholder vote” and how the essential terms “primary purpose” and “compelling justification” would apply to board actions).

The Proposal requests that the Company “adopt an enterprise-wide policy to move toward more healthy products (emphasis added), to be defined in the discretion of the Company.” The phrase “move toward more healthy products” is central to the Proposal’s request, yet is inherently vague and subject to an unknown number of interpretations as to what constitutes “move toward” and/or “more healthy products” for this purpose.

In addition, the conclusion as to what actions would be required by the Proposal, if adopted, could vary significantly between the Company and its shareowners, and neither the Company nor its shareowners would be able to determine with any reasonable certainty what constitutes a “move toward more healthy products.”

Notably, it is unclear whether the Proposal is focusing on “products” within or outside of the ready-to-drink beverage industry, because, as noted below, beyond its sugar and calorie reduction efforts, the Company’s portfolio already produces teas, juices, waters and dairy and plant-based beverages, some that are enhanced with vitamins and minerals. The Proposal’s supporting statement references peers “such as Pepsico and Unilever” as companies that use nutrition models as a comparison to the Company. These peers, however, have significant food products in their portfolios, making the comparison apples-to-oranges and potentially misleading shareowners into thinking that the Company has similar product portfolios as those companies or that the Proposal is asking the Company to branch into different and new product offerings. The Proposal’s supporting statement also references nutrition profiling models that include fiber, protein, fat, salt and micronutrients as substances that are crucial to the healthiness of “food and beverage products,” which also supports the Proponent’s failure to recognize the fact that the Company is a total beverage company and does not have food products in its portfolio unlike the peer companies referenced by the Proponent. As a result, shareowners may be misled into believing that any movement toward “more healthy products” will involve food products where

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substances such as fiber, protein, fat and salt are more pronounced. The Company's portfolio of products is already low in fat and salt, and the Company focuses on added sugar because this is the area where the Company has the most opportunity to make progress.

Further, whether within or outside of the ready-to-drink beverage industry, the phrase "more healthy products" could implicate an analysis of a number of general health, weight loss, nutrient-specific, malnutrition, social, economic or other considerations just to name a few. What "more healthy" could mean in any particular context could differ significantly from product to product and from person to person, rendering the Proposal entirely vague and indefinite. Ultimately, given the vagueness of the Proposal and the supporting statement, there is no way for the Company or shareowners to determine with any reasonable certainty what the Proposal actually requests.

In addition, we note the Proposal's supporting statement acknowledges that the Company has identified health and nutrition as a "Priority Topic," but argues that the Company has addressed this topic "solely by focusing on sugar and calorie reduction" (emphasis added). This argument is objectively false, as the Company's portfolio includes several widely marketed teas, juices, waters and dairy and plant-based beverages, some that are enhanced with vitamins and minerals, as part of the Company's approach to health and nutrition.

For these reasons, consistent with the precedent described above, the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(3) on the basis that the Proposal is inherently vague and indefinite, in violation of Rule 14a-9.

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

Rule 14a-8(i)(7) permits a company to exclude a shareowner proposal if the proposal "deals with a matter relating to the company's ordinary business operations." The underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." See *Amendments to Rules on Shareholder Proposals*, Release No. 34-40018 (May 21, 1998) (the "1998 Release").

Further, framing a proposal in the form of a request for an assessment does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See *Exchange Act Release No. 20091* (August 16, 1983); *Johnson Controls, Inc.* (October 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)"); see also *Ford Motor Co.* (March 2, 2004) (concurring with

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the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

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

*A. The Proposal may be excluded because it relates to the Company’s sale of particular products and related policies.*

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the Proposal relates to general business. While the Proposal is inherently vague and indefinite, it is clear the Proposal seeks to address policy about the Company’s product strategy, the thrust and focus of which is the Company’s policies related to the sale of particular products by the Company. In this regard, the Proposal is comparable to many proposals that the Staff has concurred may be excluded under Rule 14a-8(i)(7), where the proposal is a referendum on products or services. For example, in *Mondelēz International, Inc.* (February 23, 2016), a proposal sought a report on the company’s use of nanomaterials. The company argued that the proposal related to its ordinary business decisions, specifically “decisions regarding the ingredients or materials contained in the [c]ompany’s products and/or packaging.” The Staff concurred with the proposal’s exclusion as the proposal “relate[d] to [the company’s] product development.” Similarly, in *The TJX Companies, Inc.* (April 16, 2018), the proposal requested that the board “develop and disclose a new universal and comprehensive animal welfare policy applying to all of [the company’s] stores, merchandise and suppliers.” The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7), noting that “the [p]roposal relates to the products and services offered for sale by the [c]ompany.” See also *Wal-Mart Stores, Inc. (Green Century)* (Mar. 24, 2006) (permitting exclusion of a proposal that requested that the board of directors issue “a report evaluating [c]ompany policies and procedures for systematically minimizing customers’ exposure to toxic substances in products” the company sells under Rule 14a-8(i)(7), noting that the proposal related to the “sale of particular products”); *Amazon.com, Inc.* (March 11, 2016) (permitting exclusion of a proposal requesting that the company “issue a report addressing animal cruelty in the supply chain,” where the supporting statement requested that the report address a number of concerns relating to the company’s policies and guidelines regarding animal cruelty associated with products sold on its website, and the Staff noted that “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)”); *Amazon.com, Inc.* (March 27, 2015) (concurring with the exclusion of a proposal requesting that

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the company disclose the “reputational and financial risks it may face . . . pertaining to the treatment of animals used to produce products it sells” as relating to “the products and services offered for sale by the company”); *Papa John’s International Inc.* (February 13, 2015) (concurring with the exclusion of a proposal requesting that the company include more vegan offerings in its restaurants, despite asserting the proposal would promote animal welfare, as related to “the products offered for sale by the company”); and *Wal-Mart Stores, Inc.* (March 20, 2014) (concurring with the exclusion of a proposal requesting board oversight of determinations as to whether selling certain products that endanger public safety and well-being could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to “the products and services offered for sale by the company”).

Here, the Proposal seeks to steer the direction of the Company’s product portfolio toward a vague concept of healthiness.

The Company is committed to providing a wide portfolio of beverage choices, as reflected in the Company’s 2022 Business and Sustainability Report referenced in the supporting statement, which report addresses the Company’s commitment to reducing added sugar and increasing low- and no-calories offerings, as well as producing teas, juices, waters and dairy and plant-based beverages, some that are enhanced with vitamins and minerals. However, specific decisions regarding the products the Company sells implicate a myriad of factors that are appropriately considered by the Company’s Board of Directors and management. Decisions regarding product safety, the taste and preferences of customers, maintaining product diversity, the products offered by the Company’s competitors, legal and regulatory requirements where products are sold, the availability of sufficient quantity and quality of products to meet demand, and the costs and revenue associated with those sales, are far too complex for consideration by shareowners at an annual meeting and far exceed the scope of shareowner expertise.

As a result, the Proposal is excludable under Rule 14a-8(i)(7) as its thrust and focus concerns specific products the Company offers for sale and would require decisions and judgement on matters that are not appropriate subjects for shareowner action.

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

The established precedent set forth above demonstrate that the Proposal squarely addresses ordinary business matters. An exception to this principle may be made where a proposal focuses on significant social policy issues that transcend the day-to-day business matters of the company. *See 1998 Release*. The Staff most recently discussed its interpretation of how it will consider whether a proposal “transcends the day-to-day business matters” of a company in Staff Legal Bulletin 14L (November 3, 2021) (“[SLB 14L](#)”), noting that it is “realign[ing]” its approach to determining whether a proposal relates to ordinary business with the standards the Commission

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initially articulated in 1976 and reaffirmed in the 1998 Release. Under this realignment, the Staff will “no longer take a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)” but rather will consider only “whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” Staff precedent has established that proposals that refer to topics that might raise significant social policy issues, but which do not focus on or have only tangential implications for such issues, are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business.

The Proponent seeks to cast the Proposal as relating to a significant policy issue simply by using the terms “healthy” and “healthiness” and noting in the supporting statement that the Company “has addressed this topic until now solely by focusing on sugar and calorie reduction,” which the supporting statement states is “insufficient.” However, the mere reference to a generic term describing a broad range of health-focused issues does not alter the fundamentally ordinary business focus of the Proposal. Moreover, the vagueness of the Proposal’s request, as noted above, further removes the Proposal’s request from any clearly identifiable significant social policy issue.

The Staff has consistently concurred in exclusion of shareowner proposals under Rule 14a-8(i)(7) relating to the company’s product offerings, even when they touch upon a policy issue including health concerns, finding that such proposals did not implicate a significant social policy matter. For example, in *The Home Depot, Inc.* (March 4, 2009), a proposal recommended that the company issue a report “on policy options to reduce consumer exposure and increase consumer awareness regarding mercury and any other toxins contained in its private label . . . products.” In its no-action request, the company argued that the proposal did not focus on a significant policy issue and that the proposal’s intent was “to have the Company’s Board of Directors evaluate the business policies and practices related to product selection and labeling, notwithstanding that the [p]roposal refers to environmental concerns.” Further, as the “world’s largest home improvement retailer,” the company argued, “[d]ecisions concerning product selection and the packaging and marketing of products” were “ordinary business concerns.” The Staff concurred with the exclusion of the proposal, noting the proposal “relat[ed] to Home Depot’s ordinary business operations (i.e., the sale of particular products).” Additionally, in *Amazon.com, Inc.* (March 17, 2016), the Staff concurred with exclusion of a proposal requesting a report “on the company’s policy options to reduce potential pollution and public health problems from electronic waste generated as a result of its sales to consumers, and to increase the safe recycling of such wastes,” noting that the proposal “relates to the company’s products and services and does not focus on a significant policy issue.”

Here, the Proposal focuses on the ordinary business issue of the Company’s product portfolio and attempts to cloak the request in a vague concept of “healthy products.” Furthermore, given that the Company’s portfolio of beverages is already low in salt and fat, the focus on offering

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more low and no-sugar beverage choices is exactly the area where the Company can and has had a meaningful impact, which the Proponent concedes in the Proposal and the supporting statement. For the reasons set out above, and in accordance with the above-cited no-action letters, the Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the Proposal squarely relates to the ordinary business operations of the Company and does not implicate a significant social policy issue that transcends ordinary business.

### **Conclusion**

For the foregoing reasons, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(3), on the basis that the Proposal is inherently vague and indefinite, and subject to multiple interpretations, or, alternatively, Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company's ordinary business operations.

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

Best regards,



Alex Bahn

Enclosures

cc: Anita Jane Kamenz, The Coca-Cola Company  
Jennifer Manning, The Coca-Cola Company  
Mark Preisinger, The Coca-Cola Company  
Frank Wagemans, Achmea Investment Management



**EXHIBIT A**

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**Via mail**

the Office of the Secretary  
The Coca-Cola Company  
P.O. Box 1734  
Atlanta, Georgia 30301  
Email: [shareownerservices@coca-cola.com](mailto:shareownerservices@coca-cola.com)

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Ms. Manning,

Stichting Bewaarder Achmea Beleggingspools (“Proponent”), a shareholder of The Coca Cola Company, being the legal owner of the assets of Achmea IM Global Enhanced Equity Fund EUR hedged, hereinafter represented by its sole statutory director Achmea Investment Management, is filing a shareholder proposal for action at the next annual meeting of The Coca Cola Company. The Proponent submits the enclosed shareholder proposal for inclusion in the 2024 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.


Stichting Bewaarder Achmea Beleggingspools has continuously beneficially owned, for at least 1 year as of the date hereof, at least \$25,000 worth of the Company’s common stock.

A representative of the Proponent will attend the stockholders' meeting to move the resolution as required. The proponent intends to hold the requisite number of shares required by Rule 14a-8 through the 2024 annual meeting.

Stichting Bewaarder Achmea Beleggingspools is available to meet with the Company via teleconference on December 11, 12 or 13, 2023 between 9:00-11:00 am EDT. Any co-filers have authorized Stichting Bewaarder Achmea Beleggingspools to conduct the initial engagement meeting, but may participate subject to their availability.

We are available to discuss this issue and appreciate the opportunity to engage and seek to resolve the Proponent's concerns. I can be contacted on [REDACTED] or by email at [REDACTED] to schedule a meeting and to address any questions. Please address any future correspondence regarding the proposal to me at this address.

Sincerely,

**DocuSigned by:**  
  
R.M. Krens  
CIO  
0DB53E7DBD594C2...  
7/11/2023 | 17:12 CET

**DocuSigned by:**  
  
A.P. van Erp  
Directeur Strategisch Portefeuille Advies  
2E84D4CECC71498...  
8/11/2023 | 15:03 CET

Stichting Bewaarder Achmea Beleggingspools, hereinafter represented by its sole statutory director Achmea Investment Management.

*SL*

## Resolved:

Shareholders request that The Coca-Cola Company (“Coca-Cola” or the “Company”) adopt an enterprise-wide policy to move toward more healthy products, to be defined in the discretion of the Company and beyond sugar reduction. The policy should include an assessment of the current healthiness of its portfolio, targets with timelines and metrics for measuring implementation and disclosure.

## Supporting Statement:

Coca-Cola is evolving towards a ‘Total Beverage Company’ with over 200 brands and a global reach<sup>1</sup>. Coca-Cola identifies “Health & Nutrition” as a “Priority Topic”<sup>2</sup>. Coca-Cola has addressed this topic until now solely by focusing on sugar and calorie reduction. This is insufficient because:

- Leading government-endorsed Nutrient Profiling Models (NPM), such as Health Star Rating and Nutriscore, show that the amount of other substances such as fiber, protein, fat, salt and micronutrients are crucial to the healthiness of food and beverage products<sup>3 4</sup>. Only focusing on sugar and calorie reduction does not address the nutritional risks and opportunities for all its products and all the markets in which Coca-Cola is active.
- An increasing number of companies map their product portfolio and inform investors regarding the healthiness of their products. The Access to Nutrition US Index 2022 showed that the number of companies using a NPM rose from 6 in 2018 to 10 out of 11 in 2022, including peers such as Pepsico and Unilever<sup>5,6</sup>. In this index, only Coca-Cola has not adopted a NPM. Therefore shareholders cannot assess if the Company is adapting to potential regulation, the impact of weight-loss medicines and changing consumer preferences.
- The Access to Nutrition Index advised Coca-Cola to:
  - “formally adopt (in a public document or policy) a nutrition strategy covering all forms of malnutrition and groups affected and to more explicitly include nutrition-related Key Performance Indicators (KPIs) in its sustainability agenda”.
  - “independently verify the proportion of the company’s global portfolio consisting of low- or no-sugar beverages and preferably the overall proportion of ‘healthy’ products. To report on the latter, the company is advised to formally adopt a Nutrient Profiling Model (NPM) to define ‘healthy’, or publicly align the number of low- or no-sugar beverages with external benchmarks to ensure these products support healthy diets as much as possible.”<sup>7</sup>

In its 2021 Proxy Statement, Coca-Cola recognizes the importance of this Index and its findings, stating that “Part of the value of the Access to Nutrition Foundation findings in the

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<sup>1</sup> [Vision :: The Coca-Cola Company \(KO\)](#)

<sup>2</sup> <https://www.coca-colacompany.com/content/dam/company/us/en/reports/coca-cola-business-sustainability-report-2022.pdf#page=34>

<sup>3</sup> [Health Star Rating - Health Star Rating](#)

<sup>4</sup> [IARC Evidence Summary Brief 2.pdf \(who.int\)](#)

<sup>5</sup> [Unilever Portfolio Assessment Against 6 Nutrient Profiling Models 2022](#)

<sup>6</sup> [pepsico-nutrition-criteria.pdf](#)

<sup>7</sup> [Coca-Cola – Access to Nutrition](#)

Global Index is that the Company now has a benchmark and improved awareness of where it stands compared to other manufacturers in the food and beverage industry<sup>8</sup>.

Our proposal aims to support, evolve and create accountability regarding the strategy of Coca-Cola to be a "Total Beverage Company".

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<sup>8</sup> [0001206774-22-000669.pdf \(coca-colacompany.com\)](#)