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

DIVISION OF
CORPORATION FINANCE

January 6, 2025

Edward R. Berk
Deere & Company

Re: Deere & Company (the "Company")
Incoming letter dated October 22, 2024

Dear Edward R. Berk:

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

The Proposal requests that the Company report to shareholders annually an analysis of how the Company's contributions 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) because we are unable to conclude that the Proposal is not otherwise significantly related to the Company's business.

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.

Deere & Company
Law Department
One John Deere Place, Moline, IL 61265 USA
Phone: (309) 748-2674
Fax: (309) 749-0085
Email: BerkEdwardR@JohnDeere.com

Edward R. Berk
Vice President, Associate General Counsel &
Corporate Secretary

October 22, 2024

VIA ONLINE SHAREHOLDER PROPOSAL FORM

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

Re: *Shareholder Proposal to Deere & Company by the American Family Association*

Ladies and Gentlemen:

This letter is submitted on behalf of Deere & Company, a Delaware corporation (the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude a shareholder proposal and related supporting statement (the "Proposal") submitted by Bowyer Research, Inc., on behalf of the American Family Association (the "Proponent"), from its proxy materials for its 2025 Annual Meeting of Shareholders (the "2025 Proxy Materials"). The Company received the Proposal on September 10, 2024. For the reasons set forth below, we request confirmation that the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2025 Proxy Materials in reliance on the provisions of Rule 14a-(i)(3), Rule 14-8(i)(5), and Rule 14a-8(i)(7) under the Exchange Act, as described below.

This submission is being delivered via the Commission's online shareholder proposal portal. As required by Rule 14a-8(j), this letter and its attachments are concurrently being sent to the Proponent as notice of the Company's intent to omit the Proposal from its 2025 Proxy Materials no later than eighty (80) calendar days before January 10, 2025, the date the Company currently intends to file its definitive 2025 Proxy Materials with the Commission. Rule 14a-8(k) and Staff Legal Bulletin 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we hereby notify the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff in response to this letter, a copy of that correspondence should be concurrently provided to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at the 2025 Annual Meeting of Shareholders:

> **Resolved:** Shareholders request that John Deere report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how

John Deere's contributions impact its risks related to discrimination against individuals based on their speech or religious exercise.

A copy of the Proposal, as well as all related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading, Rule 14(8)(i)(5) because the Proposal relates to a concern that is not economically significant or otherwise significantly related to the Company's business, and Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because it Is Impermissibly Vague and Indefinite so as to Be Inherently Misleading

The Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague and indefinite. Specifically, neither the shareholders 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.

A. Background on Rule 14a-8(i)(3)

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Specifically, Rule 14a-9(a) provides that "[n]o 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..." *See also New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992) (stating that "[s]hareholders 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 interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with exclusion of shareholder proposals on the basis 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." In addition, 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 [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *See Fuqua Industries, Inc.* (Mar. 12, 1991) ("Fuqua"); *The Walt Disney Co.* (Grau) (Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) as vague and indefinite a proposal that requested a prohibition on communications by or to cast members, contractors, management, or other supervisory groups within the Company of "politically charged biases regardless of content or purpose," where the Staff stated that "in applying this proposal to the [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests"); *eBay Inc.* (Apr. 10, 2019) (permitting 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 [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading"); *Cisco Systems, Inc.* (Oct. 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); *General Electric Company* (Jan. 21, 2011) (allowing exclusion of a proposal requesting implementation of more long-term incentives because it was impermissibly vague in explaining how the program would work in practice, including the "[f]inancial [m]etric(s)" that would be used in implementing the proposal).

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 The Boeing Company* (Feb. 23, 2021) (permitting exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where the term "aerospace/aviation/engineering executive background" was undefined); *Apple Inc.* (Dec. 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"); *AT&T Inc.* (Feb. 21, 2014) (permitting 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); *Fuqua* (concurring that a proposal that sought to prohibit "any major shareholder…which currently owns 25% of the Company and has three board seats from compromising the ownership of the other stockholders," could be excluded under Rule 14a-8(i)(3), where the meaning and application of such terms as "any major shareholder," "assets/interest," and "obtaining control" would be subject to differing interpretations).

B. Neither Shareholders Voting on the Proposal, Nor the Company in Implementing the Proposal (If Adopted), Would Be Able to Determine with Any Reasonable Certainty Exactly the Scope of the Report Required by the Proposal

The Proposal requests that the Company produce an annual report to shareholders with "an analysis of how John Deere's contributions impact its risks related to discrimination against individuals based on their speech or religious exercise." The Proposal and the supporting statement fail to define, elaborate on, or provide any guidance with respect to various essential elements of the requested report, including the types of risks the Company faces that are related to discrimination, the individuals that are the subject of such purported discrimination, and the rights that form the basis of such discrimination.

First, neither the Proposal nor the supporting statement defines the types of "risks" that should be the subject of the report. In its activities, the Company is exposed to multiple types of risks, including strategic business risks, risks related to its workforce, risks related to its supply chain, legal and compliance risks, litigation risks, oversight risks, and many others. Yet neither the Proposal nor the supporting statement clearly identifies, or provides guidance with respect to, the categories of risks that the Proponent believes the Company may face as a result of its charitable contributions. It appears as though the Proponent is advocating some form of "guilt by association" and that by allegedly contributing to organizations holding an ideological position with which the Proponent disagrees, the Company is at risk of incurring undefined harm. However, the Proposal does not, at any point, indicate what form that harm might take. As such, a voting shareholder would be unable to determine with any confidence what sort of report would result from the Company's adoption of the Proposal, and the Company itself would be unable to produce a report that voting shareholders may have expected to receive.

Second, the Proposal's reference to "individuals" is also vague and undefined and the supporting statement does not offer any guidance with respect to its interpretation. Instead, the supporting statement refers to broad, and even unrelated, categories of groups and individuals, including "mainstream political and religious groups and individuals," groups that uphold "mainstream views on parental rights and human sexuality," the Company's "diverse customers" and "employees and all workers in [the] value chain," and even "every American." As a result of the various interpretations that can be given to the term "individuals" within the context of the Proposal and the supporting statement, the Company's report produced in response to the Proposal could be significantly different than the one envisioned by a voting shareholder.

Similarly, the Proposal's resolution references to discrimination against individuals "based on their speech or religious exercise" is rendered vague by the supporting statement, which is not focused on speech or religion but instead canvasses a wide variety of issues, including perceived discrimination against political groups, parental rights, human sexuality, and gender equality in law and culture, as well as indefinite gestures to "fundamental freedoms." It is impossible for shareholders to know whether they are truly voting on the production of a report that analyzes discrimination based on speech and religious exercise, or whether they are voting for a report analyzing political activities, parental rights, rights related to human sexuality, equal rights for women, or other "fundamental" but undefined freedoms. Similarly, if the Proposal was adopted, the Company in its implementation, would be unable to determine with reasonable certainty the scope and nature of the rights that should be covered by the requested report.

The failure to resolve these ambiguities in the Proposal render it so vague as to be materially misleading, since, as the Staff noted in *Fuqua*, "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." If shareholders were to approve the Proposal pursuant to their particular interpretations of the risks, individuals, and rights to be covered by the report, the Company would have no consistent direction or guidelines with respect to how the Proposal should be implemented. The Company's Board would then have to choose among multiple reasonable interpretations for implementing the Proposal, any one of which could be very different from what the shareholders approving the Proposal envisioned.

The Proposal cannot be amended to fix these ambiguities without introducing definitions (including definitions of "risks" and "individuals") and making substantial changes to the supporting statement (including relating to the actions of various not-for-profit organizations with respect to various rights and freedoms) that would result in transforming the Proposal into a substantially different proposal. According to SLB 14B, the Staff has had:

> a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. [It] adopted this practice to deal with proposals that comply generally with the substantive requirements of Rule 14a-8, but contain some minor defects

> that could be corrected easily. [Its] intent to limit this practice to minor defects was evidenced by [its] statement in SLB 14 that [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules.

In this case, the Proposal's resolution and supporting statement are so vague and indefinite that the Proponent would need to make major substantive revisions in order to allow shareholders and the Company to determine with any reasonable certainty exactly what actions or measures the proposal requires.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is inherently vague and indefinite in violation of Rule 14a-9.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because the Proposal 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 on how "John Deere's contributions impact its risks related to discrimination against individuals based on their speech or religious exercise." The Proponent has failed to show how the Company's charitable contributions and the undefined risks relating to discrimination of undefined individuals based on their speech or religious exercise (or other freedoms) significantly relate to the Company's business.

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

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded "[i]f the proposal relates to operations which account for less than five percent of the company's total assets at the end of its most recent fiscal year, and for less than five percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." In proposing changes to the previous version of the rule in 1982, the Commission noted that the Staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, *raised by* the issuer's business, and the issuer conducts any such business, no matter how small, the Staff has not issued a no-action letter with respect to the omission of the proposal." Exchange Act Release No. 19135 (Oct. 14, 1982) (emphasis added).

In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff reaffirmed its historic approach of interpreting Rule 14a-8(i)(5) and noted that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)."

B. The Proposal Is Not Related To The Company's Business.

While the Company makes charitable contributions to a wide array of recipients through the John Deere Foundation (the "Foundation"), the magnitude of the Foundation's contributions is not significant to the Company's business under the standards of Rule 14a-8(i)(5).The Company has confirmed that for its fiscal year 2024, the Foundation's total charitable contributions will represent less than one percent of each of the Company's net income, total revenue, and assets.

Nor does the Proposal relate to broad social or ethical concerns *arising* from the Company's business. *See Reliance Steel & Aluminum Co.* (Apr. 2, 2019) (concurring with the exclusion of a proposal requesting a report on political contributions and expenditures that contains information specified in the proposal where the proposal related to operations that accounted for less than five percent of the company's total assets, net earnings, and gross sales for its most recent fiscal year and were not otherwise significantly related to the company's business); *AT&T Co.* (Jan. 19, 1990) (concurring with the exclusion of a proposal addressing the company's expansion and resulting relocation of workers and jobs where any specific activity by the company would have a de minimis impact on the company's operations, and the impact of its activities on general housing costs in affected areas was too remote). The Proposal and the supporting statement make generalized assertions and address practices and issues that are not related to the business of the Company. For example, the supporting statement includes a paragraph devoted to the Southern Poverty Law Center (the "SPLC") but does not even attempt to make a connection between the SPLC and the Company. In fact, the SPLC has not been a recipient of any grant from the Foundation in its fiscal year 2024. . The supporting statement also alleges (without evidence) that the Human Rights Campaign has induced corporations like Anheuser-Busch and Target to make marketing decisions that have severely and permanently harmed their brand value, and makes passing remarks that the Company has not severed ties with this organization; however, the Proposal fails to name a single marketing, business, or any other decision the Company has made as a result of any connection with the Human Rights Campaign or other charitable organizations, much less that any such decision may have caused harm to the Company's brand or other assets. Moreover, the supporting statement states that "John Deere needs to assure its shareholders that it is promoting fundamental freedoms that benefit every American"; however, the Proposal and the supporting statement fail to demonstrate what the fundamental freedoms of every American have to do with social or ethical concerns *arising* from the Company's business. As such, neither the Proposal nor the supporting statement demonstrate how the broad claims included therein are in any way, much less significantly, related to the Company's business within the meaning of Rule 14a-8(i)(5).

Here, the Proposal relates to operations that are not economically significant to the Company, and much of the supporting statement consists of broad unsupported assertions that are not applicable to the Company's business. Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(5) because the Proponent has not demonstrated that the Proposal is economically relevant to the Company's operations or is otherwise significantly related to the Company's business.

III. 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 may be excluded under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business—specifically, the Company's charitable donations. As discussed below, Rule 14a-8(i)(7) permits the exclusion of shareholder proposals such as this one that relate to a fundamental day-to-day matter that is impracticable to submit to 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." According to the Commission, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word; instead, the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified, as a central consideration that underlies this policy, the concept 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.* Moreover, a shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has long held that a proposal requesting the preparation of a report may be excludable under Rule 14a-8(i)(7) where the subject matter of the report involves the ordinary business of the issuer. See Exchange Act Release No. 34-20091 (Aug. 16, 1983). An additional consideration stated in the 1998 Release is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

A proposal's request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. The Staff indicated in Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E") that in evaluating shareholder proposals that request a risk assessment the Staff:

> 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…[S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

Consistent with its positions in SLB 14E, the Staff has repeatedly concurred in the exclusion of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See The TJX Companies, Inc.* (Mar. 29, 2011) (concurring in exclusion under Rule 14a-8(i)(7) 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); *Amazon.com, Inc.* (Mar. 21, 2011) (same); *Wal-Mart Stores, Inc.* (Mar. 21, 2011) (same); *Lazard Ltd.* (Feb. 16, 2011) (same); *Pfizer Inc.* (Feb. 16, 2011) (same).

B. The Proposal Does Not Transcend the Ordinary Business of the Company

In accordance with the policy considerations underlying the ordinary business exclusion, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals that focus on contributions to specific organizations or types of organizations. For example, in *The Walt Disney Co.* (Nov. 20, 2014), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting the company to "preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions" as relating to the ordinary business matter of "charitable contributions to a specific organization." *See also JPMorgan Chase & Co.* (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.* (Feb. 4, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the company form a committee to "solicit feedback on the effect of anti-traditional family political and charitable contributions" as relating to the ordinary business matter of "contributions to specific types of organizations"); *PepsiCo* (Feb. 24, 2010) (agreeing with the exclusion of a proposal to prohibit support of organizations that reject or support homosexuality, noting that the proposal related to "charitable contributions directed to specific types of organizations"); *Target Corp.* (Mar. 31, 2010) (concurring in exclusion of a proposal requesting a report on charitable donations and a feasibility study of policy changes, "including minimizing donations to charities that fund animal experiments," on the basis that it related to the company's ordinary business operations in that it concerned "charitable contributions directed to specific types of organizations"); *Wachovia Corp.* (Jan. 25, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal recommending that the board disallow the payment of corporate funds to Planned Parenthood and any other organizations involved in providing abortion services as relating to the company's "ordinary business operations (i.e., contributions to specific types of organizations).")

Here, the Proposal focuses on charitable donations to non-for-profit organizations that are influencing public policy by, in the eyes of the Proponent, attacking free speech and religious freedom, and more specifically to the SPLC and the Human Rights Campaign. Thus, as in the precedent cited above, the Proposal clearly focuses on contributions to specific organizations or types of organizations, which the Staff has consistently determined is a matter relating to the company's ordinary business operations.

A proposal relating to ordinary business matters such as routine charitable giving is excludable under Rule 14a-8(i)(7) regardless of whether it focuses on a significant policy issue. Although the Commission has stated in the 1998 Release that "proposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues *generally* would not be considered to be excludable" (emphasis added), the Staff has expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7). The Staff consistently has concurred in the exclusion of proposals that touch upon a significant policy matter but that also encompass ordinary business matters. *See, e.g., Mattel, Inc*. (Feb. 10, 2012) (finding that a proposal requesting information with respect to the company's compliance with an international code of business practices encompasses "several topics that relate to…ordinary business operations and are not significant policy issues"); *PetSmart, Inc.* (Mar. 24, 2011) (concurring in the exclusion of a proposal requesting the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents" because "[a]lthough the humane treatment of animals is a significant policy issue…the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping'"). The Staff's recent statements in SLB 14L further clarify this view, noting that a proposal can overcome the ordinary business exclusion only if the proposal "*focuses* on a significant social policy" (emphasis added). This position prevents proponents from circumventing the standards of Rule 14a-8(i)(7) by combining ordinary business matters with a significant policy issue.

In this instance, the Proposal—when read together with the supporting statement—clearly seeks to limit charitable contributions that are used to support charitable organizations with specific viewpoints that are contrary to those held by the Proponent. It is telling that, in its own supporting statement, the Proponent includes itself in the list of organizations that are deemed hate groups by the SPLC, clearly indicating its very targeted opposition to the SPLC, specifically. The Proponent's references to specific organizations in its supporting statement and to the goals sought by such organizations ("bludgeon[ing] mainstream politically conservative opponents [and not] upholding civil rights" and "requir[ing] companies to provide 'puberty blockers for youth' in their healthcare plans") indicate that the Proposal is not addressed generally to the Company's policies toward charitable giving or to the risks arising from such contributions, but instead is intended to serve as a shareholder referendum on the Company's assumed partnership with organizations holding specific social and political views with which the Proponent disagrees and not the broader significant social policies of freedom of speech and religion. Thus, consistent with the precedents cited above, by targeting specific organizations, the Proposal's request to produce a report on risks relating to discrimination based on speech and religious freedom does not transcend the well-recognized ordinary business matter of selecting charitable organizations and, therefore, may be excluded pursuant to Rule 14a-8(i)(7).

C. The Proposal Seeks to Micromanage the Company

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." In SLB 14L, the Staff clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward the Staff would "focus on the level of granularity sought in the proposal and whether and *to what extent it inappropriately limits discretion of the board or management*" (emphasis added). To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, which is designed to *preserve management's discretion* on ordinary business matters but not prevent shareholders from providing *high-level* direction on large strategic corporate matters." *SLB 14L (emphasis added)*.

In assessing whether a proposal seeks to micromanage a company's ordinary business operations, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company's activities and management discretion. See *Paramount Global* (April 19, 2024) (agreeing with the exclusion of a broadly phrased proposal for detail on charitable contributions that would result in the disclosure of intricate details about the Company's policies and practices); *Merck & Co., Inc.* (Mar. 29, 2023) (same).

The Proposal requests that the Company prepare a report on "how John Deere's contributions impact its risks related to discrimination against individuals based on their speech or religious exercise." However, the supporting statement clearly shows that the Proponent is opposed to the views and goals of certain organizations, such as the SPLC and the Human Rights Campaign, and that at least one of the goals of the Proposal is to have the Company cut ties with the Human Rights Campaign ("[m]any [companies] have also explicitly cut ties with the Human Rights Campaign as a part of this effort. But John Deere has not.") As such, the Proposal does not seek a report on the risks arising from charitable donations. Instead it seeks to micromanage and second-guess the Company's choice to participate in, and/or have relationships with, specific not-for-profit organizations, and therefore may be excluded under Rule 14a-8(i)(7).

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(7) on the basis that the Proposal relates to matters relating to the Company's ordinary business and seeks to micromanage the Company.

CONCLUSION

For the reasons discussed above, we believe that the Company may properly omit the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(3), Rule 14-8(i)(5) and Rule 14a-8(i)(7). As such, we respectfully request that the Staff concur with our view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2025 Proxy Materials. Should the Staff have any questions regarding this matter, please feel free to contact me at (309) 748-2674 or by email at BerkEdwardR@JohnDeere.com.

Sincerely,

Edward R. Berk, Corporate Secretary
Deere & Company

CC:

Julie Rosales
Deere & Company
Email: RosalesJulieM@JohnDeere.com

Robert M. Hayward, P.C.
Kirkland & Ellis LLP
Email: robert.hayward@kirkland.com

Ana Sempertegui
Kirkland & Ellis LLP
Email: ana.sempertegui@kirkland.com

Jerry Bowyer
Bowyer Research, Inc.
Email: jerrybowyer@bowyerresearch.com; susan@bowyerresearch.com

Enclosures: Exhibit A

EXHIBIT A

Bowyer Research

September 10, 2024, via FedEx and email

Corporate Secretary
Deere & Company
One John Deere Place
Moline, IL 61265-8098
CorporateSecretary@JohnDeere.com

Re: <u>Proposal: Report on Charitable Giving</u>

Dear Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Deere & Company (the "Company") 2025 proxy statement to be circulated to Company shareholders in conjunction with the Company's 2025 annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations. The resolution at issue relates to the subject described below.

> Proponent: American Family Association
> Company: Deere & Company
> Subject: Report on Charitable Giving

I submit the Proposal on behalf of, and with the permission of, American Family Association ("AFA" or "Shareholder"), which has continuously held 100 shares of Deere & Company securities for more than 1 year and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders. A letter from AFA authorizing us to submit this proposal on their behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder's ownership of the shares as of the date of this proposal's submission is forthcoming. Copies of correspondence or any request for a "no-action" letter may be sent to Jerry Bowyer, Bowyer Research, P.O. Box 120, McKeesport, PA 15135 or emailed to me at [redacted], copying [redacted].

Sincerely,

Jerry Bowyer
Bowyer Research
Enclosures (2)

9/10/2024

Secretary of the Corporation
Deere & Company
One John Deere Place
Moline, IL 61265- 8098
CorporateSecretary@JohnDeere.com

Re: Authorization to File Shareholder Proposal

Dear Secretary,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned ("Proponent") authorizes Bowyer Research, Inc. to file a shareholder proposal on the Proponent's behalf with Deere & Company ("the Company") for inclusion in the Company's 2025 proxy statement. The proposal at issue relates to the subject described below.

Proponent: American Family Association
Company: Deere & Company
Subject: Report on Charitable Giving

The Proponent gives Bowyer Research, Inc. the authority to address, on the Proponent's behalf, any and all aspects of the shareholder proposal, including drafting and editing the proposal, representing the Proponent in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the Proponent. The Proponent understands that the Proponent's name may appear on the company's proxy statement as the filer of the aforementioned proposal, and that the media may mention the Proponent's name in relation to the proposal.

The Proponent supports this proposal and authorizes *Bowyer Research* to write a more detailed statement of support of the proposal on the Proponent's behalf.

American Family Association (the "Proponent") has continuously owned 100 shares of Deere & Company securities since February 21, 2023 (more than 1 year's duration) and intends to continue holding the requisite amount of Company shares through the date of the Company's 2025 Annual Meeting of Shareholders.

Pursuant to interpretations of Rule 14a-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following times for a telephone conference to discuss this proposal:

Monday, September 23, 2024: 12PM CT (1PM ET)
Thursday, September 26, 2024: 10AM CT (11AM ET)

If these times prove inconvenient, please suggest some other times to speak. Feel free to contact me at [redacted], copying [redacted] and [redacted], so that we can determine the mode and method of that discussion.

Sincerely,

Signed by:
Walter Billingsley
4943A5F496C84EB...

Walter Billingsley
Chief Financial Officer
American Family Association

Report on Charitable Giving

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, including John Deere, support non-profits that are influencing public policy by actively attacking free speech and religious freedom.

Groups like the Southern Poverty Law Center have been criticized across the political spectrum as "a partisan progressive hit operation"[2] more interested in "bludgeon[ing] mainstream politically conservative opponents"[3] than upholding civil rights. It uses its "Hate Map" and "Hate Watch" to target many mainstream political and religious groups and individuals, including Moms for Liberty, the Family Research Council, Homeschool Legal Defense Association, Ruth Institute, Dr. Ben Carson, Franklin Graham, and the American Family Association.[4][5][6] It has also used its influence to get social media and tech companies to adopt standards and model policies that restrict or censor similar speech and speakers online through co-authoring the Change the Terms model policy.[7]

Similarly, Human Rights Campaign has led coalitions calling on major social media platforms to censor "hate speech and harassment" that includes many mainstream views on parental rights and human sexuality.[8] It has advocated for legislation like the Equality Act, which would pose serious threats to religious freedom, free speech,

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[1] https://www.un.org/en/about-us/universal-declaration-of-human-rights

[2] https://www.politico.com/magazine/story/2017/06/28/morris-dees-splc-trump-southern-poverty-law-center-215312/

[3] https://politi.co/2lsnOxw

[4] https://www.splcenter.org/hate-map

[5] https://www.newsbusters.org/blogs/free-speech/alexander-hall/2020/04/09/leftist-splc-attacks-american-family-association-hate

[6] https://www.afa.net/who-we-are/press-releases/2018/american-family-association-family-research-council-call-on-media-big-tech-to-distance-themselves-from-the-disgraced-splc/

[7] https://www.splcenter.org/news/2018/10/24/splc-announces-policy-recommendations-social-media-internet-companies-fight-hate-online

[8] https://deadline.com/2023/06/glaad-letter-human-rights-campaign-social-media-policies-letter-hate-speech-1235425983/;
https://www.hrc.org/press-releases/new-research-hateful-and-abusive-speech-towards-lgbtq-community-surging-on-twitter-under-elon-musk

and the progress women have made toward equality in law and culture.[9] And its Corporate Equality Index requires companies to provide “puberty blockers for youth” in their healthcare plans[10] even though nearly 70% of Americans oppose the practice and has induced corporations like Anheuser-Busch[11] and Target[12] into marketing decisions that have severely and permanently harmed their brand value.

This Company and many others, including Jack Daniels, Harley Davidson, Lowes, Home Depot, Ford, and Coors, have already taken affirmative steps to refocus their charitable giving to serve their diverse customers.[13] Many have also explicitly cut ties with the Human Rights Campaign as a part of this effort. But John Deere has not.

John Deere has also stated that it “strive[s] to ensure that human rights are upheld for our employees and all workers in our value chain” consistent with the “UN Guiding Principles on Business and Human Rights.”[14]

John Deere needs to assure its shareholders that it is promoting fundamental freedoms that benefit every American.

Resolved: Shareholders request that John Deere report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how John Deere’s contributions impact its risks related to discrimination against individuals based on their speech or religious exercise.

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[9] https://www.heritage.org/religious-liberty/commentary/misguided-fairness-all-act-would-undermine-religious-liberty
[10] https://hrc-prod-requests.s3-us-west-2.amazonaws.com/2023-CEI-Criteria-Toolkit-FINAL.pdf
[11] https://www.newsweek.com/anheuser-busch-stock-drops-20-percent-bud-light-sales-struggle-1803680
[12] https://nypost.com/2023/05/28/target-loses-10b-following-boycott-calls-over-lgbtq-friendly-clothing/
[13] https://www.dailymail.co.uk/news/article-13812241/american-brand-dei-rules-backlash.html
[14] https://www.deere.com/assets/pdfs/common/our-company/sustainability/business-impact-report-2023.pdf

From:	Susan Bowyer
To:	Corporate Secretary
Cc:	Walker Wildmon [redacted]; Walter Billingsley; Gerald Bowyer; Isaac Willour
Subject:	RE: a shareholder proposal
Date:	Wednesday, September 11, 2024 4:14:59 PM
Attachments:	image001.png Deere DE - AFA - Ownership Letter 9-11-24.pdf

Mr. Berk et al., I hope you are well.

In relation to the shareholder proposal we submitted yesterday, please find attached a letter from the custodian of AFA shares of Deere & Company stock affirming their continuous ownership of the share required.

Please kindly confirm receipt, and all the best,

Susan Bowyer

Public

From: Susan Bowyer
Sent: Tuesday, September 10, 2024 4:36 PM
To: Corporate Secretary <CorporateSecretary@JohnDeere.com>
Cc: Walker Wildmon [redacted] [redacted]; Walter Billingsley [redacted]; Gerald Bowyer [redacted]; Isaac Willour [redacted]
Subject: RE: a shareholder proposal

Thank you for confirming, and best regards to you,

Susan Bowyer

From: Corporate Secretary <CorporateSecretary@JohnDeere.com>
Sent: Tuesday, September 10, 2024 1:58 PM
To: Susan Bowyer [redacted]
Cc: Walker Wildmon [redacted] [redacted]; Walter Billingsley [redacted]; Gerald Bowyer [redacted]; Isaac Willour [redacted]
Subject: RE: a shareholder proposal

Dear Ms. Bowyer:

We hereby confirm receipt of your communication and attached materials. We will review your proposal carefully and let you know if we have any questions or requests. Many thanks.

Best regards,
Ed Berk

Public

From: Susan Bowyer [redacted]
Sent: Tuesday, September 10, 2024 12:08 PM
To: Corporate Secretary <CorporateSecretary@JohnDeere.com>
Cc: Walker Wildmon [redacted] [redacted]>; Walter Billingsley [redacted]; Gerald Bowyer [redacted]; Isaac Willour [redacted]
Subject: a shareholder proposal

Dear Secretary,

Please find attached a shareholder proposal from American Family Association, as well as some supporting documentation.

Attached are:
- Our submission cover letter
- A letter from America Family Association authorizing Bowyer Research to file the proposal on their behalf (with other appropriate details)
- The proposal itself

Please kindly confirm receipt of this communication.

Thank you for your attention,

Susan Bowyer

Chief Operating Officer/Bowyer Research

[redacted]

[redacted] office | [redacted] cell

charles SCHWAB

September 11, 2024

Account #: [redacted]
Questions: +1 800-378-0685 x210337

American Family Association
Agents: Walter Billingsley,
W. Wildmon, and T. Wildmon
PII [redacted]
US

DEERE & CO Share Ownership.

Dear Walter Billingsley,

I am writing regarding the request for confirmation of DE - DEERE & CO (CUSIP 244199105) in account [redacted] registered as Charity Non-Profit in the name of American Family Association - Association Investments, Agents: Mr. Walter R Billingsley, Wriley Wildmon, and Mr. Timothy B. Wildmon.

As of 09/10/2024, this account holds 100 shares of DEERE & CO (CUSIP 244199105).

This also serves to confirm that 100 shares of DEERE & CO (CUSIP 244199105) were purchased on 02/21/2023 and have been held continuously in the above referenced account since the purchase date.

Please note: This letter is for informational purposes only and is not an official record of the account.

This letter is for informational purposes only and is not an official record of the account. Please refer to statements and trade confirmations as they are the official record of account transactions.

Thank you for investing with Schwab. We appreciate your business and look forward to serving you in the future. If you have any questions or if we can help in any other way, please call me or any Client Service Specialist at +1 800-378-0685 x210337, Monday through Friday, from 9:00 a.m. to 7:00 p.m. ET.

Sincerely,

Ben Ahoure

Ben Ahoure
Senior Specialist | SPWS Partner Support
Tel 800.378.0685 | EXT 210337
3000 Schwab Way, Westlake, TX 76262
Charles Schwab & Co., Inc.

ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE.

November 27, 2024

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 American Family Association at Deere & Company under Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of the American Family Association ("AFA" or the "Proponent") to defend its shareholder proposal to Deere & Company ("John Deere" or the "Company"). Edward R. Berk, Corporate Secretary for Deere, wrote to you on October 22, 2024 to ask you to concur with John Deere's view that it can exclude AFA's shareholder proposal from its 2025 Annual Meeting of Shareholders under 17 CFR § 240.14a-8 ("Rule 14a-8"). John Deere 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 John Deere to report to shareholders how its charitable contributions are impacting discrimination against free speech and religion. John Deere raises four separate grounds for exclusion under Rule 14a-8: vagueness (i)(3), economic significance (i)(5), significant social policy and ordinary business (i)(7), and micromanagement and ordinary business (i)(7).

Its arguments lack persuasive (or any) citation to relevant guidance and no-action decisions and, particularly for ordinary business, misunderstand the legal standards. For example, John Deere argues that a proposal must both not relate to ordinary business operations and also focus on a significant social policy issue to satisfy (i)(7). Staff rejected this exact interpretation of (i)(7) over 10 years ago in Staff Legal Bulletin 14H and reiterated it in Bulletin 14L.

John Deere also makes baseless allegations that Proponent is simply seeking a "shareholder referendum" against "organizations holding specific social and political views with which the Proponent disagrees." John Deere No-Action Request (Oct. 22, 2024) at 9 ("NAR"). The Proposal, however, focuses top to bottom on civil liberties and mentions certain organizations, like the Human Rights Campaign and Southern

Poverty Law Center, because they have supported censorship of views with which they disagree.

John Deere is welcome to voice its disagreement in an opposition statement on the proxy ballot. But that disagreement does not give it a right to silence an opposing viewpoint from a bona fide shareholder concerned about the Company's charitable contributions, as Staff have repeatedly recognized. *See, e.g.*, *Target Corporation (NCPPR)* (Apr. 19, 2024); *Kohl's Corporation* (Mar. 14, 2024); *Levi Strauss & Co.* (Mar. 8, 2024); *Dell Technologies, Inc.* (Apr. 24, 2024). If anything, this shows only that John Deere may have a blind spot on censorship that needs correcting to bring it in line with its diverse shareholders and other stakeholders.

The Proposal

The Proposal provides:

> **Resolved:** Shareholders request that John Deere report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how John Deere's contributions 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 John Deere's own commitment "to ensure that human rights are upheld for our employees and all workers in our value chain."[1] Unfortunately, John Deere and other companies are exhibiting a leftward tilt and associating with non-profits that are actively working against two of the most fundamental human rights, free speech and religious liberty.

The Statement provides two notable examples, the Southern Poverty Law Center and Human Rights Campaign, the latter of which John Deere is known to support. It explains that both have advocated for increased censorship of mainstream conversative and political views under oppressive "hate speech" policies, legislation, and corporate activism. The Statement explains that many companies, including John Deere, have recently faced public backlash for their ties to the HRC. But unlike the other companies, John Deere has not cut ties with the HRC. The Statement then says John Deere needs to take broader steps to "refocus [its] charitable giving to serve [its] diverse customers." Doing so will support free speech and religious freedom, thus "promoting fundamental freedoms that benefit every American."

[1] John Deere, *2023 Business Impact Report* at 49, https://www.deere.com/assets/pdfs/common/our-company/sustainability/business-impact-report-2023.pdf.

Discussion

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

John Deere complains that the Proposal is so vague that it can be excluded as a materially false statement. But 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 No. 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.

John Deere 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. John Deere also argues that the Proposal lacks any focus on "speech or religious exercise" because it deals with topics ranging from political activities to beliefs about human sexuality and women's rights. But these topics are the subject of the speech that HRC wants to censor. And many of the views being targeted are religious views. Americans are increasingly wary of this, so John Deere's association with HRC 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 rely 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 Corporation* (Mar. 14, 2024), "impacts on civil rights and non-discrimination" across all aspects of the company, *CVS Health Corporation* (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).

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 compensation 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."

John Deere 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, in *The Boeing Company* (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 refused to elaborate on what "privacy rights" meant beyond "voluminous media coverage of this issue provides all the context necessary." *Id.* at 8.[2] And the company noted that it was unclear whether "moral, ethical and legal fiduciary" modified "opportunities" and, if so, what exactly "moral, ethical and legal fiduciary [] opportunities" were. *Id.* John Deere also points to "politically charged biases" in *Walt Disney Co. (Grau)* (Jan. 19, 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] All page numbers refer to the pdf page number of the no-action packet available at the SEC's website, https://www.sec.gov/rules-regulations/shareholder-proposals?.

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

Here, John Deere 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 contributions. This is materially identical to other charitable giving proposals that Staff recently found were not vague. *See, e.g.*, *Kohl's Corporation* (Mar. 14, 2024); *Levi Strauss & Co.* (Mar. 8, 2024); *Dell Technologies, Inc.* (Apr. 24, 2024) (disclose "material donations from the Company" with a focus on donations to "radical gender theory activists."). And like this Proposal, those proposals also focused on political bias in charitable giving and included express references to the Human Rights Campaign. *Kohl's* at 3; *Levi Strauss* at 4; *Dell* at 4.

John Deere argues that the terms "risks" and "individuals" are undefined and that the Supporting Statement is vague as to "free speech and religious exercise." But "risks" is a term readily understood in the business world. "Individuals" needs no definition because it refers to any and all individual persons affected by the company's partnership with HRC, SPLC, and similar groups.

<u>First</u>, Staff have rejected vagueness challenges to the term "risks." *Meta Platforms, Inc.* (Apr. 2, 2022) ("report on (1) the risks created by Company business practices that prioritize internal financial return 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 John Deere 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. John Deere, of course, also understands this, which is why in every annual report it lists all of the various risk factors to its business.[3] The SEC's own guidance for companies in filing their annual reports even identifies and defines "risk factors" to broadly include includes information "about the most significant risks that apply to the company or to its securities."[4] 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). The Proponent here appropriately defers to John Deere to identify the

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[3] SEC, Form 10-K, Deere & Co. at 14–24
https://s22.q4cdn.com/253594569/files/doc_downloads/2023/12/deere-company-2023-10-k.pdf.

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

appropriate risks that politically biased charitable giving presents to the Company, a function for which John Deere has ample expertise and experience.

Second, the term "individuals" is also commonly understood to mean individual persons; it's common meaning and specific meaning here is "single human being[s]."[5] John Deere balks that the Proposal identifies "broad, and even unrelated, categories of groups and individuals" 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 John Deere's existing customers or direct victims of corporate censorship through "hate speech" labels.

The broad focus surprises John Deere, 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.*, *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 Companies, Inc.* (Mar. 30, 2023) (third-party audit on "improving the racial impacts of its policies, practices, products, and services" and receiving "[i]nput from stakeholders, including civil rights organizations, employees, and customers"); *CVS Health Corporation* (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"); *see also JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023) (report evaluating "how it oversees risks related to discrimination against individuals . . . and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights.").

Third, John Deere says that the Supporting Statement goes well beyond "speech or religious exercise" into all manner of "political activities, parental rights, rights related to human sexuality, [and] equal rights for women." NAR at 4. The clear point of the entire Proposal is that groups like the SPLC and HRC are actively trying to censor speech, which includes many religious viewpoints, on each of these topics,[6] through their partnerships with corporations and otherwise. Put another way, no one can express any views on a social issue without free speech.

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[5] *Individual (noun)*, Merriam-Webster, https://www.merriam-webster.com/dictionary/individual (last accessed Nov. 26, 2024).

[6] 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*, RNS (June 8, 2023).

The Supporting Statement calls special attention to the SPLC's and HRC's censorious actions, from actually pressuring social media platforms to censor hate speech and harassment, passing public policy that directly curtails free speech and religious liberty, and directly pressuring corporations to promote, and thus normalize, what 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. *Id.* at 12.

And a reasonable shareholder and company would understand this too. Recent press has shown and the Supporting Statement states that there has been a public outrage over companies like and including John Deere because, in addition to promoting DEI, they have partnered with organizations like the HRC, which many perceive as a far-left group.[7] The mere fact that the Proposal discusses the HRC and corporate censorship from a different perspective than what John Deere 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."

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[7] Joseph Pisani & Chip Cutter, *The Activist Pushing Companies to Ditch Their Diversity Policies*, Wall Street Journal (Aug. 3, 2024), https://www.wsj.com/business/the-activist-pushing-companies-to-ditch-their-diversity-policies-aeb82873; Noah Halff, Another American classic brand rolls back DEI rules after backlash, Daily Mail (Sept. 4, 2024), https://www.dailymail.co.uk/news/article-13812241/american-brand-dei-rules-backlash.html.

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."

John Deere 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."

The Commission stated in 1976 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). For example, "[p]roposals requesting the cessation of further development, planning and construction of nuclear power plants and proposals requesting shareholders be informed as to all aspects of the company's business in European communist countries have been included in this way." *Lovenheim v. Iroquois Brands*, 618 F. Supp 554, 560 n.11 (1985) (citation omitted); *see also the Travelers Companies, Inc.* (Apr. 1, 2022) (report to ensure insurance offerings do "not increase the potential for racist police brutality, nor associate our brand with police violations of civil rights"). Thus, Staff recently reiterated that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)." Division of Corporate Finance, Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L").

The Proposal here easily satisfies that test. As an initial matter, John Deere's charitable giving relates closely to its public relations and reputation, which would very likely satisfy the 5% economic threshold. More importantly and as explained in Section C below, charitable giving, discrimination, and civil rights are consistently recognized as "issues of broad social or ethical concern."

John Deere, however, argues that the Proposal does not "relate to broad social or ethical concerns *arising* from the Company's business." NAR at 6 (emphasis in original). This misquotes and potentially confuses the test, which requires only that the concerns be "significantly *related* to the company's business." Rule 14a-8(i)(5). To support this assertion, John Deere cites *Reliance Steel & Aluminum Co.* (Apr. 2, 2019), which rejected a proposal on lobbying, and *AT&T Co.* (Jan. 19, 1990), which rejected a proposal on relocating workers.

John Deere's reliance on *Reliance* is misplaced. There, Staff took special note that the company made *no* political contributions, direct or indirect. 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 they did not meet the 5% relevance test.

John Deere's explanation of *AT&T* also raises no apparent social or ethical issue, only the general economic impacts of relocating workers. 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.*, *The Gap* (Mar. 4, 2012) (seeking to company's trade partnership in Sri Lanka because of its human rights violations); *Corning Incorporated* (Feb. 11, 2015) (governance of Israeli workforce even though Israeli operations accounted for less than 1% of company's assets, earning, and sales). Most recently, Staff in *Citigroup* rejected a proposal seeking disclosures of lobbying even though, as the Company argued, its lobbying accounted for only "0.0006% of total assets, 0.0165% of total revenue, and 0.0665% of net income." *Citigroup, Inc. (Miller/Howard Investments)* (Feb. 26, 2021), at 32. This last decision is notable because it passed muster even under the restrictive interpretation of (i)(5) under (now rescinded) Bulletins 14I and 14J. Division of Corporate Finance, Staff Legal Bulletin No. 14I (Nov. 1, 2017); Division of Corporate Finance, Staff Legal Bulletin No. 14J (Oct. 23, 2018).

Next, John Deere appears to argue that the Proposal does not show how the social or ethical issues relate to John Deere's business. But as explained both in the earlier and later sections of this response, groups like the Human Rights Campaign call for censorship and 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.

Finally, John Deere also protests that the Proposal has provided no proof that it has supported the HRC. But proof is not required. And John Deere later admits that the Proposal states that it has not publicly cut ties with the HRC. NAR at 9. Regardless, the lack of transparency around John Deere's charitable support justifies shareholders who are seeking answers about who John Deere supports and how much support they provide. Case in point, two days after the Proposal was submitted, the HRC announced that John Deere will "only" get a 70 out of 100 on its latest Corporate Equality Index.[8]

[8] Press Release, *HRC Foundation Announces Record Participation in Upcoming 2025 Corporate Equality Index, Docks Scores of Seven Companies in Current Ranking Following Their Pullback From Workplace Inclusion*, Human Rights Campaign (Sep. 12, 2024), https://www.hrc.org/press-releases/hrc-foundation-announces-record-participation-in-upcoming-2025-corporate-equality-index-docks-scores-of-seven-companies-in-current-ranking-following-their-pullback-from-workplace-inclusion.

C. The Proposal unambiguously focuses on a significant social policy issue that transcends the Company's ordinary business operations.

To meet its burden of showing that it can exclude AFA's Proposal for failing to focus on a significant social policy, John Deere must show that the Proposal both does not focus on a significant social policy issue and that it relates to the "nitty-gritty" of the company's ordinary business operations. John Deere contends otherwise but it grossly misreads Commission and Staff guidance directly addressing this. John Deere also cannot bear its burden under either requirement.

The Proposal shows a consistent focus on discrimination on the basis of religion and other civil rights, which the Commission and Staff guidance have proven is a perennially significant social policy issue. Further, the Proposal focuses on John Deere's charitable giving broadly, filtered through the lens of discrimination, so it does not relate to John Deere's ordinary business operations.

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 "presence of widespread public debate," Division of Corporation Finance, Staff Legal Bulletin No. 14A (July 12, 2002), and "broad societal impact" of the issue raised by the proposal, SLB 14L.

John Deere argues that a company may exclude a proposal focusing on ordinary business matters "regardless of whether it focuses on a significant policy issue" and says this position, as clarified in SLB 14L, prevents proponents from "combining ordinary business matters with a significant policy issue." NAR at 8. This is directly contrary to the Commission's 1998 guidance, Staff Legal Bulletin 14H, and Staff Legal Bulletin 14L.

As the Commission stated in 1998,

> [P]roposals relating to [ordinary business] matters but focusing on sufficiently significant policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, *because* the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.

1998 Release at 29108 (emphasis added). Staff then made this a major focus of Bulletin 14H nearly 10 years ago 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"). As the Bulletin states, "whether a proposal focuses on an issue of social policy that is sufficiently significant is not separate and distinct from whether the proposal transcends a company's ordinary business." Id. (quoting *Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 353 (3d Cir. 2015) (Schwartz, J., concurring)). Then, in Bulletin 14L, Staff clarified that the "significant social policy" rule is not an additional requirement for proposals, but an "exception" to the "ordinary business" rule. It added that "[t]his exception is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement." SLB 14L.

John Deere's reading creates an exception that swallows the rule and is more restrictive even than the three-part test that Staff *rejected* in 14H. Indeed, John Deere's cites predate 14H. And one of the cites even states that the proposal focused on "several topics that . . . are not significant policy issues." *Mattel, Inc.* (Feb. 10, 2012). John Deere must actually show that the Proposal both does not focus on a significant social policy issue and that it does relate to John Deere's ordinary business operations. But it can do neither.

2. Staff regularly agree that discrimination in civil rights is a significant social policy issue.

The Commission's and Staff's interpretations of the "significant social policy exception" repeatedly cite discrimination in civil rights matters as the 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). In Staff Legal Bulletin No. 14L, the Staff reiterated this position by citing "[m]atters related to employment discrimination" as an example of an issue that "may rise to the level of transcending the company's ordinary business operations." SLB 14L.

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 Corporation* (Mar. 17, 2022) (audit on "Company's impacts on civil rights and non-discrimination" arising from employment practices); *McDonald's Corporation* (Apr. 5, 2022) (audit analyzing the "adverse impact" of the company's "policies and practices on the civil rights of company stakeholders").

This also includes many proposals dealing specifically with religious discrimination. *See, e.g.*, *JPMorgan Chase & Co. (Bahnsen)* (Mar. 21, 2023), *supra*; *Toys "R" Us* (Apr. 8, 1999) (adopt resolution providing for religious non-discrimination in Northern Ireland); *General Electric* (Feb. 10, 2015) (adopt "Holy Land" principles, including religious non-discrimination).

3. The Proposal shows a clear focus on discrimination in civil rights, which is a quintessential significant social policy issue.

John Deere whistles past the Proposal's social significance and fails to cite to or distinguish the Proposal from any of the Staff's many denials of relief for religious discrimination or other civil rights discrimination proposals. Instead, it argues again that the Proposal is just seeking a "referendum on the Company's assumed partnerships with organizations holding specific social and political views with which the Proponent disagrees and not the broader significant social policies of freedom of speech and religion." NAR at 9.

By any measure, civil rights issues are fundamental questions of social policy that have "broad societal impact" and "widespread public debate." John Deere admits as much when it argues that the Proposal lacks a clear focus on "the broader significant social policies of freedom of speech and religion." *Id.* Nor, as explained above, could it contest that discrimination is a significant social policy issue. Religious discrimination in particular is prohibited by law in numerous contexts.[9] Discrimination against political affiliation or activities is also prohibited in many states and locales.[10]

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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*, https://www.justia.com/civil-rights/public-accommodations-laws-50-state-survey.

[10] *See, e.g.*, D.C. Code § 2-1402.11; N.Y. Lab. Law § 201-d; Wash. Rev. Code Ann. § 42.17A.495(2).

Discrimination against religion and speech is becoming increasingly relevant to corporate America—particularly with companies' charitable giving. Robby Starbuck, for example, has made national news for his social media campaigns that have resulted in many major companies, including John Deere, dropping their commitments to diversity, equity, and inclusion policies. Many other companies like Tractor Supply and Ford have also cut ties to the Human Rights Campaign.[11] But as the Proposal notes, John Deere has not. Also this year, Best Buy responded to shareholder calls about its support for controversial charities, including the HRC, by deciding to screen some of the corporate donations to those charities.[12]

Other recent events show this in other corporate contexts. Last spring, a group of 15 state financial officers and 15 state attorneys general sent separate letters to Bank of America putting it on notice for de-banking multiple Christian and conservative organizations.[13] And over the summer, members of the U.S. House revealed that the Global Alliance for Responsible Media was colluding with many of the world's biggest ad buyers to boycott X and pressure social media platforms to more aggressive censor "hate" and "offensive" speech. After the House report and a lawsuit from X, GARM quickly disbanded.[14]

The Proposal takes no position on the proper balance of these risks against others. But it is undeniable that they are significant—and are growing in their significance—in our society today.

And the Proposal reflects a clear and consistent focus on these issues from top to bottom. The Supporting Statement cites as the motivation for the Proposal risks related to support for organizations that undermine "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." To illustrate the issue, the Supporting Statement provides examples of how organizations are trying to censor "many mainstream views," including many widely held religious views, "on parental

[11] Jessica Guynn, *This anti-DEI activist is targeting an LGBTQ index. Major companies are listening*, USA Today (Sep. 12, 2024), https://www.usatoday.com/story/money/2024/09/12/anti-dei-activist-targets-lgbtq/75165395007/.

[12] Sonia Thompson, *How Best Buy Responded To Pushback On Its Donations To LGBTQ+ Charities*, Forbes (Apr. 9, 2024), https://www.forbes.com/sites/soniathompson/2024/04/04/why-best-buy-decided-to-screen-donations-to-lgbtq-charities/.

[13] 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; Gabrielle Saulsbery, *15 AGs put BofA on notice for 'de-banking' conservatives*, Banking Dive (Apr. 18, 2024), https://www.bankingdive.com/news/15-attorneys-general-put-bofa-notice-debanking-conservatives-christians/713618/.

[14] Kate Conger and Tiffany Hsu, *Advertising Coalition Shuts Down After X, Owned by Elon Musk, Sues*, The N. Y. Times (Aug. 8, 2024), https://www.nytimes.com/2024/08/08/technology/elon-musk-x-advertisers-boycott.html.

rights and human sexuality" through content moderation, legislation, and working with corporations. It also explains how Starbucks's support for such organizations may conflict with its commitment to "universal principles of operating [its] business in a responsible and ethical manner, [and] respecting the rights of individuals."

JPMorgan Chase & Co. (Bahnsen) (Mar. 21, 2023) is instructive. There, the proposal requested that the company issue a report evaluating how it oversees risk related to discrimination based on several characteristics. Despite the direct references to discrimination on speech and religion, among other grounds, the company argued that because the proposal still related to products and services, relationships with customers, and management of the workforce, it related to its ordinary business matters and should be excluded. The shareholders responded, however, that "the question of discrimination on grounds including race, color, sex, and religion is the central issue and clear focus" of the proposal, and since that question was a matter of significant social policy, it transcended any ordinary business matters. *Id.* at 8. The Staff concurred with the shareholders, finding that "the Proposal transcend[ed] ordinary business matters." So too here. The Proposal's primary focus is on reducing discrimination, not just "the disclosure of the Company's charitable contributions," as Starbucks alleges. Of course, charitable contributions are not themselves part of Starbucks's ordinary business operations, as addressed in Section D below.

John Deere cites no decisions to support its mischaracterization of the Proposal. Nor could it. The Proposal here, like the one at issue in *JPMorgan Chase 2023* and many others concerning "civil rights" cited above, focuses on the discriminatory effect of John Deere's policies on society generally. That it singles out several bad actors is unremarkable and, as explained below, legally irrelevant.

Instead, John Deere contends that Proponent's listing on the SPLC's "hate group" list is proof positive of the Proposal's biased nature. This begs the question. Proponent's label as a "hate group" derives entirely from its mission to promote mainstream conservative and Christian values.[15] And that is the entire point of the Proposal, that advocacy groups like and including AFA are being smeared and censored for expressing these views. HRC, SPLC, and similarly censorious groups are increasingly viewed by the American public as controversial. And Companies that continue to associate with these groups are receiving sustained negative feedback from customers and others.

John Deere can voice disagreement with that proposition. But John Deere cannot silence the Proponent just because it disagrees with its message. That is the exact

[15] *See* American Family Association, *Mission, Vision, Values*, https://www.afa.net/who-we-are/mission-vision-values/ ("The mission of American Family Association is to inform, equip, and activate individuals and families to transform American culture and to give aid to the church, here and abroad, in its calling to fulfill the Great Commission.").

attitude that has caused groups like HRC and SPLC to become so controversial and generate reputational risk for groups associating with them. This irony shows that John Deere may in fact have a blind spot on free speech and religious liberty that needs to be corrected to bring it in line with its diverse shareholders and other stakeholders, many of whom have already expressed their strong disagreement with John Deere choosing to partner with HRC.

4. The Proposal does not relate to John Deere's ordinary business operations.

John Deere also argues that the Proposal relates to its ordinary business operations because it is targeting "contributions to specific organizations or types of organizations." This is ultimately irrelevant because the Proposal focuses on a significant social policy issue. Again, Staff clarified in Bulletin 14H that "a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the 'nitty-gritty of its core business.'"

John Deere is also wrong. The Proposal focuses on John Deere's charitable giving broadly and filters that giving through the lens of a significant social policy issue, discrimination against speech and religion. Many recent Staff decisions on nearly identical proposals also targeting HRC, among other groups, align with this understanding.

a. Proposals focusing on charitable giving are generally not excludable.

Staff have long understood that charitable contributions generally are not part of a company's ordinary business operations. *Wells Fargo & Company* (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 of proposals like the one here that requests reports on charitable giving because of a company's support for controversial organizations, many of which even name the Human Rights Campaign as an example. *See, e.g.*, *Wells Fargo & Company* (Feb. 19, 2010); *Target Corporation (NCPPR)* (April 19, 2024); *Dell Technologies Inc.* (April 24, 2024).

On the other hand, Staff have stated that proposals focusing on "specific types of organizations" may render a proposal excludable. This has been narrowly construed, especially in recent decisions, to exclude only proposals that lack a clear focus on a significant policy issue. *See, e.g.*, *JPMorgan Chase & Co.* (Feb. 28, 2018) (expressing concern about "public image" created by charitable donations); *The Walt Disney Co.* (Nov. 20, 2014) (targeting only Boy Scouts of America and listing variety of social and business issues).

Were the rule otherwise, it would create the perverse result of allowing a proposal that generally focuses on charitable giving, but then disqualifying one that focuses on a particular social policy impact but is otherwise identical. A broad reading of the "types of organizations" exception would also conflict with other decisions allowing shareholders to assess particular aspects of the company's operations for its impacts on significant social policy issues. *See, e.g.*, *JPMorgan Chase & Co. 2023* (denials-of-service effects on discrimination and constitutional rights); *Meta Platforms (Cortese)* (Apr. 2, 2022) (report on "potential psychological and civil and human rights harms to users" from "the use and abuse" of virtual reality project); *Alphabet, Inc. (Trillium)* (Apr. 15, 2022) (discriminatory impacts of Google's "algorithmic systems" for targeted advertising); *CBRE Group, Inc.* (Mar. 6, 2019) (report on the impact of the company's mandatory arbitration policy on sexual harassment claims).

b. The Proposal does not relate to John Deere's ordinary business operations because it focuses on the discriminatory impacts of charitable giving.

John Deere makes much of the fact that the Proposal singles out the SPLC and HRC. As explained above, the Proposal uses these as illustrative examples of the much broader problem of companies contributing to discrimination against religion and speech. Indeed, an LGBT organization can promote its issues without calling for censorship from dissenting views. And AFA would be concerned about John Deere supporting an organization that promotes any censorship of *any* viewpoints, regardless of their political persuasion.

John Deere's argument also withers in light of recent decisions. Staff have rejected more targeted proposals on nearly exactly the same subject. In *Target Corporation (NCPPR)* (April 19, 2024), the proposal requested that the company issue a report on the risks arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations. The supporting statement and resolved clause almost exclusively focused on the Human Rights Campaign and even asked Target to report specifically on its participation in HRC's Corporate Equality Index. *Id.* at 26–27. Just as here, Target argued that the proposal involved ordinary business matters because it related to charitable contributions to specific types of organizations—specifically singling out HRC. *Id.* at 8–9. But Staff concurred with the shareholders, finding that "the Proposal [did] not address ordinary business matters."

Also in 2024, Staff repeatedly denied relief to companies seeking to exclude proposals that relate to a company's contributions, even though the proposals singled out specific organizations or groups of organizations. *See Dell Technologies Inc.* (April 24, 2024) at 4 (HRC and other groups pushing "child gender transition agenda"); *Church & Dwight Co., Inc.* (March 15, 2024) (Super PACs and other pass-through organizations for political spending); *Kohl's Corp.* (March 14, 2024) (HRC and other groups taking "public and politically divisive positions over issues of significant social policy concern"); *Levi Strauss & Co.* (March 8, 2024) at 4 (HRC and other groups “tak[ing] public and politically divisive positions over issues of significant social policy concern” including gun control, racism, and COVID-19).

So too here. The only difference between those proposals and this one is that AFA’s Proposal focuses on discrimination in civil rights on top of the John Deere’s political and social engagement. But this is a well-established significant policy issue, so it weighs even further against excluding the Proposal.

John Deere relies on dated decisions where the proposals did not specify a clear focus on a social policy that was sufficiently significant. *JPMorgan Chase & Co.* (Feb. 28, 2018) (expressing concern about “public image” created by charitable donations); *PG&E Corp.* (Feb. 4, 2015) (donations to “anti-family values” organizations); *Target Corp.* (Mar. 31, 2010) (funding animal experiments); *PepsiCo, Inc.* (Feb. 24, 2010) at 4 (asking company to stop support to “any organization or philosophy which either rejects or supports homosexuality”). Others similarly focus on specific groups or types of groups without specifying a clear significant policy reason. *The Walt Disney Co.* (Nov. 20, 2014) (Boy Scouts of America); *Wachovia Corp.* (Jan. 25, 2005) (Planned Parenthood and pro-abortion groups).

The Proposal here is much more like the recent proposals in *Target 2024* and the others above because, rather than focus on profitability, nebulous or not-quite-significant policies, or targeting organizations for their own sake, it targets the Company’s charitable giving broadly and filters it through a significant policy issue. That certain organizations like the HRC may factor more heavily into a report than others is unremarkable and, as Staff have stated through recent decisions, legally irrelevant. And here, the Proposal’s focus is discrimination in civil rights, which is a quintessential and perennial significant social policy issue.

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

John Deere contends that the Proposal micromanages the company because “at least one of the goals of the Proposal is to have the Company cut ties with the Human Rights Campaign.” Again, John Deere mischaracterizes the Proposal. And again, John Deere misunderstands the legal standard. It does not ask John Deere to implement any methods or policies, much less that it cut ties with the HRC. Nor does it seek exhaustive detail. The Proposal, like many others of which Staff approve, simply asks for transparency from the company on how a particular part of the company is impacting a particular social issue.

1. Staff regularly agree that transparency reports do not micromanage a company.

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 can happen "where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* But "specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability." SLB 14L. "[P]roposals may seek a reasonable level of detail without running afoul of these considerations." 1998 Release at 29108.

Staff clarified in Bulletin 14L that they expect proposals to seek a level of detail that is "consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input." SLB 14L. To that end, Staff also considers the "sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic," including "references to well-established national or international frameworks when assessing proposals related to disclosure . . . as indicative of topics that shareholders are well-equipped to evaluate." *Id.*

This reading of the rule, the Bulletin notes, appropriately accounts for each company's and proposal's particular circumstances while ameliorating the "dilemma many proponents face": crafting a proposal specific enough that the company has not substantially implemented it while being general enough to avoid micromanaging the company. *Id.*

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 things like reports asking about smoke-free premises, *Boyd Gaming Corporation* (Mar. 18, 2024), *Caesars Entertainment, Inc.* (Apr. 19, 2024), reducing misinformation in targeted advertising, *Meta Platforms, Inc.* (Mar. 30, 2022), *Alphabet Inc.* (Apr. 12, 2022), the misuse of products in war-torn conflict-affected areas, *Texas Instruments Incorporated* (Mar. 4, 2024), and underwriting clients who contribute to new fossil fuel supplies, *see, e.g.*, *Citigroup Inc.* (Mar. 7, 2021).

This makes sense. Transparency reports are not prescriptive requests for policy changes, unlike many proposal requests. And even those "do not per se constitute micromanagement." SLB 14L.

2. The Proposal asks for a typical transparency report, which Staff regularly agree do not micromanage companies.

The Proposal here seeks a reasonable level of detail for investors to evaluate John Deere's "impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input" regarding charitable giving and discrimination in civil rights. *Id.* John Deere does not contest that shareholders are capable of providing input on John Deere's charitable giving policies or that this is a topic fit for shareholder review.

Nor could it, given the "robust[] public discussion and analysis on the topic" as explained above. *Id.*

Given the above, the Proposal does not "seek[] intricate detail" or "to impose specific time-frames or methods." 1998 Release at 29108. Indeed, it does not ask John Deere to implement, or not implement, any policies at all, much less specific methods or time-frames for said implementation.

John Deere argues that "the Proposal does not seek a report on the risks arising from charitable donations. Instead, it seeks to micromanage and second-guess the Company's choice to participate in, and/or have relationships with, specific not-for-profit organizations" like the HRC. NAR at 9. But Proponent asked only for a transparency report. The Supporting Statement mentions that other companies "have also explicitly cut ties with the Human Rights Campaign" to show what some companies are doing and to show that there is controversy and public attention on the issue. The Proposal takes no stance on how John Deere should balance the risks of associating with these groups against other risks, much less recommend that John Deere stop charitable contributions with a particular organization.

John Deere's argument also assumes that the "micromanagement" part of Rule 14a-8(i)(7) would treat a proposal prescribing a particular charitable giving policy the same as one asking for transparency on charitable giving policies. It would not because asking for "methods for implementing complex policies" is necessarily different than seeking a risk report. 1998 Release at 29108. Take John Deere's two citations, where the proposals asked "the Company to list the recipients of corporate charitable contributions of $5,000 or more on the company website" along with any material limitations on company contributions. *Paramount Global (NCPPR)* (Apr. 19, 2024); *Merck & Co.* (Mar. 29, 2023). Compare these with nearly identical proposals that are simply less prescriptive: "The Proponent requests that the Board of Directors *consider* listing on the Company website any recipient of $10,000 or more of direct contributions." *The Walt Disney Company* (Jan. 12, 2023) (emphasis added); *The Kroger Co. (Eichhold Trust)* (Apr. 25, 2023). Staff stated that the former pair micromanaged the company, but that the latter pair did not. Similarly, Staff rejected a micromanagement argument in 2024 for a proposal asking for disclosure of any "material donations from the Company . . . . Optimally, this list would include all recipients of $5,000 or more" or "an explanation of why such donations are not material." *Dell Technologies Inc.* (Apr. 24, 2024).

This is because "micromanagement" focuses primarily on the "specific methods, timelines, or detail" actually requested by the Proposal, not its underlying subject matter. SLB 14L. And here, the Proposal is less prescriptive even than those in *Disney* and *Kroger*. It does not ask for Deere even to consider specific policies. It simply asks John Deere to report, providing information of its choosing in a format of its choosing, on how its charitable giving is impacting risks related to discrimination against speech and religion.

Conclusion

For the foregoing reasons, we respectfully request that the Staff reject John Deere's request for relief from AFA's Proposal. A copy of this correspondence has been timely provided to John Deere. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to contact me.

Sincerely,

Michael Ross

Michael Ross

Cc: Edward R. Berk