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

DIVISION OF
CORPORATION FINANCE

January 3, 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 LongView LargeCap 500 Index Fund for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the Company to report publicly on the effectiveness of its efforts to create a meritocratic workplace where no one is excluded from contributing to the Company's success because of an immutable characteristic, such as gender, race or ethnicity.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). In our view, the Proposal does not substantially duplicate the proposal submitted by the National Legal and Policy Center.

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: Andrew Behar
As You Sow

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 As You Sow*

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 "Duplicate Proposal") submitted by As You Sow on behalf of Amalgamated Bank, trustee of LongView LargeCap 500 Index Fund (the "Proponent"), from its proxy materials for its 2025 Annual Meeting of Shareholders (the "2025 Proxy Materials"). The Company received the Duplicate Proposal on September 11, 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 Duplicate Proposal from its 2025 Proxy Materials in reliance on the provisions of Rule 14a-8(i)(11) 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 Duplicate 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 No. 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 DUPLICATE PROPOSAL

The Duplicate 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 Deere report publicly on the effectiveness of its efforts to create a meritocratic workplace where no one is excluded from

> contributing to the Company's success because of an immutable characteristic, such as gender, race or ethnicity. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes using quantitative metrics for workforce diversity, hiring, promotion and retention of employees, including data by gender, race, and ethnicity.

A copy of the Duplicate 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 Duplicate Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates another proposal previously submitted to the Company.

ANALYSIS

The Duplicate Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal Previously Submitted to the Company.

The Duplicate Proposal may be excluded under Rule 14a-8(i)(11) because it is substantially duplicative of a proposal previously submitted to the Company—specifically, a proposal (the "Prior Proposal," and, together with the Duplicate Proposal, the "Proposals") from the National Legal and Policy Center received by the Company on September 4, 2024, seven days prior to the date the Company received the Duplicate Proposal. A copy of the Prior Proposal is attached hereto as Exhibit B. The Company intends to include the Prior Proposal in its 2025 Proxy Materials and exclude the Duplicate Proposal on the basis of Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates the Prior Proposal.

The proposed resolution contained in the Prior Proposal is set forth below:

> **Resolved:** Shareholders request that the Company produce a report on statistical differences in hiring across race and gender globally and/or by country, where appropriate, including associated policy, reputational, competitive, operational risks, and risks related to recruiting and retaining talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy, and legal compliance information. Shareholders request the company to present its findings for hiring data dating back to Jan. 1, 2020, and to publish an updated report annually thereafter, at least three months prior to each annual meeting.

A. Background on Rule 14a-8(i)(11)

Under Rule 14a-8(i)(11), a company may exclude a shareholder proposal if it substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting. The Commission has stated that the purpose of Rule 14a-8(i)(11) is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted by proponents acting independently of each other. *See* Exchange Act Release No. 34-12999 (Nov. 22, 1976) (the "1976 Release"). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company may exclude the later of the proposals it received from its proxy

materials, unless the initial proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (Mar. 2, 1998); *Pacific Gas and Electric Co.* (Jan. 6, 1994).

Two shareholder proposals need not be identical in order to provide a basis for exclusion under Rule 14a-8(i)(11). The Staff has traditionally referred to Rule 14a8(i)(11)'s substantial duplication standard as assessing whether the later proposal presents the same "principal thrust" or "principal focus" as a previously submitted proposal. In *Exxon Mobil Corp.* (Mar. 13, 2020) ("Exxon Mobil 2020"), the Staff concurred with the exclusion of a proposal as substantially duplicative, because the Staff noted that "the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany's expressed policy positions" despite the proposals requesting different actions. *See also, e.g., McDonald's Corporation* (April 3, 2023) (agreeing that two proposals that share the same objective of having the company provide additional disclosures regarding its lobbying activities were substantially duplicative and so the later submitted proposal could be excluded); *Duke Energy Corp.* (Feb. 19, 2016) (granting the company's request to exclude a proposal asking for a report on organizations either supported by the company or of which the company was a member that were engaged in lobbying activities because the proposal shared the same principal thrust or focus as a previously submitted proposal requesting a report on the company's direct and indirect lobbying activities, including grassroots lobbying activities); *Pfizer Inc.* (Feb. 17, 2012) (concurring with the exclusion of a proposal requesting a lobbying priorities report, with a supporting statement describing the company's role in the passage of "ObamaCare," because the proposal shared the same principal thrust or focus as a previously submitted proposal calling for greater transparency of the company's lobbying expenditures).

In addition, proposals may still be substantially duplicative despite differences in terms or breadth and despite the proposals requesting different actions. In *Exxon Mobil Corp.* (Mar. 9, 2017) ("Exxon Mobil 2017"), the proponent requested a report on the policies and procedures relating to the company's political contributions and expenditures while a prior proposal requested a report relating to, among other related things, the company's policies and procedures "governing lobbying…and grassroots lobbying communications." The company argued that the later proposal substantially duplicated the prior proposal because "its real target [was] disclosure of contributions to third parties that are used for political purposes." The proponent conceded that there may have been some overlap between the proposals but argued that its proposal was "far broader than the [prior] [p]roposal and request[ed] vastly more information" and even admitted that had the proposals been submitted in the opposite order, then the narrower proposal relating solely to lobbying disclosures might have been excludable. Nevertheless, the distinction on the timing and order of when the broader proposal was received did not change the analysis: the Staff concurred that the broader proposal was substantially duplicative of the earlier, narrower prior proposal and agreed with exclusion under Rule 14a 8(i)(11). *See also Amazon.com, Inc.* (Apr. 6, 2022) (concurring that a proposal requesting the board commission an independent third-party audit on workplace health and safety, evaluating productivity quotas, surveillance practices, and the effects of these practices on injury rates and turnover was substantially duplicative of a proposal requesting the board commission an independent audit and report of the working conditions and treatment that warehouse workers face); *Wells Fargo & Co.* (Feb. 8, 2011) (concurring that a proposal seeking a review and report on the company's loan modifications, foreclosures, and securitizations was substantially duplicative of a proposal seeking a report that would include "home preservation rates" and "loss mitigation outcomes," which would not necessarily be covered by the other proposal); *Chevron Corp.* (Mar. 23, 2009, recon. denied Apr. 6, 2009) (agreeing that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company's expanding oil sands operations in

the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company's products and operations).

B. The Duplicate Proposal Substantially Duplicates the Prior Proposal

The principal thrust and focus of the Duplicate Proposal and the Prior Proposal are the same—each proposal requests a quantitative report related to the Company's recruiting, hiring, and general talent retention practices. Specifically, the Duplicate Proposal requests the Company publicly report "quantitative metrics for workforce diversity, hiring, promotion and retention of employees, including data by gender, race, and ethnicity." Likewise, the Prior Proposal requests the Company to "produce a report on statistical differences in hiring across race and gender…" A comparison of the two Proposals, provided in the table below, demonstrates that they address the same subject matter, share the same objectives, and are inspired by similar concerns:

The Prior Proposal	***The Duplicate Proposal***
The Proposals each request disclosure of data and statistics regarding the Company's hiring practices	
"Shareholders request the Company produce a report on statistical differences in hiring across race and gender globally and/or by country…"	"The report should…provide transparency on outcomes using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity."
The Proposals' requested reports would include substantially similar data and statistics relating to race and gender	
"Statistical differences across race/gender are defined as the difference between non-minority/male new hires and minority/female new hires expressed as a percentage of non-minority/male new hires."	"The report should… [use] quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity."
Each of the Proposals expresses concern with hiring practices and associated risks faced by the Company	
"Hiring disparities persist across race and gender. They pose substantial societal and company risks…The risk of litigation for [discrimination in employment practices] is rising, and companies have begun to reconsider whether their DEI programs perpetuate prejudice rather than alleviate it…."	"Diverse employees, such as Black and female employees, still face significant barriers in recruitment, hiring, and promotion…" "If the company has dismantled key diversity, equity, and inclusion…policies and practices, this exposes it to financial, competitive, legal, and reputational risks."
Each of the Proposals argue that the requested statistics are needed to evaluate whether the Company discriminates	
"Deere should report on statistical differences in hiring across race and gender to prove it does not practice discrimination."	"Quantitative data is sought so that investors can assess and compare the effectiveness of companies' efforts to ensure meritocratic workplaces…"

The Proposals are concerned with the adequacy of the Company's current disclosures relating to hiring and similar topics	
"…the Company cannot make empty promises without following through. If the Company discriminates, it will be obvious in its hiring numbers. Deere should report on statistical differences in hiring across race and gender to prove it does not practice discrimination."	"As of the date of the filing of this proposal, Deere has not shared sufficient hiring, retention, or promotion data to allow investors to determine the effectiveness of its DEI programs."
Each of the Proposals addresses issues of both hiring and retention of employees	
"Shareholders request the Company produce a report on statistical differences in hiring…including associated policy, reputational, competitive, operational risks, and risks related to recruiting and retaining talent."	"The report should… provide transparency on outcomes using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees…."
Each of the Proposals notes the potential impact of the Company's recent DEI statements	
"Deere & Company…has come under fire for its DEI programs. The Company walked back its positions…These commitments are an important first step to deemphasize DEI and return the Company's recruitment focus to merit and skill…."	"In July, 2024, Deere & Company …announced an ambiguous and inconsistent shift in policies and practices regarding its workplace diversity strategy."

The fact that the proponents of each Proposal view the issue of disclosure of the Company's hiring practices through differing ideological lenses does not alter the fact that both Proposals share the same principal thrust and focus. Although the Duplicate Proposal and the Prior Proposal sometimes use some different words to phrase their shared request that the Company prepare a statistical report detailing the outcomes of its employment practices, and one emphasizes the need to prevent discrimination in hiring practices while the other emphasizes the importance of DEI initiatives in ensuring a diverse workplace, these are not substantive differences that detract from the overall shared principal thrust or focus of the Proposals—the production of a public report containing data and statistics on the Company's workforce and hiring decisions, including data by gender, race and ethnicity.

Nor does the arguably broader Prior Proposal's request that its report specifically address "associated policy, reputational, competitive, operational risks, and risks related to recruiting and retaining talent" introduce a substantial difference between the two Proposals. The facts here create an even simpler analysis than in Exxon Mobil 2017, where the broader proposal was submitted second in time and nevertheless excluded. Here, the Prior Proposal goes further than the Duplicate Proposal in its request for analyses of specific kinds of risks associated with the Company's hiring and talent retention practices, a subject on which the Duplicate Proposal is silent. Conversely, the Duplicate Proposal's primary request that the Company "report publicly on its efforts to create a meritocratic workplace…using quantitative metrics" entirely overlaps with the Prior Proposal's efforts to "return the Company's recruitment focus to merit and skill" through the publication of "a report on statistical differences in hiring." Exactly as in Exxon Mobil 2020, the

two Proposals "share a concern for seeking additional transparency from the [c]ompany about its [hiring] activities," firmly indicating that the Duplicate Proposal may be excluded.

Furthermore, as noted in the 1976 Release, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." As the Duplicate Proposal substantially duplicates the Prior Proposal, if the Company were required to include both Proposals in its 2025 Proxy Materials, there is a serious risk of shareholder confusion, particularly given the differing perspectives presented in the Proposals' supporting statements. In such a circumstance, shareholders could assume that they are being asked to wade into the ongoing cultural and ideological war regarding the value of diversity in the workplace and the legality of DEI initiatives, which is not the stated objective of either Proposal. In addition, if the voting outcome on the Proposals differed, the shareholder vote would not provide guidance on what actions shareholders want the Company to pursue, given that the same actions would be necessary to implement either the Duplicate Proposal or the Prior Proposal.

Accordingly, because the Company intends to include the Prior Proposal in its 2025 Proxy Materials, the Duplicate Proposal was submitted to the Company seven days after the Prior Proposal, and the Duplicate Proposal substantially duplicates the Prior Proposal, the Duplicate Proposal may be excluded pursuant to Rule 14a-8(i)(11).

CONCLUSION

For the reasons discussed above, we believe that the Company may properly omit the Duplicate Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(11). 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 Duplicate 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

Andrew Behar
CEO, *As You Sow*
Email: shareholderengagement@asyousow.org

Enclosures: Exhibit A
Exhibit B

EXHIBIT A

AS YOU SOW
2020 Milvia St. Suite 500
Berkeley, CA 94704
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

VIA FEDEX & EMAIL

September 11, 2024

Edward R. Berk
Corporate Secretary
Deere & Company
One John Deere Place
Moline, Illinois 61265-8098
CorporateSecretary@JohnDeere.com
BerkEdwardR@JohnDeere.com

Dear Mr. Berk,

As You Sow® is filing a shareholder proposal on behalf of LONGVIEW LARGECAP 500 INDEX FUND ("Proponent"), a shareholder of Deere & Co for inclusion in Deere & Co's 2025 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

To schedule a dialogue, please contact Meredith Benton, Workplace Equity Program Manager at [redacted]. Please send all correspondence **with a copy to** [redacted].

Andrew Behar
CEO, *As You Sow*

Enclosures
- Shareholder Proposal
- Shareholder Authorization

cc: Josh Beal, Director Investor Relations [redacted]

9/11/24

Andrew Behar
CEO
As You Sow
2020 Milvia Street, Suite 500
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with Deere & Co (the "Company") for inclusion in the Company's 2025 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to requesting the Board report publicly on the effectiveness of its efforts to create a meritocratic workplace where no one is excluded from contributing to the Company's success because of an immutable characteristic, such as gender, race or ethnicity. The report should provide transparency on outcomes using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity.

Stockholder: LONGVIEW LARGECAP 500 INDEX FUND

The Stockholder has continuously owned over $25,000 worth of Company stock, with voting rights, for over 13 months and will hold the required amount of stock through the date of the Company's annual meeting in 2025.

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

Ivan Frishberg is the Senior Vice President of Sustainability Banking at Amalgamated Bank. He is available for a meeting with Company regarding this shareholder proposal at the following days/times: October 1st at 2PM Central Time or October 2nd at 2PM Central Time.

Mr. Frishberg can be contacted at [redacted] to schedule a dialogue during one of the above dates.

Any correspondence regarding meeting dates must **also be sent to my representative:** Merdith Benton, Workplace Equity Program Manager, [redacted] **and** to [redacted].

275 Seventh Avenue
New York, NY 10001
amalgamatedbank.com

The Stockholder also authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

Mandy Tenner

Mandy Tenner
General Counsel of Amalgamated Bank

Trustee for
LONGVIEW LARGECAP 500 INDEX FUND

275 Seventh Avenue
New York, NY 10001
amalgamatedbank.com

WHEREAS: In July, 2024, Deere & Company (Deere) announced an ambiguous and inconsistent shift in policies and practices regarding its workplace diversity strategy.[1] If the company has dismantled key diversity, equity, and inclusion ("DEI") policies and practices, this exposes it to financial, competitive, legal, and reputational risks.

Prior to these recent changes, Deere has made public statements on the importance of its DEI efforts. These include, but are not limited to:

- 2023 Proxy Statement: "We are committed to the principles of equal employment opportunity and we believe that a diverse workforce is essential to our long-term success and solving our customers' most pressing challenges."[2]
- Code of Business Conduct: "Each day we strive for a more diverse, equitable, and inclusive culture with our colleagues, customers, suppliers, and distribution channels. In doing so, experience tells us we will be more engaged, innovative, and successful."[3]

Many research studies indicate that investors benefit from companies with management diversity:

- McKinsey studies underscore that companies with higher diversity in corporate leadership have a greater likelihood of outperforming peers on profitability.[4]
- *As You Sow* and Whistle Stop Capital have reviewed the workforce diversity of 1,641 companies between 2016-2021. Linear regressions found statistically significant positive correlations between manager diversity and return on equity, return on invested capital, and 10-year revenue growth, among other indicators.[5]

Multiple studies have shown the need for action. Diverse employees, such as Black and female employees, still face significant barriers in recruitment, hiring,[6] and promotion.[7]

As of the date of the filing of this proposal, Deere has not shared sufficient hiring, retention, or promotion data to allow investors to determine the effectiveness of its DEI programs. Deere is falling behind peers. Russell 1000 companies have increased disclosure of these indicators by seventy-six percent in the last two years.[8] Companies that release more diversity and inclusion data than Deere include, but are not limited to Ford, General Dynamics, General Motors, Union Pacific, and Raytheon Technologies.

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[1] https://x.com/JohnDeere/status/1813318977650847944/photo/1
[2] https://www.sec.gov/ix?doc=/Archives/edgar/data/315189/000155837024000170/de-20240228xdef14a.htm
[3] https://s22.q4cdn.com/253594569/files/doc_downloads/2022/11/Deere_Code_External_2022.pdf
[4] https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-matters-even-more-the-case-for-holistic-impact
[5] https://www.asyousow.org/report-page/2023-positive-relationships-linking-workforce-diversity-and-financial-performance
[6] https://www.bloomberg.com/opinion/features/2024-07-29/white-men-the-most-likely-to-get-hired-even-with-dei-finds-research
[7] https://mitsloan.mit.edu/ideas-made-to-matter/women-are-less-likely-men-to-be-promoted-heres-one-reason-why
[8] https://www.asyousow.org/our-work/social-justice/workplace-equity/data-visualization

Without data on the outcomes of its workplace equity efforts, investors will lack confidence in Deere's ability to build, use, and maintain an effective and meritocratic workforce.

RESOLVED: Shareholders request that Deere report publicly on the effectiveness of its efforts to create a meritocratic workplace where no one is excluded from contributing to the Company's success because of an immutable characteristic, such as gender, race or ethnicity. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity.

SUPPORTING STATEMENT: Quantitative data is sought so that investors can assess and compare the effectiveness of companies' efforts to ensure meritocratic workplaces through DEI efforts. It is advised that this content be provided through Deere's existing sustainability reporting infrastructure. An independent report on this topic is not requested.

From:	Edward Berk
To:	Shareholder Engagement; Corporate Secretary; [redacted]
Cc:	Meredith Benton; Jaylen Spann; [redacted] Frishberg, Ivan; Tenner, Mandy; Cole Genge; Gail Follansbee; Riley McCann; Rachel Lowy
Subject:	RE: Deere & Co (DE) - Shareholder Proposal Filing Documents
Date:	Thursday, September 12, 2024 8:26:33 AM
Attachments:	image001.png

Dear Ms. Lowy:

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

Best regards,
Ed Berk

Public

From: Shareholder Engagement [redacted]
Sent: Wednesday, September 11, 2024 4:25 PM
To: Corporate Secretary <CorporateSecretary@JohnDeere.com>; Edward Berk <BerkEdwardR@JohnDeere.com>; [redacted]
Cc: Meredith Benton [redacted]; Jaylen Spann [redacted]; [redacted]; Frishberg, Ivan [redacted]; Tenner, Mandy [redacted]; Cole Genge [redacted]; Gail Follansbee [redacted]; Riley McCann [redacted]; Rachel Lowy [redacted]
Subject: Deere & Co (DE) - Shareholder Proposal Filing Documents

Dear Mr. Berk,

Attached please find the lead filing document packet submitting a shareholder proposal for inclusion in the company's 2025 proxy statement. A printed copy of these documents has been sent to your offices via FedEx and our records show it will be delivered tomorrow, September 12, 2024.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and kind regards,
Rachel Lowy

Rachel Lowy (she/her/hers)

Shareholder Relations Sr. Coordinator

JOHN DEERE

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

September 17, 2024

VIA EMAIL AND OVERNIGHT COURIER

Mr. Andrew Behar
As You Sow
2020 Milvia St. Suite 500
Berkeley, California 94704

[redacted]

Re: Notice of Deficiency Relating to Stockholder Proposal

Dear Mr. Behar:

On September 11, 2024 (the "Submission Date"), we received the stockholder proposal from As You Sow (the "Representative"), on behalf of the Longview Largecap 500 Index Fund (the "Proponent") via email (the "Proposal") for inclusion in Deere & Company's (the "Company") proxy materials for its 2025 Annual Meeting of Stockholders (the "Annual Meeting"). The purpose of this letter is to notify the Representative that we have not received sufficient proof of the Proponent's ownership as required by Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended ("Rule 14a-8(b)").

Rule 14a-8(b) provides that a stockholder proponent must submit sufficient proof of their continuous ownership for the applicable holding period preceding and including the Submission Date of:

- At least $2,000 in market value of the Company's securities entitled to vote on the Proposal for at least three years; or
- At least $15,000 in market value of the Company's securities entitled to vote on the Proposal for at least two years; or
- At least $25,000 in market value of the Company's securities entitled to vote on the Proposal for at least one year.

Our search of the database of our registered stockholders shows that the Proponent is not a registered stockholder, and as a result, we are unable to verify this ownership requirement. Therefore, pursuant to Rule 14a-8(b), the Proponent must demonstrate its eligibility to submit the Proposal by submitting to us a written statement from the "record"

holder of the securities (usually a bank or broker) verifying that the Proponent has continuously held the requisite number of securities for the applicable holding period preceding and including the Submission Date, as described above. The Securities and Exchange Commission's Staff Legal Bulletins No. 14F and 14G (together, the "Bulletins") provide additional guidance with respect to the standard for proof of ownership. According to the Bulletins, for purposes of satisfying the proof of ownership requirement under Rule 14a-8(b)(2), only participants in The Depository Trust Company ("DTC") and their affiliates, as described in the Bulletins, should be viewed as "record" holders of securities that are deposited with the DTC. If the Proponent's broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through its account statements, because the clearing broker identified on such account statements will generally be the DTC participant. If the DTC participant knows the Proponent's broker or bank's holdings, but does not know the Proponent's holdings, the Proponent can satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, as of the Submission Date, the required amount of securities was continuously held for the applicable holding period—one from the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

To remedy the procedural defect identified in this letter, please respond with the appropriate ownership verification and information discussed above as further detailed in Rule 14a-8 and the guidance set forth in the Bulletins. We have attached copies of the Bulletins and Rule 14a-8 as Exhibit A hereto. The Representative's response, on behalf of the Proponent, must be postmarked or transmitted electronically with the appropriate documentation and information within 14 calendar days of receipt of this letter, the response timeline imposed by Rule 14a-8(f). If the Proponent does not adequately correct the procedural deficiency discussed in this letter within 14 days of receipt of this letter, the Company may be allowed to exclude the Proposal from consideration at its Annual Meeting and in its proxy materials. If the Proponent adequately corrects the procedural defect within the 14-day period, the Company reserves the right to seek relief from the Securities and Exchange Commission on other grounds, as appropriate.

Please transmit your response electronically to BerkEdwardR@JohnDeere.com. Alternatively, you may address your response to me at the address on this letter.

Sincerely,

Edward R. Berk
Corporate Secretary

Enclosures

9/18/2024

Deere & Company
One John Deere Place
Moline, Illinois 61265-8098
CorporateSecretary@JohnDeere.com
BerkEdwardR@JohnDeere.com
Attention: Edward R. Berk

Dear Mr. Berk,

Amalgamated Bank, a DTC participant, acts as trustee and custodian LONGVIEW LARGECAP 500 INDEX FUND. As of the date of this letter, Amalgamated Bank holds, on LONGVIEW LARGECAP 500 INDEX FUND's behalf, 26,182 shares of Deere & Co stock, and has continuously held Deere & Co stock for at least 13 months with a value of over $25,000.

Best Regards,

Mandy Tenner

Mandy Tenner
General Counsel of Amalgamated Bank

Trustee for
LONGVIEW LARGECAP 500 INDEX FUND

275 Seventh Avenue
New York, NY 10001
amalgamatedbank.com

From: Edward Berk
To: Shareholder Engagement
Cc: Rachel Lowy; Meredith Benton; Frishberg, Ivan
Subject: RE: Rule 14a-8 Proposal (DE)
Attachments: image001.png

Hi Rachel,

I confirm that the proof of ownership you have provided is sufficient. Thanks.

Best,
Ed

From: Shareholder Engagement [redacted]
Sent: Wednesday, September 18, 2024 6:18 PM
To: Edward Berk <BerkEdwardR@JohnDeere.com>
Cc: Rachel Lowy [redacted]; Meredith Benton [redacted];
Frishberg, Ivan [redacted]
Subject: Re: Rule 14a-8 Proposal (DE)

Hello Edward,

Please find attached the following proof of ownership:
Lead Filer Longview Largecap 500 Index Fund 26,182 shares

It would be greatly appreciated if you could confirm receipt of this attachment and that all deficiencies have been satisfied.

Thank you and kind regards,
Rachel

Rachel Lowy (she/her/hers)

Shareholder Relations Sr. Coordinator

As You Sow®

Main Post Office, P.O. Box 751 |Berkeley, CA 94701

From: Shareholder Engagement [redacted]
Sent: Wednesday, September 18, 2024 9:50 AM
To: Edward Berk [redacted]
Cc: Rachel Lowy [redacted]; Meredith Benton [redacted];

Frishberg, Ivan [redacted]
Subject: Re: Rule 14a-8 Proposal (DE)

Hello Edward,

Confirming receipt of this deficiency letter. The proof of ownership has been requested from the shareholder's custodian, and will be forwarded to you no later than October 1, 2024.

Thank you and best regards,
Rachel

Rachel Lowy (she/her/hers)

Shareholder Relations Sr. Coordinator

As You Sow®

Main Post Office, P.O. Box 751 |Berkeley, CA 94701

(510) 735-8158 x722

rlowy@asyousow.org | www.asyousow.org

~Empowering Shareholders to Change Corporations for Good~

From: Edward Berk <BerkEdwardR@JohnDeere.com>
Sent: Tuesday, September 17, 2024 12:09 PM
To: Shareholder Engagement [redacted]
Cc: Rachel Lowy [redacted]; Meredith Benton [redacted];
Frishberg, Ivan [redacted]
Subject: Rule 14a-8 Proposal (DE)

Dear Mr. Behar:

Please see the attached letter re your recent Rule 14a-8 proposal. Please don't hesitate to contact me with any questions. Thanks.

Best,
Edward Berk

Edward R. Berk
(he/him/his)
Vice President, Associate General Counsel & Corporate Secretary
Deere & Company World Headquarters
One John Deere Place
Moline, Illinois 61265, USA
T: +1 309 748 2674
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BerkEdwardR@JohnDeere.com

Public

EXHIBIT B

NATIONAL LEGAL AND POLICY CENTER

September 4, 2024

Mr. Edward Berk
Corporate Secretary & Associate General Counsel
Deere & Company
One John Deere Place
Moline, Illinois 61265-8098

VIA UPS & EMAIL: BerkEdwardR@johndeere.com,
CorporateSecretary@JohnDeere.com

Dear Mr. Berk/Corporate Secretary:

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

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

The Proposal is submitted to promote shareholder value by requesting the Company produce a report on hiring statistics across race and gender. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative can meet with the Company via teleconference to discuss the proposal on September 18 at 10 a.m. or September 20 at 10 a.m., in the Central Time Zone (U.S.). While we can potentially accommodate other dates and times that would align with Company representatives' schedules, NLPC will *not* be able to meet with the Company outside the time window of 10 to 30 days from the date of the Proposal's submission, as specified by SEC guidelines. I can be reached at [redacted] or at [redacted].

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me via email or sent to my attention at 21430 Timberlake Rd, #204, Lynchburg, VA 24502.

Sincerely,

Luke Perlot
Associate Director
Corporate Integrity Project

Enclosure: "Report on Racial and Gender Hiring Statistics" proposal

Report on Racial and Gender Hiring Statistics

Whereas: Hiring disparities persist across race and gender. They pose substantial societal and company risks.

The U.S. Supreme Court ruled in *SFFA v. Harvard* on June 29, 2023, that discriminating on the basis of race in college admissions violates the equal protection clause of the 14th Amendment.[1]

Attorneys General of thirteen states warned Fortune 100 companies on July 13, 2023, that *SFFA* implicated corporate diversity, equity, and inclusion (DEI) programs.[2]

Prior legal advice regarding the legality of racially discriminatory programs has been called into question post-*SFFA*.[3]

In the year after the death of George Floyd, the S&P 100 added 300,000 jobs. Only 6 percent of them went to white applicants, [4] [5] a statistic that provides prima facie proof of illegal discrimination on the basis of race by these companies, considering whites constitute 76 percent of the American population.[6]

In 2019, Starbucks was sued for a single case of discrimination against a white employee, who was awarded $25 million in 2023.[7] The risk of litigation for such mistreatment is rising, and companies have begun to reconsider whether their DEI programs perpetuate prejudice rather than alleviate it.[8]

Supporting Statement: Deere & Company ("Deere" or the "Company") has come under fire for its DEI programs. The Company walked back its positions, promising the following:[9] [10]

- "We will no longer participate in or support external social or cultural awareness parades, festivals, or events."
- "Business Resource Groups will be exclusively focused on professional development, networking, mentoring, and supporting talent recruitment efforts."
- "Auditing all company-mandated training materials and policies to ensure the absence of social motivated messages, while being in compliance with federal, state, and local laws."

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[1] https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/
[2] https://ag.ks.gov/docs/default-source/documents/corporate-racial-discrimination-multistate-letter.pdf
[3] https://www.skadden.com/insights/publications/2023/09/quarterly-insights/corporate-dei-polices-face-scrutiny
[4] https://www.bloomberg.com/graphics/2023-black-lives-matter-equal-opportunity-corporate-diversity/
[5] https://www.dailywire.com/news/bloomberg-flubs-data-for-bombshell-report-that-only-6-of-new-corporate-hires-are-white
[6] https://www.census.gov/quickfacts/fact/table/US/PST045222
[7] https://www.foxbusiness.com/features/starbucks-manager-shannon-phillips-wins-25-million-lawsuit-fired-white-donte-robinson-rashon-nelson
[8] https://apnews.com/article/dei-diversity-corporations-affirmative-action-309864f08e6ec63a45d18ca5f25d7540
[9] https://x.com/JohnDeere/status/1813318977650847944
[10] https://www.cnn.com/2024/07/18/business/john-deere-diversity-inclusion-efforts/index.html

- “Reaffirming within the business that the existence of diversity quotas and pronoun identification have never been and are not company policy.”

These commitments are an important first step to deemphasize DEI and return the Company’s recruitment focus to merit and skill, but the Company cannot make empty promises without following through. If the Company discriminates, it will be obvious in its hiring numbers. Deere should report on statistical differences in hiring across race and gender to prove it does not practice discrimination.

Resolved: Shareholders request the Company produce a report on statistical differences in hiring across race and gender globally and/or by country, where appropriate, including associated policy, reputational, competitive, operational risks, and risks related to recruiting and retaining talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy, and legal compliance information. Shareholders request the company to present its findings for hiring data dating back to Jan. 1, 2020, and to publish an updated report annually thereafter, at least three months prior to each annual meeting.

Statistical differences across race/gender are defined as the difference between non-minority/male new hires and minority/female new hires expressed as a percentage of non-minority/male new hires.

November 25, 2024

VIA ONLINE SUBMISSION

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

Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Deere & Co. Regarding Diversity, Equity, and Inclusion Disclosures on Behalf of Amalgamated Bank, Trustee of the LongView LargeCap 500 Index Fund

Ladies and Gentlemen:

Amalgamated Bank, as trustee of the LongView LargeCap 500 Index Fund (the "Proponent"), a beneficial owner of common stock of Deere & Company (the "Company" or "Deere"), has submitted a shareholder proposal (the "Proposal") seeking a public report on the effectiveness of the Company's efforts to create a meritocratic workplace where no one is excluded from contributing to the Company's success because of an immutable characteristic. The Proponent has designated *As You Sow* to act as its representative with respect to the Proposal, including responding to the Company's October 22, 2024 "No Action" letter (the "Company Letter").

The Company Letter contends that the Proposal may be excluded from the Company's 2024 proxy statement because, Deere argues, the Proposal is duplicative of a prior-submitted proposal ("NLPC Proposal"). In reality, the two Proposals differ starkly. As such, the Proponent respectfully requests that the Staff inform the Company that it cannot concur with the Company's request.

A copy of this letter is being emailed to the Company concurrently with its submission to the Commission's online shareholder proposal portal.

SUMMARY

The Proposal requests that Deere report "on the effectiveness of its efforts to create a meritocratic workplace" by disclosing "quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity." The Proposal, reproduced below, is supported by evidence demonstrating the significant economic benefits to companies of maintaining effective diversity, equity, and inclusion ("DEI") programs that ensure the workplace is a functioning meritocracy.

The "NLPC Proposal" requests that Deere "produce a report on statistical differences in hiring across race and gender . . . including associated policy, reputational, competitive, operational risks, and risks related to recruiting and retaining talent." The NLPC Proposal demands that the Company disclose this information in the form of a single, specific data point to "prove" that it

does not practice discrimination—in particular, against white men. *See* Company Letter at 24-25 (reproducing NLPC Proposal).

The Proposal does not substantially duplicate the NLPC Proposal. The two Proposals, motivated by different concerns, seek different data to answer different questions about different company practices. They share neither scope nor principal thrust or focus.

With respect to scope, the difference between the two Proposals is most clearly demonstrated by the different data the Proposals seek. The NLPC Proposal narrowly requests the disclosure of "the difference between non-minority/male new hires and minority/female new hires expressed as a percentage of non-minority/male new hires." By contrast, the Proposal requests information on hiring, *promotion, and retention* rates by race, gender, and ethnicity.

This difference in scope reflects the fundamental difference in principal thrust between the two Proposals. As these requests demonstrate, the NLPC Proposal is *exclusively* focused on the issue of alleged hiring discrimination against white men. The Proposal, in contrast, has a broader concern: given the evidence linking diversity and financial outperformance, the Proposal asks not only for diversity and hiring information, but for data sufficient to determine whether the Company is *retaining* and *promoting* candidates based on their merit, rather hiring diversely while retaining policies that reproduce and maintain unequal treatment and division within the Company's workforce.

This fundamental difference is reflected in a number of other distinctions between the Proposals:

- The NLPC Proposal is risk-oriented, and seeks a qualitative disclosure of the risks related to alleged hiring discrimination against white men. By contrast, the Proposal seeks quantitative data to allow investors to confirm whether the Company is taking advantage of the *opportunities* and financial benefits of promoting a diverse meritocracy in the workplace.
- Unlike the Proposal, the NLPC Proposal's narrow focus on white men causes it to exclude a request to disclose ethnicity data. Race and ethnicity are different.[1]
- The Proposal is forward-looking, seeking the ongoing disclosure of data concerning the Company's workforce to allow investors to track whether the Company's "snapshot" diversity statistics reflect ongoing retention and promotion of diverse hires rather than frustration and burnout. By contrast, the NLPC Proposal seeks data to "prove" it did not discriminate in hiring against white men "after the death of George Floyd."
- As this last point suggests, the Proposals are also responsive to two different factual predicates. The NLPC Proposal bills itself as a response to national hiring trends after the death of George Floyd in 2020, while the Proposal's purpose is in response to the Company's 2024 announcement concerning its withdrawal of DEI policies.

[1] *See* U.S. Equal Employment Opportunity Comm'n, *Fact Sheet: Definitions of Race and Ethnicity Categories* (2024), https://www.eeocdata.org/pdfs/DEFINITIONS_OF_RACE_AND_ETHNICITY_CATEGORIES.pdf.

The generally acknowledged purposes behind Rule 14a-8(i)(11)'s prohibition against duplicative proposals are: (a) preventing shareholder confusion and (b) preventing proxy materials from becoming cluttered with virtually identical proposals. Neither of these concerns is presented here. No reasonable shareholder would be confused about the difference between the two proposals. The Staff typically has declined to concur in the exclusion of later-submitted proposals under similar circumstances and it should do so here.

THE PROPOSAL

WHEREAS: In July, 2024, Deere & Company (Deere) announced an ambiguous and inconsistent shift in policies and practices regarding its workplace diversity strategy.[1] If the company has dismantled key diversity, equity, and inclusion ("DEI") policies and practices, this exposes it to financial, competitive, legal, and reputational risks.

Prior to these recent changes, Deere has made public statements on the importance of its DEI efforts. These include, but are not limited to:

- 2023 Proxy Statement: "We are committed to the principles of equal employment opportunity and we believe that a diverse workforce is essential to our long-term success and solving our customers' most pressing challenges."[2]
- Code of Business Conduct: "Each day we strive for a more diverse, equitable, and inclusive culture with our colleagues, customers, suppliers, and distribution channels. In doing so, experience tells us we will be more engaged, innovative, and successful."[3]

Many research studies indicate that investors benefit from companies with management diversity:

- McKinsey studies underscore that companies with higher diversity in corporate leadership have a greater likelihood of outperforming peers on profitability.[4]
- *As You Sow* and Whistle Stop Capital have reviewed the workforce diversity of 1,641 companies between 2016-2021. Linear regressions found statistically significant positive correlations between manager diversity and return on equity, return on invested capital, and 10-year revenue growth, among other indicators.[5]

[1] https://x.com/JohnDeere/status/1813318977650847944/photo/1
[2] https://www.sec.gov/ix?doc=/Archives/edgar/data/315189/000155837024000170/de-20240228xdef14a.htm
[3] https://s22.q4cdn.com/253594569/files/doc_downloads/2022/11/Deere_Code_External_2022.pdf
[4] https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-matters-even-more-the-case-for-holistic-impact
[5] https://www.asyousow.org/report-page/2023-positive-relationships-linking-workforce-diversity-and-financial-performance

Multiple studies have shown the need for action. Diverse employees, such as Black and female employees, still face significant barriers in recruitment, hiring,[6] and promotion.[7]
As of the date of the filing of this proposal, Deere has not shared sufficient hiring, retention, or promotion data to allow investors to determine the effectiveness of its DEI programs. Deere is falling behind peers. Russell 1000 companies have increased disclosure of these indicators by seventy-six percent in the last two years.[8] Companies that release more diversity and inclusion data than Deere include, but are not limited to Ford, General Dynamics, General Motors, Union Pacific, and Raytheon Technologies. Without data on the outcomes of its workplace equity efforts, investors will lack confidence in Deere's ability to build, use, and maintain an effective and meritocratic workforce.

RESOLVED: Shareholders request that Deere report publicly on the effectiveness of its efforts to create a meritocratic workplace where no one is excluded from contributing to the Company's success because of an immutable characteristic, such as gender, race or ethnicity. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity.

SUPPORTING STATEMENT: Quantitative data is sought so that investors can assess and compare the effectiveness of companies' efforts to ensure meritocratic workplaces through DEI efforts. It is advised that this content be provided through Deere's existing sustainability reporting infrastructure. An independent report on this topic is not requested.

ANALYSIS

The Company Letter argues that the Proposal substantially duplicates the earlier-submitted NLPC Proposal and therefore may be excluded. However, the two proposals differ in principal thrust and focus and present no risk of shareholder confusion or contradictory messages to the Company.

I. Rule 14a-8(i)(11) Background

Rule 14a-8(i)(11) permits the exclusion of a proposal that "substantially duplicates" an earlier-submitted proposal for the same shareholder meeting. In 1976, the Commission stated that the purpose of this exclusion was to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 34-12999 (Nov. 22, 1976) (the "1976 Release").

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[6] https://www.bloomberg.com/opinion/features/2024-07-29/white-men-the-most-likely-to-get-hired-even-with-dei-finds-research
[7] https://mitsloan.mit.edu/ideas-made-to-matter/women-are-less-likely-men-to-be-promoted-heres-one-reason-why
[8] https://www.asyousow.org/our-work/social-justice/workplace-equity/data-visualization

"Historically, in evaluating whether proposals are substantially duplicative under Rule 14a-8(i)(11), the staff has considered whether the proposals share the same 'principal thrust' or 'principal focus.'" 2022 Proposed Rule at 17.[1] However, the Staff has acknowledged that "this analytical framework can be difficult to apply" because "there are numerous potential approaches . . . to discerning a proposal's principal thrust or focus." *Id.* at 18. As such, "delineating the principal thrust or focus too broadly" risks over-excluding proposals. *Id.*

II. The Proposals differ dramatically—they seek different data to answer different questions about different company practices—in both scope and principal thrust

The Company Letter argues that the "principal thrust and focus of the [two Proposals] are the same—each proposal requests a quantitative report related to the Company's recruiting, hiring, and general talent retention practices." Company Letter at 4. But this is flawed, both descriptively—the NLPC Proposal actually says nothing whatsoever about "talent retention," which is a central focus of the Proposal—and legally, in that it defines the Proposals' thrust too broadly.

The principal thrust of the NLPC Proposal is exclusively about whether the Company is discriminating in hiring against white men, and the risks of so doing. The principal thrust of the Proposal, by contrast, is asking the Company to provide information related to hiring, retention, and promotion of employees by race, gender, and ethnicity, to allow investors to determine if the Company is taking full advantage of the financial and competitive benefits of a diverse, meritocratic workplace. These vastly different principal thrusts are reflected in numerous ways:

NLPC Proposal	**The Proposal**
Backward-oriented	Forward-oriented
Downside risk-oriented, especially legal risk	Upside opportunity-oriented
Focused on hiring	Focused on recruitment, hiring, retention, and promotion
Reflects concern that post-2020, the Company did not hire enough white men	Reflects concern that 2024 changes to the Company's DEI policies will negatively impact its financial performance

Independently and together, these differences are sufficient to differentiate the Proposals. No investor would confuse the two, and the Company will have little difficulty distinguishing the purpose inherent in investors' voting for each Proposal, i.e., their principal thrusts.

1. The Proposals' differing scopes

The Proposal seeks quantitative disclosures for hiring, retention, and promotion across race, gender, and ethnicity (in order to demonstrate the effectiveness of the Company's efforts to

[1] Proposed Rule, *Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8* ("2022 Proposed Rule"), Securities and Exchange Commission, *available at:* https://www.sec.gov/files/rules/proposed/2022/34-95267.pdf.

create and maintain a diverse, meritocratic workplace). The NLPC Proposal seeks a single metric: the difference between white male hires and non-white male hires as a percentage of white male hires, dating back to 2020 (in order to investigate whether or not the Company has discriminated in hiring against white men).

The Company Letter attempts to hand-wave away the magnitude of difference in these requests as minor "differences in terms or breadth." Company Letter at 3. But—as the above parentheticals indicate—the different scopes of the Proposals' disclosure requests go directly to the different principal thrusts of the Proposals.

The Staff has consistently declined to concur in no-action requests under circumstances like those present here where, despite a high-level similarity in requested information, the proposals had significantly different scopes. For example, in *Verizon Wireless Co.* (Mar. 14, 2024):

***Verizon* (Mar. 14, 2024)** **Earlier Proposal**	**Later Proposal**
The shareholders request that the board (at reasonable cost, within a reasonable time, and excluding confidential/proprietary information) commission, oversee, and publish an independent third-party study which examines the impact on the company, the sector, and American democracy of the company adopting a policy prohibiting the use of corporate or PAC funds for direct or indirect contributions to political candidates. The study should provide recommendations and potential next steps.	Shareholders request the Board annually report, at reasonable expense, on Verizon's political and electioneering expenditures, identifying and analyzing incongruence between such expenditures and the Company's operational and strategic needs and its stated values and policies. The report should state whether Verizon has made, or plans to make, changes in contributions or communications as a result of identified incongruencies.

The Staff declined to concur in the Company's no-action request after the Proponent argued, *inter alia*, that the earlier proposal was limited to *candidate contributions*, while the later proposal involved a broader swath of electioneering expenses. As a result of that and other distinctions in scope between the two Proposals—for example, the earlier proposal sought a report on impacts to American democracy, while the later limited its scope on risks to the company's own interests—the "action" that the two proposals asked the company to undertake differed drastically.

So too here: one proposal focuses on discrimination in hiring, and one is about the effectiveness of policies to promote diversity in hiring, retention, and promotion. As the Staff recognized in denying a substantial implementation no-action request concerning a proposal similar to the Proposal here, the retention and promotion data is *the critical component* of the Proposal's request. *See Eli Lilly & Co.* (Mar. 10, 2023) (rejecting substantial implementation argument where proposal sought same quantitative hiring, promotion, and retention data as here, because

company's release of "snapshot" hiring diversity data was insufficient to demonstrate benefits of diversity were being attained).

The relative significance of this difference between the Proposals serves to differentiate the circumstances here from those in many of the precedents relied upon by the Company.[2] Most of those precedents involve lobbying transparency proposals with relatively limited differences in the requested disclosure. For example, in *Exxon Mobil Corp.* (Mar. 13, 2020), the Staff concurred in a 14a-8(i)(11) exclusion where both proposals narrowly concerned lobbying expenditures. Same with *Duke Energy Corp.* (Feb. 19, 2016) and *Pfizer, Inc.* (Feb. 17, 2012) — while the disclosure requests varied slightly, in each case both proposals sought similar insight into the *same* company activity.

Here, the question of whether the Company discriminates against white men in hiring is distinct from the question of how effective the Company is at promoting and maintaining a diverse, meritocratic workplace, as demonstrated not only by hiring but also by retention and promotion rates. Thus, the Proposals seek **different data** answering **different questions** about **different company practices**.

That the requested data differs so significantly demonstrates the inappositeness of *Exxon Mobil Corp.* (Mar. 9, 2017), a precedent upon which the Company Letter relies heavily. *See* Company Letter at 5-6 (the two Exxon precedents are the only two precedents cited outside of the "Background" section). There, the proposals had a subject matter that overlapped in part and differed in part, but requested substantially identical reports:

***Exxon* (Mar. 9, 2017) Earlier Proposal**	**Later Proposal**
Requested that company prepare a report disclosing Exxon's: (1) "Company **policy and procedures** governing lobbying, **both direct and indirect**, and grassroots lobbying communications." (2) "*Payments by ExxonMobil* used for (a) direct or indirect lobbying or (b) grassroots lobbying communications" (3) "ExxonMobil's membership in and payments to any tax-exempt organization that writes and endorses model legislation" and	Requested that company prepare a report disclosing company's: (a) "**Policies and procedures** for making political contributions and expenditures with corporate funds (**both direct and indirect**), including ***the board's role (if any) in that process***" and (b) "*Monetary and non-monetary political contributions or expenditures . . .* as well as the portion of any dues or payments made to any tax-exempt organization (such as a trade

[2] In *McDonald's Corp.* (Apr. 3, 2023), the proposals were essentially word-for-word identical, with one minor change in the later-submitted proposal. That is not the case here, so *McDonald's* is of little precedential value. So too with *Amazon.com, Inc.* (Apr. 6, 2022), in which both proposals requested a third-party audit of the Company's workforce conditions and policies, with very minor differences between the proposals.

(4) "Description of management's and the ***Board's decision making process*** and oversight for making payments" described above.	association) used for" political expenditures

(different emphases added to demonstrate various similarities).

As an initial point, *Exxon* is a shaky foundation upon which to rely. The decision there presumably turned in significant part on the proponent's "conce[ssion]" that, in light of the "overlap" between the two proposals, if the submissions had "been made in reverse order, the [earlier proposal] might well be excluded." *See Exxon* 2017, *supra* (Proponent Letter at 6, Company Reply at 2 ("In light of this concession of overlap by the Proponent, there is clearly sufficient overlap to justify exclusion under Rule 14a-8(i)(11) . . . .")).

But, more substantively, *Exxon* demonstrates precisely why the proposals here are *not* duplicative. The later proponent in *Exxon* argued that its resolved clause primarily concerned candidate/party contributions, while the earlier proposal primarily concerned lobbying expenditures.[3] However, the full text of the later proposal heavily focused on payments made to trade associations and other third-party organizations, including organizations prohibited by law from making candidate/party contributions. Moreover, the later proposal also conceded that Exxon was *already disclosing* its direct candidate/party contributions and the policy for making those contributions, meaning that the third-party payments were essentially all the later proposal sought. But such payments were fully contained within the scope of the earlier proposal. Thus, as the company argued, the "report that the Company would need to provide in order to comply with the request in the [first] Proposal would cover substantially similar areas as the report sought in the [second] Proposal." *Id.* (Company Reply at 2).

By contrast, there would be no such overlap in the reports needed to fulfill each Proposal here. All that the Proposals here share is a broadly defined subject-matter interest in diversity in the Company's workforce. To the extent that the NLPC Proposal requests: (1) the result of the abstract formula described above, and (2) a description of the risks associated with not hiring enough white men, *neither* element would appear in a report that satisfied the base elements of the Proposal. Similarly, while the quantitative disclosures requested by the Proposal may partially solve the math problem included in the NLPC Proposal, other core requests of the Proposal, including (1) ethnicity data, (2) retention data, (3) promotion data, and (4) any qualitative discussion of the "effectiveness of its efforts to create a meritocratic workplace where no one is excluded from contributing to the Company's success because of an immutable characteristic," would be well outside the scope of the NLPC Proposal. So, the Company's argument that "the same actions would be necessary to implement" each Proposal is incorrect. *See* Company Letter at 6.

The Proposals are not substantially duplicative.

[3] As described above, as investor sophistication on political spending issues has advanced, more recent proponents have successfully argued that this is a significant difference. *See Verizon Wireless*, *supra*. However, as explained *infra*, the company's existing disclosures in *Exxon* complicated the independent significance of the later-submitted proposal's request.

2. The Proposals' different principal thrusts

Even if the Proposals had greater overlap in scope, they would still not satisfy the standards articulated by the Staff because, as described above, their principal thrusts depart significantly. The NLPC Proposal is about the legal risk of hiring discrimination against white men, and the Proposal is about whether the Company's workforce management practices are effectively hiring, retaining, and promoting a diverse and meritocratic talent base in order to secure greater financial performance.

Once more, the Company attempts to hand-wave away this drastic difference as merely "differing ideological lenses." Company Letter at 5.[4] But the Staff has recognized that differences this significant can overwhelm superficial similarities in proposals and make exclusion under the duplication rule inappropriate.

The most directly on-point precedent is *Johnson & Johnson* (Feb. 11, 2022). It postdates both *Exxon* precedents on which the Company relies, involves a similar subject matter as the proposals here, and involves a similar difference in "ideological lenses," to quote the Company Letter. There:

***Johnson & Johnson* (Feb. 11, 2022) Earlier Proposal from National Center for Public Policy Research**	**Later Proposal from Mercy Investment Services, Inc.**
Shareholders of Johnson & Johnson, Inc. ("the Company") request that the Board of Directors commission a racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly	Shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices and products, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining the specific matters to be assessed. A report on the audit, prepared at reasonable cost and omitting

[4] Notably, the Company tries to have it both ways on this point. The Company Letter simultaneously argues that these "differing ideological lenses" are not significant enough to distinguish the Proposals *and* that "the differing perspectives presented in the Proposals' supporting statements" are so diametrically opposed that shareholders might somehow become confused into thinking that, rather than voting for or against the Proposals' specific asks, "they are being asked to wade into the ongoing cultural and ideological war regarding the value of diversity in the workplace." Company Letter at 6. The argument that the Proposals risk shareholder confusion because they are *too different* is incompatible both with the duplication rule and the Company's other arguments.

disclosed on the Company's website.	confidential/proprietary information, should be published on the company's website.

In short, the proposals' resolved clauses were substantially similar—each, using standard language for such an ask, requested a "racial equity audit." The proponent of the later-submitted proposal did not even bother contesting the point, admitting that the first proposal's "resolved clause closely resembles that of the Proposal." *See id.* (Proponent Letter at 2).

The two proposals differed dramatically, however, in their supporting statements, *i.e.*, the proposals' principal thrust. While the later-submitted proposal's supporting statement "detail[ed] the economic impacts of systemic racism, the reasons a racial equity audit is warranted at J&J, and the benefits J&J would derive from conducting such an audit," *id.*, the earlier-submitted proposal's supporting statement argued the opposite. It claimed that DEI programs were "themselves deeply racist and otherwise discriminatory" and that the Company was "in the name of racial equity, diversity and inclusion, committing illegal discrimination against employees deemed 'non-diverse.'" *Id.* (NCPPR Proposal). The Staff concluded that—despite resolved clauses that the later proponent admitted were substantially identical—the proposals were not substantially duplicative.

The exact situation presents itself here—*except* that the two whereas clauses, as described above, *also* differ significantly. The Proposal seeks information from the Company on the effectiveness of its efforts to promote a diverse, meritocratic workforce. It supports that request with a supporting statement laying out the substantial evidence that diversity in the workforce leads to financial outperformance, justifying investors' interest in the topic. By contrast, the NLPC Proposal argues that efforts to promote diversity—at least within the hiring context—put the company at legal risk and are incompatible with focusing on "merit and skill." As in *Johnson & Johnson*, the Proposals present no risk of investor confusion, and excluding the Proposal does not serve the purposes of the rule.[5]

[5] While less directly comparable, a similar dynamic was at play in *Verizon Wireless*, *supra.* There, the earlier proposal requested that the company consider the effect that its candidate contributions had on democracy and whether it should end those contributions, while the later proposal requested that the company analyze the risks associated with political expenditures that were misaligned with its values or business interests. As the later proponent successfully argued, the first proposal was essentially anti-contribution, while the second proposal was anti-*misalignment*, but not necessarily anti-contribution. The Staff declined to concur in the exclusion of the proposal.

CONCLUSION

The two Proposals, motivated by different concerns, seek different data to answer different questions about different company practices. They are not substantially duplicative and present no risk of shareholder confusion.

Based on the foregoing, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2025 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,

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