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

DIVISION OF
CORPORATION FINANCE

March 28, 2025

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: The Home Depot, Inc. (the "Company")
Incoming letter dated January 17, 2025

Dear Elizabeth A. Ising:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the As You Sow Foundation Fund and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board issue a report describing how the Company could match its peers by committing to make all its packaging curbside recyclable, reusable, or compostable.

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 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: Luke Morgan
As You Sow

GIBSON DUNN

Elizabeth A. Ising
Partner
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eising@gibsondunn.com

January 17, 2025

VIA ELECTRONIC SUBMISSION

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

Re: *The Home Depot, Inc.*
Shareholder Proposal of The As You Sow Foundation Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Home Depot, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders (collectively, the "2025 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from The As You Sow Foundation Fund, Chinook Fund, and Ken Olum (collectively, the "Proponents").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved**: Shareholders request the Board issue a report, at reasonable expense and excluding proprietary information, describing how the Company could match its

peers by committing to make all its packaging curbside recyclable, reusable, or compostable.

A copy of the Proposal and the Supporting Statement is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company.

BACKGROUND

As discussed with the Proponent as part of ongoing engagement activities, circularity has been a sustainability pillar for the Company since 2019. The Company prioritizes plastics risks and opportunities based on impact to its business.[1] The Company has a comprehensive and risk-based approach to addressing hard-to-recycle materials and has established capabilities to support the reduction, reuse and recycling of plastics.[2]

The Company encourages supplier innovation in product and packaging design, material selection, and manufacturing, in order to offer products and packaging, where possible without impacting product efficacy and safety, with a lower environmental impact and a focus on plastics reduction, reuse and longevity.[3] These initiatives are aimed at helping the Company achieve its goal of reducing or converting 200 million pounds of virgin plastic used in products to more sustainable, recycled, or alternative materials by the end of fiscal 2028, with a start year of fiscal 2020.[4] Further, in fiscal 2023, the Company achieved its goal to exclude expanded polystyrene (EPS) foam and polyvinyl chloride (PVC) film from its new private-brand packaging.[5] By achieving this goal, the Company was able to meaningfully reduce its environmental impact by eliminating these hard-to-recycle materials, improve customers' experience with less packaging waste and reduce shipping costs with right-sized

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[1] *See Environmental, Social and Governance Report: Advancing Our Business FY 2023*, The Home Depot at 53 (Aug. 2024), *available at* https://corporate.homedepot.com/sites/default/files/2024-09/2024_Home_Depot_ESG_Report_8.15.24.2_vF.2.pdf (the "FY23 ESG Report").

[2] *Id.*

[3] *See id.* at 53-55. *See also* "What Do We Mean by Circular Economy?," The Home Depot Eco Actions article, *available at* https://ecoactions.homedepot.com/blog/what-do-we-mean-by-circular-economy/.

[4] *See id.* at 23 and 53.

[5] *See id.* at 55. *See also id.* at 24, 53, and 56.

packages.[6] Moving forward, the Company plans to continue to partner with its suppliers to keep these materials out of future packaging.[7]

The Company has also embedded circularity and recycling practices into its own store and distribution operations. Between its market delivery operations and reverse logistic centers, the Company recycles hard plastics, shrink wrap, and EPS packaging, as well as other materials.[8] In fiscal 2023 alone, the Company recycled roughly 19.4 million pounds—over 400 metric tons—of plastic (LDPE).[9]

The Company discusses all of these goals and initiatives, as well as various other efforts to reduce its environmental impact, in various public disclosures, including its annual voluntary sustainability reports, the most recent of which is available on its corporate website at https://corporate.homedepot.com/responsibility.

As policies and innovation around sustainable packaging materials continue to evolve and recycling infrastructure expands, the Company looks for opportunities where it has the ability to drive sustainable solutions and partners with suppliers to encourage meeting customers' expectations for quality packaging with a lower environmental impact.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company

A. *Background On The Ordinary Business Standard*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 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

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[6] *See id.* at 55.

[7] *Id.* The Company has a stated goal that all of its private-brand packaging for new product SKUs sold in its U.S. and Canada stores and online will be compostable, recyclable, or made with recycled content by the start of fiscal 2027. *See id.* at 23 and 55. This goal demonstrates the Company's commitment to circularity and promotes worthwhile alternative packaging options, where available and feasible, to harder-to-recycle packaging materials.

[8] *See id.* at 54.

[9] *See id.* at 57.

problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As is relevant to the Proposal, the second consideration 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." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific . . . methods for implementing complex policies."

In Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff stated that in considering arguments for exclusion based on micromanagement, the Staff "will 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." In assessing whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment, the Staff "may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." The Staff has repeatedly confirmed that the micromanagement basis of exclusion also applies to proposals that call for a study or report and, therefore, a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds. *See, e.g.*, *Delta Air Lines, Inc.* (avail. Apr. 24, 2024) (concurring with the exclusion of a proposal requesting a report regarding "union suppression expenditures," including internal and external expenses); *Amazon.com, Inc.* (avail. Apr. 1, 2024) (concurring with the exclusion of proposal requesting a highly detailed living wage report). To that end, the Staff noted that the ordinary business exclusion "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.

Moreover, in assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, 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 The Coca-Cola Co.* (avail. Feb. 16, 2022) and *Deere & Co.* (avail. Jan. 3, 2022) (each of which involved a broadly phrased request but required detailed and intrusive actions to implement). Moreover, "granularity" is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses "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).

B. *The Proposal Is Excludable Because It Seeks To Micromanage The Company's Operations*

As with the shareholder proposals in *Deere*, *Coca-Cola*, and other precedents that are discussed below, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company's operations. The Proposal is more than a request for a report, as revealed by Resolved clause's focus on "committing [the Company] to make all its

packaging curbside recyclable, reusable, or compostable" as well as the Supporting Statement's support for the Company "making all packaging recyclable." The Company is the world's largest home improvement retailer, selling on average more than 35,000 products in its stores and more than three million products online. The Proposal seeks to remove management's discretion by directing decisions and actions that involve a host of complex matters relating to the manner in which the Company sells these products and manages its relationships with thousands of suppliers around the world. These decisions are part of the Company's ordinary business operations and do not involve "shareholders . . . providing high-level direction on large strategic corporate matters." The granularity of the Proposal continues in the Supporting Statement, which notes that the Company should (in the Board's discretion) "[s]et a time-bound goal to make all its packaging curbside recyclable, reusable, or compostable," and "[q]uantify the weight of total plastic packaging used by the Company." Further, it is worth noting that there are currently no uniform standards that would allow the Company to achieve the ambition of having "all its packaging curbside recyclable, reusable, or compostable" as the Proposal requests. Jurisdictions vary on what materials and products they will accept through curbside programs, and on what materials they deem to be recyclable, reusable, or compostable. In sum, the Proposal probes too deeply into complex matters upon which shareholders as a group would not be in a position to make an informed judgment.

As noted above, in assessing the "granularity" of a proposal and the extent to which 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. For example, in *MGE Energy, Inc.* (avail. Mar. 13, 2019), the Staff concurred with the exclusion of a proposal requesting "a public report describing how [the company] can provide a secure, low cost energy future for its customers and shareholders by eliminating coal and moving to 100% renewable energy" because it sought to micromanage ordinary business operations by, in the words of the Staff, "seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors." Similarly, in *The Home Depot, Inc. (Green Century Capital Management, Inc.)* (avail. Mar. 21, 2024), the Staff concurred with the exclusion of a proposal on the basis of micromanagement where the proposal sought to dictate the Company's ability to sell a particular product containing particular materials, even though the proposal attempted to implicate significant social policy issues "[b]y referring to the climate, regulatory and legal and reputational risks." In addition, in *Tesla, Inc. (Stephen)* (avail. Mar. 27, 2024), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company redesign its vehicle tires "to avoid pollution from harmful chemicals such as 6PPD-Q," noting that "[i]n our view, the [p]roposal seeks to micromanage the [c]ompany." There, the company argued that proposals "concern[ing] the design, product development or product offerings of a company" are excludable, "even when the design, development or product touches on a social issue." Similarly, in *SeaWorld Entertainment, Inc.* (avail. Apr. 20, 2021), the Staff concurred that a proposal requesting a feasibility study to determine how soon the company could eliminate animal-based programs could be excluded because it sought to micromanage the company.

There, the company argued that determining which attractions inspire guests, create enjoyable, memorable and educational experiences, drive increased attendance and revenue, and impact operating efficiency, and evaluating alternatives to such attractions, involved complex management decisions, and that by suggesting alternative programs the proponents sought to micromanage those decisions. *See also MGE Energy*.

Just as with the precedents cited above, the Proposal seeks to micromanage the Company by directing how the Company sells products in its stores and online. Design and innovation of packaging for the products sold by the Company is "fundamental to management's ability to run [the Company] on a day-to-day basis." The Company offers its customers a vast assortment of building materials, home improvement products, lawn and garden products, décor products, and facilities maintenance, repair and operations products. Innovations and decisions regarding whether to use particular packaging for particular products involve evaluation of complex and intersecting factors, including supplier innovations and design; product safety, quality, durability in transit, and reliability; environmental concerns; legal and regulatory issues; and the Company's intellectual property protection needs and strategic considerations, including ever-evolving customer preferences and expectations. These considerations are fundamental business matters for the Company's management, requiring a deep understanding of the numerous issues discussed above, and rely on careful assessment of a myriad of possible alternative packaging options.

Similarly, the Proposal micromanages the Company's day-to-day decisions and policies and procedures related to its suppliers that provide packaging for products the Company sells. In this regard, the Proposal is like the proposal excluded in *The Kroger Co.* (avail. Apr. 25, 2023). There the Staff concurred with the exclusion under the micromanagement prong of Rule 14a-8(i)(7) of a proposal requesting that "the Board take the necessary steps to pilot participation in the Fair Food Program for the [c]ompany's tomato purchases in the Southeast United States, in order mitigate severe risks of forced labor and other human rights violations in Kroger's produce supply chain." In its no-action request, the company argued that the "selection of suppliers and management of supplier relationships are complicated matters that are integrally entwined with its ordinary business operations and fundamental to management's ability to run the [c]ompany's operations on a day-to-day basis" and thus the proposal sought to "micro-manage the [c]ompany by substituting the shareholder's decisions regarding the [c]ompany's supply chain for management's practices, a decision upon which the shareholders, as a group, are not in a position to make an informed judgment." As in *The Kroger Co.*, the Proposal intends for shareholders to step into the shoes of management and does not afford management sufficient flexibility or discretion to address and implement business decisions on a highly nuanced and complex matter. Management of the Company's relationships with its thousands of suppliers is at the heart of its day-to-day operations. Accordingly, it would be unrealistic for shareholders to direct decisions and actions that are integrally entwined with those supplier relationships at an annual meeting of shareholders.

Decisions about the manner in which the Company sells products and manages its supply relationships are at the core of the Company's ordinary business operations and extend well

beyond "shareholders . . . providing high-level direction on large strategic corporate matters." Accordingly, as stated in the 1998 Release, "it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Given that the Proposal probes too deeply into complex matters upon which shareholders as a group would not be in a position to make an informed judgment, the Proposal is excludable under Rule 14a-8(i)(7).

C. *Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company*

As discussed above, it is well established that a proposal may be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a company by specifying in detail the manner in which the company should address an issue, regardless of whether the proposal touches upon a significant policy issue. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009), at note 8, citing the 1998 Release for the standard that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it 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." For example, since the issuance of SLB 14L, the Staff concurred with the exclusion of proposals addressing how companies interact with their shareholders on significant social policy issues because the proposals sought to micromanage how the companies addressed those policy issues. *See Amazon.com, Inc.* (avail. April 7, 2023) (concurring with the exclusion of a proposal requesting the company report Scope 3 emissions from "its full value chain" was excludable for attempting to micro-manage the company); *Verizon Communications, Inc. (National Center for Public Policy Research)* (avail. Mar. 17, 2022) (concurring that a proposal requesting the company publish annually the written and oral content of diversity, inclusion, equity, or related employee-training materials probed too deeply into matters of a complex nature)*; The Coca-Cola Co.* (avail. Feb. 16, 2022) (concurring that a proposal addressing the company's political activities was excludable for attempting to micromanage the issue).

Here, the Proposal references plastic pollution, but it improperly attempts to limit the Company's discretion in how it manages its supplier relationships and the complex matter of designing and innovating appropriate packaging materials for the Company's vast assortment of product offerings. Thus, the fact that the Proposal references plastic pollution does not preclude its exclusion under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2025 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter

should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Stephanie W. Bignon, the Company's Associate General Counsel and Deputy Corporate Secretary, at (770) 384-2858.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Stephanie W. Bignon, The Home Depot, Inc.
Conrad Mac Kerron, As You Sow Foundation Fund
Crystal Middlestadt, Chinook Fund
Ken Olum

Exhibit A

Shareholder Proposal and Supporting Statement

WHEREAS: Without immediate and sustained new commitments to make packaging recyclable, reusable, or compostable, and reduce overall plastic use, annual flows of plastics into oceans could nearly triple by 2040.[1] The authoritative study *Breaking the Plastic Wave*, by Pew Charitable Trusts ("Pew Report"), concludes that if all current industry and government commitments were met, ocean plastic deposition would be reduced by only 7%.[2]

Improved recycling must be coupled with reductions in use, materials redesign, and substitution. The Pew Report concludes that plastic demand should be reduced by at least one-third to cut ocean plastic pollution 80% by 2040, and that reducing plastic production is the most attractive solution from environmental, economic, and social perspectives. Many governments and major brands have committed to significant cuts in the use of virgin and single-use plastics.[3]

The growing plastic pollution crisis poses increasing risk to Home Depot. Corporations could face an annual financial risk of approximately $100 billion should governments require them to cover the waste management costs of the packaging they produce, a policy that is increasingly being enacted around the globe.[4]

While Home Depot has taken initial steps to partner with suppliers to target the reduction of 200 million pounds of virgin plastic by 2028, or convert them to recycled or alternative materials, it has not disclosed its total plastic footprint, leaving investors unsure about the impact of its commitment.[5]

Competitors Walmart and Target have adopted goals to make their private brand plastic packaging recyclable, reusable, or compostable by 2025, and Lowe's has agreed to do the same by 2030. Home Depot is also notably absent from participation in the largest pre-competitive corporate initiative to address plastic pollution, the New Plastics Economy Global Commitment.

Reducing the Company's overall plastic packaging and making all packaging recyclable are necessary steps to combat the plastic pollution crisis. Our Company is overdue to take action on this important issue.

BE IT RESOLVED: Shareholders request the Board issue a report, at reasonable expense and excluding proprietary information, describing how the Company could match its peers by committing to make all its packaging curbside recyclable, reusable, or compostable.

SUPPORTING STATEMENT: The report should, at Board discretion:

- Quantify the weight of total plastic packaging used by the Company;

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[1] https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf, p.4
[2] https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf, p.13
[3] https://gc-data.emf.org/; https://www.asyousow.org/press-releases/2021/10/6/walmart-commits-plastic-reduction-goal;
[4] https://www.weforum.org/agenda/2020/10/canada-bans-single-use-plastics;
https://www.packworld.com/news/sustainability/article/22419036/four-states-enact-packaging-epr-laws;
https://environment.ec.europa.eu/topics/plastics/single-use-plastics_en
[5] https://ecoactions.homedepot.com/blog/plastic-reduction-earth-day-2024/#:~:text=By%20the%20end%20of%202028,to%20recycled%20or%20alternative%20materials

- Set a time-bound goal to make all its packaging curbside recyclable, reusable, or compostable; and
- Describe planned reduction strategies or goals, materials redesign, transition to reusables, substitution, or reductions in Company use of plastic packaging.

March 17, 2025

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 The Home Depot, Inc. Regarding Plastic Packaging

Ladies and Gentlemen:

As You Sow Foundation Fund, a beneficial owner of common stock of The Home Depot, Inc. (the "Company" or "Home Depot"), has submitted a shareholder proposal (the "Proposal") asking the Company to report on how it could match its peers by committing to make all its packaging curbside recyclable, reusable, or compostable.

As You Sow writes in response to the Company's January 17, 2025 "No Action" letter (the "Company Letter").[1]The Company Letter contends that the Proposal may be excluded from the Company's 2025 proxy statement under Rule 14a-8(i)(7) because, Home Depot argues, the Proposal impermissibly seeks to micromanage the Company. The Proposal's request that the Company report on *how* it could make its packaging recyclable, reusable, or compostable, however, does not seek inordinately granular detail, nor does it seek to impose specific methods on the Company's Board or management. Therefore, the Company has not demonstrated that it is entitled to exclude the Proposal.

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, reproduced below, requests that the Board "issue a report, at reasonable expense and excluding proprietary information, describing how the Company could match its peers by committing to make all its packaging curbside recyclable, reusable, or compostable." In the Supporting Statement, the Proposal provides guidance on what it would like to see in the Company's disclosure. As noted, providing this supporting information is fully "at management discretion."

[1] The Proponent delayed submission of this response to the Company Letter in anticipation of the release of Staff Legal Bulletin 14M ("SLB 14M") (Feb. 12, 2025). The arguments herein that the Proposal satisfies the standards of SLB 14M do not constitute concessions of the legality of retroactively applying SLB 14M's standards to proposals submitted prior to its publication, and the Proponent expressly reserves all rights and arguments to contest such retroactive application as appropriate and permitted by law.

The Company's argument that the Proposal seeks to micromanage it follows a familiar pattern: it reads the Proposal, which requests a report describing *how* the Company could accomplish a goal, as *requiring* the Company to meet that goal; it then describes in granular detail the interstitial steps required to meet that goal; and it claims that the Proposal micromanages it by requiring it to take those steps. Under this approach, the Proposal asking the Company to describe how it could address plastic pollution from its packaging is transformed into an attempt by investors to "direct[] how the Company sells products," and to "manag[e] . . . the Company's relationships with its thousands of suppliers." Company Letter at 6.

The Proposal does no such thing. The Company is not entitled to read a set of highly specific demands into the Proposal and then assert that those demands micromanage it and that the Proposal may therefore be excluded. The Company has not met its burden of demonstrating its entitlement to exclude the Proposal.

THE PROPOSAL

WHEREAS: Without immediate and sustained new commitments to make packaging recyclable, reusable, or compostable, and reduce overall plastic use, annual flows of plastics into oceans could nearly triple by 2040.[1] The authoritative study *Breaking the Plastic Wave*, by Pew Charitable Trusts ("Pew Report"), concludes that if all current industry and government commitments were met, ocean plastic deposition would be reduced by only 7%.[2]

Improved recycling must be coupled with reductions in use, materials redesign, and substitution. The Pew Report concludes that plastic demand should be reduced by at least one-third to cut ocean plastic pollution 80% by 2040, and that reducing plastic production is the most attractive solution from environmental, economic, and social perspectives. Many governments and major brands have committed to significant cuts in the use of virgin and single-use plastics.[3]

The growing plastic pollution crisis poses increasing risk to Home Depot. Corporations could face an annual financial risk of approximately $100 billion should governments require them to cover the waste management costs of the packaging they produce, a policy that is increasingly being enacted around the globe.[4]

While Home Depot has taken initial steps to partner with suppliers to target the reduction of 200 million pounds of virgin plastic by 2028, or convert them to recycled or alternative materials, it has not disclosed its total plastic footprint, leaving investors unsure about the impact of its commitment.[5]

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[1] https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf, p.4
[2] https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf, p.13
[3] https://gc-data.emf.org/; https://www.asyousow.org/press-releases/2021/10/6/walmart-commits-plastic-reduction-goal;
[4] https://www.weforum.org/agenda/2020/10/canada-bans-single-use-plastics;
https://www.packworld.com/news/sustainability/article/22419036/four-states-enact-packaging-epr-laws;
https://environment.ec.europa.eu/topics/plastics/single-use-plastics_en
[5] https://ecoactions.homedepot.com/blog/plastic-reduction-earth-day-2024/#:~:text=By%20the%20end%20of%202028,to%20recycled%20or%20alternative%20materials

Competitors Walmart and Target have adopted goals to make their private brand plastic packaging recyclable, reusable, or compostable by 2025, and Lowe's has agreed to do the same by 2030. Home Depot is also notably absent from participation in the largest pre-competitive corporate initiative to address plastic pollution, the New Plastics Economy Global Commitment. Reducing the Company's overall plastic packaging and making all packaging recyclable are necessary steps to combat the plastic pollution crisis. Our Company is overdue to take action on this important issue.

BE IT RESOLVED: Shareholders request the Board issue a report, at reasonable expense and excluding proprietary information, describing how the Company could match its peers by committing to make all its packaging curbside recyclable, reusable, or compostable.

SUPPORTING STATEMENT: The report should, at Board discretion:

- Quantify the weight of total plastic packaging used by the Company;
- Set a time-bound goal to make all its packaging curbside recyclable, reusable, or compostable; and
- Describe planned reduction strategies or goals, materials redesign, transition to reusables, substitution, or reductions in Company use of plastic packaging.

ANALYSIS

The Proposal Does Not Seek to Micromanage the Company

I. Micromanagement Standard

The Commission has recognized the exclusion under Rule 14a-8(i)(7) of proposals seeking to "micromanage" companies 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.

In SLB 14M, the Staff reinstated guidance concerning the scope of the micromanagement exclusion from SLBs 14J and 14K. The guidance in those bulletins emphasizes that a proposal may seek to micromanage if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." SLB 14M (Annex A, quoting SLB 14J). Additionally, the Staff looks "to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome, or timeline for addressing an issue, thereby supplanting the judgment of management and the board." SLB 14K.

II. The Proposal does not seek to micromanage Home Depot

The Proposal requests that the Company describe "how [it] could match its peers by committing to make all its packaging curbside recyclable, reusable, or compostable." The Company's

argument that this Proposal seeks to micromanage it is unpersuasive, at odds with the plain language of the Proposal, and unsupported by Staff precedent.

The first step in the Company's argument is to assert that "the Proposal is more than a request for a report," Company Letter at 4, This argument is based on the Supporting Statement expressing "support for the Company 'making all packaging recyclable.'" Company Letter at 5. That the Proponent "supports" making all packaging recyclable does not transform the request into a mandate. Here, the Proposal's actual request is unambiguous: issue a report describing *how* the Company *could* match its peers by committing to make all its packaging recyclable, reusable, or compostable. It cannot be fairly read to compel or require the company to actually do so.[1]

As the Company Letter suggests, the basic question in addressing the micromanagement exclusion is whether the Proposal provides "high-level direction on large strategic corporate matters" or demands granular or highly specific action. *See* Company Letter at 5. The Company attempts to ignore this distinction. Asking a Company "how" it can undertake a task is certainly in the arena of "high-level direction." This is true even though, as the Company Letter ably demonstrates, any "high-level direction on large strategic corporate matters" necessarily can be described as a entailing a series of much more specific actions. For example, requesting that a company reduce its greenhouse gas emissions is as high-level as it gets, but a company cannot simply wave a magic wand and reduce its emissions. It has to take steps to do so. A company mirroring the arguments made in the Company Letter here could describe a generic emissions-reduction proposal as requiring it to "decommission . . . natural gas fired engines . . . and replace[them] with electric equipment," "conver[t] to electric process heaters," and use "post combustion capture and sequestration as well as conver[t] to hydrogen fuel." A company may not allege that a proponent has filled in the blanks and is therefore micromanaging it when it has not actually done more than provided high level direction on large strategic matters.

That the Company needs to rewrite the Proposal in order to describe it as micromanaging it should all but resolve its micromanagement argument. This is a common — and unsuccessful — approach. For example, in *Tesla Inc.* (Mar. 27, 2024), the company unsuccessfully described a proposal requesting a moratorium on sourcing minerals from deep sea mining as attempting to "micromanage the source of the raw materials used in the Company's products and the specific suppliers from which the Company may purchase from [sic]." Similarly, in *Apple Inc.* (Jan. 2, 2025), the company attempted to portray a proposal asking for a report on the costs and benefits of the Company's decisions regarding its use of child sex abuse material identifying software as

[1] The Proposal's supporting statement provides additional suggestions for inclusion in the requested report—that the company quantify its total plastic packaging, set a goal to make all of its packaging recyclable, reusable, or compostable, and describe any extant plans to address plastic packaging. These suggestions are explicitly left to the Board's discretion. The inclusion of explicitly discretionary suggestions in a proposal's supporting statement is generally not understood to create an independent basis to find that the proposal seeks to micromanage a company. Furthermore, none of the individual requests in the Supporting Statement seeks to micromanage the Company. As described in more detail above the line, even reading the Proposal to effectively incorporate a request that the Company set a goal does not constitute micromanagement where the details of implementation are left to the Company's discretion.

seeking to micromanage its choice of technologies. Neither of these attempts to rewrite proposals as demanding more specific action than the proposals requested were successful.

Indeed, even if one were to read the Proposal in the maximalist way offered by the Company Letter — as demanding that the Company adopt a goal to make 100% of its plastic packaging recyclable, reusable, or compostable — it *still* would not be excludable under the micromanagement rule because it does not dictate how the Company is to achieve such goal or along what timeline. The Company Letter's arguments here are essentially identical to those rejected in *Tesla*. This Proposal and the proposal in Tesla both set a high-level goal relating to products sold by the Company — respectively, 100% recyclable/reusable/ compostable packaging and 100% non-deep-sea-mined minerals. Each proposal leaves the essential details of meeting that goal up to the company. The *Tesla* proposal is, if anything, more limiting in its direction to the company. Further, in each case, the company argues that meeting the goal will necessarily affect its relationship with suppliers. This approach was unsuccessful in *Tesla* and it should be equally unsuccessful here.

Even more specific proposals have defeated micromanagement challenges, including after the release of SLB 14M. For example, in *The Goodyear Tire & Rubber Co.* (Mar. 3, 2025), the proposal requested that the company "adopt policies that will result in setting tire wear shedding reduction goals and timelines." The company argued that the proposal micromanaged it by requiring it to set specific goals and timelines that would necessarily alter the design of its primary product. But the Staff disagreed with the company after proponent noted that the policies, goals, and timelines were left entirely to company discretion. Here, the Proposal — even read maximally to suggest a goal, does not demand a specific approach or timeline for meeting that goal, nor request the adoption of any particular policy.

By contrast, the closest precedent marshalled by the Company is *MGE Energy, Inc.* (Mar. 13, 2019), in which the proposal requested that the company report on how it could "provide a secure, low cost energy future for its customers and shareholders by eliminating coal and moving to 100% renewable energy." The difference between the Proposal here and the one in *MGE* is obvious: the *MGE* proposal dictated that the company meet the goal of a "secure, low cost energy future" *by* eliminating coal and moving to 100% renewable energy. Here, the Proposal asks *how* the Company can meet a *goal* of having all of its packaging be recyclable, reusable, or compostable — but does not prescribe the path by which the Company must meet that goal.

The Home Depot, Inc. (Mar. 21, 2024) is distinguishable for the same reason. The proposal requested a report analyzing the "benefits and drawbacks of permanently committing not to sell paint containing titanium dioxide sourced from the Okefenokee." The requested report therefore essentially prescribed (and therefore required an analysis of) a single method for addressing the problems associated with mining in the Okefenokee area—permanently committing not to sell paint containing titanium dioxide mined from that area. Much like requiring a company to install fluorescent lights as the only solution to increasing efficiency, reporting on this single solution

could be seen to inappropriately limit the Company's discretion. Here, the Proposal does not impose *any* methods on the Company.

The remaining precedent cited by the Company is further afield:

- *Deere & Co.* (Jan. 3, 2022): The proposal requested publication of "the written and oral content of any employee-training materials offered to any subset of the company's employees." This extraordinarily specific demand for granular disclosure of what is likely significant quantities of data bears no resemblance to the Proposal's request for a qualitative description of how the Company could make its packaging recyclable, reusable, or compostable. Even considering the Supporting Statement's suggestion of categories to be described, the Company could discuss the "how" at any level of detail it chooses, from a broad summary to providing great detail.

- *The Coca-Cola Co.* (Feb. 16, 2022): The proposal demanded that the company "submit any proposed political statement to the next shareholder meeting for approval prior to issuing the subject statement publicly." This demand that shareholders be given indefinite prior approval authority over any statement the company made that could be described as "political" is highly prescriptive. It commands a single means by which shareholders' concern about the company's controversial political statements is to be resolved, and it does so by literally inserting shareholder approval into the company's process. This bears no resemblance to the proposal here, which requests that the company report on *how* it *could* make its packaging recyclable, reusable, or compostable.

- *Tesla, Inc. (Stephen)* (Mar. 27, 2024): The proposal required the company to "redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q." In that case, the Proposal micromanaged the company by commanding ***how*** it should reduce harmful chemicals in its tires — that it bring its tire design process in-house. As the company pointed out, it purchases rather than designs its own tires. Therefore, the proposal imposed an extraordinarily specific and burdensome solution to the pollution problem: that the company design its tires in-house to reduce pollution, a process that the company did not currently undertake and may not even have the in-house skills to do so. Here, the Proposal identifies a goal and asks the Company how it could meet that goal.

- *SeaWorld Ent., Inc.* (Apr. 20, 2021): The proposal sought a feasibility study on "how soon the company could eliminate animal-based programs." Once more, like *MGE* and *Home Depot, supra*, the proposal identified a single, specific approach to meet its goal of animal welfare, and literally only asked for "how soon can the company implement this policy." By contrast, the proposal here identifies *a goal* and asks the company how (i.e., what policies) it could implement to meet that goal.

- *The Kroger Co.* (Apr. 25, 2023): The proposal requested that the company "take the necessary steps to pilot participation in the Fair Food Program for the company's tomato purchases in the Southeast United States" in order mitigate severe risks of forced labor and other human rights violations in the Company's produce supply chain. Here, the only

> comparison the Company makes between the two is that, "[a]s in *The Kroger Co.*, the Proposal intends for shareholders to step into the shoes of management and does not afford management sufficient flexibility or discretion to address and implement business decisions on a highly nuanced and complex matter." Company Letter at 6. This generic argument papers over the fundamental difference between the two proposals, one of which asks the Company how it can meet a high-level goal, and one of which prescribes a specific policy of participating in a particular program chosen by the proponent to solve alleged human rights abuses.

Accordingly, the Company has not demonstrated that the Proposal seeks to micromanage it. The precedent cited by the Company only serves to underline that the Proposal which, even read maximally, only requests that the Company adopt a goal at a timeline of its own discretion without requiring specific policies to meet that goal. This does not meet the standards for micromanagement under SLB 14L or 14M. The proposal is not too complex, granular, or intricate for investors, and it does not impose a specific method or policy on the Company.

CONCLUSION

Because the Proposal does not seek to micromanage the Company, the Company has no valid basis to exclude it from its 2025 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,

Luke Morgan
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CC:

Elizabeth Ising, Gibson Dunn