

January 27, 2025

VIA ONLINE SUBMISSION

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

Re: *Lowe's Companies, Inc.*
Shareholder Proposal of John Chevedden
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Lowe's Companies, 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 John Chevedden (the "Proponent").

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 a copy of this correspondence to the Proponent.

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 Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such 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, which is captioned "Civil Rights Audit," states:

RESOLVED that shareholders of Lowe's Companies, Inc. ("Lowe's") urge the Board of Directors to commission and oversee a civil rights audit, conducted

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 2

consistent with the Civil Rights Audit Standards discussed below, analyzing the bias and discrimination risks of Lowe's policies and practices on talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives.

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

BASES 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)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading; and
- Rule 14a-8(i)(7) because (1) the Proposal deals with a matter relating to the Company's ordinary business operations, and (2) the Proposal seeks to micromanage the Company.

BACKGROUND

The Company is committed to fostering an environment where different viewpoints and backgrounds are respected and valued. The Company has an Equal Employment Opportunity Policy that prohibits discrimination based on any legally protected status, as well as protecting employees in other categories, while the Company's anti-harassment policy reflects the Company's commitment to providing a work environment free from all forms of harassment based these categories. The Company's Human Rights Policy¹ provides that the Company conducts a corporate-wide human rights review at least annually that focuses on promoting the fundamental rights of its employees, customers, communities, and supply chain workers.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because The Proposal Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-5(a), which requires information in a proxy statement to be clearly presented, and Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.

In Staff Legal Bulletin No. 14B (Sept. 15, 2004), the Staff confirmed that a proposal may properly be excluded pursuant to Rule 14a-8(i)(3) when the proposal and supporting

¹ See Lowe's Human Rights Policy, *available* at <https://corporate.lowes.com/our-responsibilities/corporate-responsibility-reports-policies/lowes-human-rights-policy>.

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 3

statement, when read together, are “so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” See *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992) (proposal “lacks the clarity required of a proper shareholder proposal”; “Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote”); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“it appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the company argued that its shareholders “would not know with any certainty what they are voting either for or against”).

As further described below, the Proposal is so vague and indefinite that neither the Company nor the Company’s shareholders can comprehend with any level of certainty what the Proposal would entail and, therefore, the Proposal is excludable under Rule 14a-8(i)(3). Specifically, the Proposal requests that the Board “commission and oversee a civil rights audit, conducted consistent with the Civil Rights Audit Standards” with the objective of “analyzing the bias and discrimination risks of Lowe’s policies and practices on talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives.”² The Proposal specifically calls for a civil rights audit conducted in accordance with the “Civil Rights Audit Standards,” and the Resolved clause includes a footnote to a website describing the Civil Rights Audit Standards and further linking to a forty page document containing the standards.³ The Civil Rights Audit Standards state that a civil rights audit “should identify areas that need improvement and recommend changes to policies, practices, products, and services to promote equity and inclusion for all and to prevent or mitigate the risk of bias or discrimination.”⁴ That objective differs from the objective set forth in the Proposal; a civil rights audit conducted in accordance with the Civil Rights Audit Standard is not designed to analyze the bias and discrimination risks that a company’s policies and practices have “on talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives.”⁵ As a result, shareholders would not

² While the Proposal is somewhat vaguely worded, the closing paragraph of the Supporting Statement reinforces the reading that this is the objective of the Proposal, as it states that the requested civil rights audit will provide information and analysis on the impact of the Company’s policies and practices (including actions called out in the Supporting Statement) on various business objectives.

³ See https://www.policylink.org/sites/default/files/PolicyLink-CivilRightsAuditStandards_7-24-24vFinal.pdf.

⁴ *Id.* at 10.

⁵ The Civil Rights Audit Standards outline the following elements of a comprehensive civil rights audit, each of which is focused on identifying civil rights concerns, promoting equity and inclusion, and mitigating the risk of bias and discrimination, not on analyzing how the Company’s policies and practices bear on business objectives such as talent recruitment, advancement, and retention or customer and revenue growth:

- “A comprehensive civil rights audit assesses whether the company has the proper controls, policies, practices, processes, staffing, structures, systems, and training in place to detect, address, monitor, and prevent or reduce the risk of bias and discrimination in...key components of a company’s business.”

(Cont’d on next page)

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 4

know what they are being asked to vote for – to support an audit designed to identify any actions that could promote equity and inclusion and prevent or mitigate risks of bias or discrimination, as the framework specifically cited in the Proposal calls for, or to request an analysis of how any bias or discrimination risks in existing policies and practices affect talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives, as other language in the Proposal calls for.

Thus, it is misleading, or at least vague and confusing, to propose that the Company analyze the bias and discrimination risks of its policies and practices to assess impacts on talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives through a civil rights audit conducted in accordance with the Civil Rights Audit Standards. The Proposal and Supporting Statement do not explain how the framework specifically cited in the Proposal would be applied to conduct the assessment called for by the Proposal, so neither the Company nor shareholders would know what the Company would be expected to do.

The Staff has routinely concurred with the exclusion of proposals that fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019) (“*Apple (Zhao)*”), the Staff concurred that a company could exclude, as vague and indefinite, a proposal that recommended that the company “improve guiding principles of executive compensation,” but failed to define or explain what improvements the proponent sought to the “guiding principles.” The Staff noted that the proposal “lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles” and concurred with exclusion of the proposal as “vague and indefinite.” Similarly, in *The Walt Disney Co. (Grau)* (avail. Jan. 19, 2022) (“*Walt Disney (Grau)*”), the Staff concurred with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a prohibition on communications by or to cast members, contractors, management or other supervisory groups within the company of “politically charged biases regardless of content or purpose,” where the Staff stated that “in applying this proposal to the [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests.” See also *The Boeing Co.* (avail. Feb. 23, 2021) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requiring that 60% of the company’s directors “must have an aerospace/aviation/engineering executive background” where such phrase was undefined); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a review of policies and procedures related to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined); *Puget Energy, Inc.* (avail. Mar. 7, 2002) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company’s board of directors

-
- “A civil rights audit analyzes whether the company is taking steps to prevent or reduce the risk of bias or discrimination consistent with the principles embodied in federal and any applicable local civil rights laws.”
 - “A civil rights audit also analyzes whether the company is effectively advancing and promoting equity and inclusion for all.”

implement “a policy of improved corporate governance” where it also included a broad array of unrelated topics that could be covered by such a policy).

Similar to *Apple (Zhao)* and *Walt Disney (Grau)*, the central request of the Proposal—that the Company conduct a civil rights audit analyzing the bias and discrimination risk of its policies and practices on talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives—is so ambiguous that it is impossible for the Company or shareholders “to determine with any reasonable certainty exactly what actions or measures the [P]roposal requires.” As a result of the Proposal’s lack of guidance or clarity on how these divergent concepts are to be reconciled and applied, shareholders would be unable to assess the scope and nature of the audit they are being asked to support—whether they are asking for an analysis of the Company’s policies and practices to assess whether they appropriately promote equity and inclusion for all and prevent or mitigate the risk of bias or discrimination, which is what the Civil Rights Audit Standards state a civil rights audit is designed to do, or to analyze the Company’s policies and practices for their impact on the Company’s talent management, customer and revenue growth, and other business objectives, as stated in the Proposal. Accordingly, the Proposal’s reference to a standard that is oriented to assessing the risk of bias and discrimination at a company, not assessing risks to and impacts on various business objectives, causes the Proposal to be impermissibly vague and indefinite and renders it excludable under Rule 14a-8(i)(3).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Relates To The Company’s Ordinary Business Operations.

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 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 problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. *Id.* The first of those considerations is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* The Commission stated that examples of tasks that implicate the ordinary business standard include “the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” *Id.* The Commission stated further, “However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 6

transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”

The second consideration concerns “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 “1976 Release”).

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal is within the ordinary business of the company. See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”). Moreover, in Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the “subject matter to which the risk pertains or that gives rise to the risk” in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. See, e.g., *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

B. The Proposal Is Excludable Because It Focuses On Ordinary Business Matters (Management Of The Workforce, Customer Relations, And Other Business Objectives).

The Proposal is excludable because it is focused on how the Company’s policies and practices affect the Company’s “talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives,” all of which relate to the Company’s ordinary business within the meaning and interpretations under Rule 14a-8(i)(7).

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company’s management of its workforce, including its relationship with employees. The Commission recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” Consistent with the 1998 Release, the Staff has recognized that proposals pertaining to the management of a company’s workforce are excludable under Rule 14a-8(i)(7). For example, in *Intel Corp.* (avail. Mar. 18, 2022), the Staff concurred with the exclusion of a proposal requesting that the company report on

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 7

whether a company diversity and inclusion program “impacted current, and to the extent reasonable, past and prospective employees’ view of the company as a desirable place to work.” The company argued that the proposal related to management of the company’s workforce and that “[t]he proposal’s focus on ‘the [C]ompany’s ability to hire and retain the most talented employees’ does not elevate the proposal beyond an ordinary business matter.” The Staff concurred, noting that, in its view, the proposal related to, and did not transcend, ordinary business matters. Similarly, in *Deere & Co.* (avail. Nov. 14, 2014, recon. denied Jan. 5, 2015) (“*Deere 2014*”), the Staff concurred with the exclusion of a proposal requesting that the company adopt an employee code of conduct that included an anti-discrimination policy “that protects employees’ human right to engage in the political process, civic activities and public policy of his or her country without retaliation.” In its response the Staff explained that the proposal related to the company’s “policies concerning its employees” and thus implicated the company’s ordinary business operations. Similarly, in *The Walt Disney Co.* (avail. Nov. 24, 2014, recon. denied Jan. 5, 2015), the Staff permitted exclusion of a proposal requesting that the company “consider the possibility of adopting anti-discrimination principles that protect employees’ human right[s]” relating to engaging in political and civic expression. The company argued that the adoption of anti-discrimination principles involved “decisions with respect to, and modifications of the way the company manages its workforce and employee relations” that were “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.” In allowing exclusion, the Staff again affirmed that “policies concerning [the companies] employees” relate to companies’ ordinary business operations covered by Rule 14a-8(i)(7) and are thus excludable on that basis.

Similarly, the Proposal directly addresses the Company’s management of its approximately 300,000 employees by requesting that the Board of Directors commission and oversee a civil rights audit analyzing the risks of the Company’s policies and practices on “talent recruitment, advancement, and retention.” As with the proposal in *Intel Corp.*, the Supporting Statement specifically points to actions the Company has taken in managing its diversity and inclusion policies and practices, and requests that the Company report on the implications of such policies and practices on management of the Company’s workforce. As well, in seeking information regarding the Company’s policies and practices concerning its employees, the Proposal directly relates to the “decisions with respect to ... the way the company manages its workforce and [associate] relations,” just like the proposal in *The Walt Disney Co.* The Company’s policies and practices with respect to its employees involve workforce management considerations that, as with the proposal in *The Walt Disney Co.*, are “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.” Likewise, as in *Deere 2014*, despite the Proposal’s reference to “civil rights” and “bias and discrimination risks,” the Proposal primarily relates to the Company’s policies concerning its employees.

In addition to assessing implications of the Company’s policies and practices on workforce management issues, the Proposal also requests that the assessment address any potential implications for “customer and revenue growth, and other business objectives,” all of which are topics that relate to the Company’s ordinary business operations under Rule 14a-8(i)(7). See., e.g., *Verizon Communications Inc. (NLPC)* (avail. Mar. 14, 2024) (concurring with

exclusion with a proposal to examine the consequences of the company's positions and advocacy on what the proposal referred to as "immaterial social policy issues" (and the supporting statement described as "controversial stances...on social and cultural issues") on the company's growth and sustainability, where the company argued that the proposal related to relationships with customers and employees, among others); *Bank of America Corp. (NCPFR)* (avail. Feb. 29, 2024) (concurring with exclusion of a proposal asking for a report on the company's relationship with customers where the supporting statement asserted that various biases and discriminatory views were influencing those relationships); *PG&E Corp.* (avail. Mar. 7, 2016) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a non-discrimination policy "in hiring ... or customer relations," where the company argued that the proposal related to management of the workforce and customer relations, among others).

Here, as evidenced by the Supporting Statement, the Proposal seeks to address workforce management and customer relations issues as affected by policies and procedures relating to matters such as employee resource groups and event sponsorships. Managing workforce hiring, retention, and development issues, as well as issues relating to customer relations, revenue growth, and "other business objectives" involves complex, dynamic, and intricate considerations implicating issues that are not appropriate for a shareholder vote, such as how best to promote company culture, the advertising and publicity value of various activities and sponsorships, employee and customer demographics, and legal compliance considerations. The Company's management and its Board of Directors devote significant time, effort and resources to developing, overseeing, and evolving the Company's policies and practices. These are exactly the types of tasks that are "fundamental to management's ability to run [the Company] on a day-to-day basis" as addressed under Rule 14a-8(i)(7). Thus, as with the precedents cited above, the Proposal properly is excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business.

C. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations.

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission initially articulated in the 1976 Release. In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. As noted above, the Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. Pursuant to SLB 14E, when a proposal relates to management of risks, the Staff will focus on the "subject matter to which the risk pertains or that gives rise to the risk" in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7).

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 9

Consistent with the 1998 Release, the Staff routinely concurs with the exclusion of proposals that relate to ordinary business decisions even where the proposal may reference a significant policy issue. For example, in *Amazon.com, Inc.* (Domini Impact Equity Fund) (avail. Mar. 28, 2019), the proposal requested that the board annually report to shareholders “its analysis of the community impacts of [the company’s] operations, considering near- and long-term local economic and social outcomes, including risks, and the mitigation of those risks, and opportunities arising from its presence in communities.” In its no-action request, the company successfully argued that “[e]ven if some of [the] issues that would be addressed in the report requested by the [p]roposal could touch upon significant policy issues within the meaning of the Staff’s interpretation, the [p]roposal is not focused on those issues, but instead encompasses a wide range of issues implicating the [c]ompany’s ordinary business operations within the meaning of Rule 14a-8(i)(7), and therefore may properly be excluded under Rule 14a-8(i)(7).” The Staff concurred and granted no-action relief under Rule 14a-8(i)(7) noting that “the [p]roposal relates generally to ‘the community impacts’ of the [c]ompany’s operations and does not appear to focus on an issue that transcends ordinary business matters.” Similarly, and as demonstrated above, the focus of the Proposal is on the Company’s policies relating to workforce management and customer relations, which are ordinary business matters. Neither the Proposal’s reference to “a civil rights audit” nor its vague reference to “bias and discrimination risks” alter the principal focus of the Proposal, which is analyzing the implications of policies and practices relating to, and affecting, workforce management, customer and revenue growth, and other business objectives.

The Staff most recently discussed its interpretation of how it will evaluate whether a proposal “transcends the day-to-day business matters” of a company in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), noting that it is “realign[ing]” its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976 and reaffirmed in the 1998 Release. In addition, the Staff stated that it will “no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)” but rather will consider only “whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” The Staff also stated that under its new approach proposals “previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)” and that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company” (citing to the 1998 Release and *Dollar General Corp.* (avail. Mar. 6, 2020) and providing “significant discrimination matters” as an example of an issue that transcends ordinary business matters).

Proposals with passing references touching upon topics that might raise significant social policy issues—but that do not *focus on* or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). See, *Intel Corp.*, *supra*; *American Express* (avail. Mar. 9, 2023) (Staff concurred with the

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 10

exclusion of a shareholder proposal requesting a report “describing if and how the Company intends to reduce the risk associated with tracking, collecting, or sharing information regarding the processing of payments involving its cards and/or electronic payment system services” where the proposal was not focused on reducing gun violence or another significant social policy that transcended the company’s ordinary business). Similarly, in *Walmart Inc.* (avail. Apr. 8, 2019), the Staff concurred with the exclusion of a proposal requesting a report evaluating the risk of discrimination that may result from the company’s policies and practices for hourly workers taking absences from work for personal or family illness because it related “generally to the [c]ompany’s management of its workforce, and [did] not focus on an issue that transcends ordinary business matters.” See also, *Amazon.com, Inc.* (AFL-CIO Reserve Fund) (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting a report on the company’s workforce turnover rates and labor market changes resulting from the COVID-19 pandemic noting that “the [p]roposal . . . does not focus on significant social policy issues”); *Amazon.com, Inc.* (McRitchie) (avail. Apr. 8, 2022) (concurring with the exclusion of a proposal requesting an annual report on the distribution of stock-based incentives throughout the workforce despite referring to wealth inequality in the United States as a significant policy issue).

The Staff’s guidance in SLB 14L does not affect the excludability of the Proposal because, unlike the proposal in *Dollar General*, the Proposal does not raise significant discrimination matters or board oversight of human capital issues, and instead is focused on analyzing the effects of “policies and practices on talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives.” The Proposal’s reference to conducting a “civil rights audit” pursuant to a specific framework does not alter the focus of the Proposal. Indeed, as discussed above, the Civil Rights Audit Standards state that they, “should identify areas that need improvement and recommend changes to policies, practices, products, and services to promote equity and inclusion for all and to prevent or mitigate the risk of bias or discrimination.”⁶ Applying that framework to analyze risks to “talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives” shifts the focus of the analysis away from assessing impacts on civil rights and equal employment opportunity, and instead focuses the assessment on ordinary business matters.

In this respect, the Proposal differs from other proposals that the Staff has viewed as addressing significant social policy issues in a manner that transcends a company’s ordinary business operations. In those precedents, the proposals, in the terms of the 1998 Release, focus on significant discrimination matters, because they focus on a board of

⁶ Civil Rights Audit Standards, at 10.

director's oversight of risks of specifically enumerated types of discrimination,⁷ or because they focus on the impact of potential discrimination on affected individuals.⁸

In contrast, here, while the Supporting Statement claims that the Company has ended or curtailed some of its DEI commitments,⁹ the focus of the Proposal is not on the Board's oversight of risk or on the impact of company operations on affected individuals, but instead the focus is on how the Company's policies and practices affect "talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives." As such, the Proposal is more comparable to the proposals addressed in part II.B. of this letter above, such as the proposal in *Walmart Inc.* As discussed above, the Staff there concurred that while the proposal addressed discrimination, the subject matter actually related to the Company's ordinary business matters and therefore was excludable. Similarly, because the text of the Proposal makes clear that it is primarily focused on the Company's ordinary business operations, the Proposal does not transcend the Company's ordinary business operations and does not focus on any significant policy issue. Similar to the proposals in the precedents discussed in part II.B. above, the Proposal may be excluded under Rule 14a-8(i)(7).

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

A. Background On The Micromanagement Standard.

The Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *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 SLB 14L, the Staff stated that in considering arguments

⁷ See *SLB 14E* ("a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote."); *E.g., PayPal Holdings, Inc. (NCPFR)* (avail. Apr. 10, 2023) (Staff declined to concur with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report focused on how the board of directors oversees risks related to discrimination against individuals based on their race, color, religion, sex, national origin, or political views).

⁸ See, for example, *Walt Disney Company (NCPFR)* (avail. Jan. 19, 2022) (Staff declined to concur with exclusion under Rule 14a-8(i)(7) of a proposal requesting a workplace non-discrimination audit specifically focused on addressing the company's impacts on civil rights and non-discrimination in the workplace and the impacts of those issues on the company's business); *McDonald's Corporation* (avail. Apr. 5, 2022) (Staff declined to concur with exclusion under Rule 14a-8(i)(7) of a proposal requesting a third-party audit to analyze the adverse impact of the company's policies and practices on the civil rights of company stakeholders and to provide recommendations for improving the company's civil rights impact).

⁹ The Company disputes this assertion. Notably, the Supporting Statement refers to two actions that do not involve ending or curtailing DEI commitments – consolidating several employee resource groups and ceasing sponsorship of events that are not tied to the Company's four business-related focus areas (safe and affordable housing, community improvements, disaster relief, and skilled trades education).

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.” *Id.* The Staff stated that in assessing whether proposals are appropriate for shareholder action, it also would consider “references to well-established national or international frameworks when assessing proposals related to disclosure.” *Id.* The Staff’s approach “is consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters.” *Id.*

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) (“*Deere 2022*”) (each of which involved a broadly phrased request but required detailed and intrusive actions to implement). See also *Phillips 66* (avail. Mar. 20, 2023) (concurring with the exclusion of a proposal requesting an audited report describing the undiscounted expected value to settle obligations for the company’s asset retirement obligations with indeterminate settlement dates, where the no-action request described the extent to which preparation of the report would probe deeply into complex matters); *Valero Energy Corp.* (avail. Mar. 20, 2023) (same). 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. Staff Precedent Supports Exclusion Of The Proposal Under The Micromanagement Standard Of Rule 14a-8(i)(7).

As with the shareholder proposals in *The Coca Cola Co.*, *Deere 2022*, and other precedents discussed below, the Proposal is not designed to “provid[e] high-level direction on large strategic corporate matters,” and instead “inappropriately limits discretion of the board or management” by calling for a highly detailed and intrusive review of wide-ranging aspects of the Company’s ordinary business operations. SLB 14L.

The Proposal is similar to the proposal at issue in *Home Depot, Inc. (Wrobel)* (“*Home Depot (Wrobel)*”) (avail. Mar. 21, 2024), where the proposal requested that the company prepare a living wage report. As with the Proposal, the proponent in *Home Depot (Wrobel)* had cited a specific reference guide that demonstrated the difficulty in performing living wage calculations. The company characterized the proposal as requiring an unusual and highly prescriptive format for which there was no well-established national or international framework, and that would require assembling granular detail to calculate the requested “living wage” amount and provide specific calculations and statistics based on comparisons

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 13

of various amounts. The company explained that each element of that process required the collection of data that was not readily available and could be complex. The Staff concurred that the proposal sought to micromanage the company and thereby was excludable under Rule 14a-8(i)(7). See also *Amazon.com, Inc.* (avail. Apr. 1, 2024) (same).

Similarly, in *Delta Air Lines, Inc.* (avail. Apr. 24, 2024) the Staff concurred that a proposal asking the company to report on “expenditures that are intended or could be viewed as intended to dissuade employees from joining or supporting unions” could be excluded because it sought to micromanage the company where the company pointed out that the proposal would have required it to dig into granular detail to evaluate the costs of numerous routine management actions related to management of its workforce. The company argued that the information required by the proposal would delve deeply into ordinary business operations, noting that workforce management matters are “multi-faceted, complex and based on a range of considerations, and they are the subject of laws of multiple states and foreign countries.”

The Proposal eschews management’s judgment on the appropriate manner to manage and analyze the implications of Company policies and practices on workforce hiring, retention, and development issues, customer relations, revenue growth, and “other business objectives,” and instead seeks to require an assessment that applies the Civil Rights Audit Standards. The Proposal not only requests the use of a framework that is inconsistent with the objectives of the Proposal, but the requested framework is also highly prescriptive, requiring dozens of distinct pieces of information, encompassing thousands of the Company’s day-to-day activities. Specifically, the Civil Rights Audit Standards cited and linked to in the Proposal consists of nine steps, each of which is further subdivided into numerous subparts, each of which require detailed assessment and analysis. For example, Standard 3 describes the internal and external stakeholders that should be engaged as part of the audit, which includes the following:

- The Board of Directors
- The CEO
- Senior management
- Key members of the human resources team
- Key members of the DEI team
- Key members of the legal team
- Key members of the compliance team
- Contractors
- Franchisees
- Franchisee employees
- Company employees
- Employee resource groups
- Philanthropy or social impact teams
- Customers
- Suppliers
- Business Partners

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 14

- Public Officials
- Civil rights or community organizations
- Unions
- Investors
- Asset managers
- Grant recipients
- Civil rights advocates

In addition to requiring a review and assessment of extensive amounts of information, as detailed above, the Civil Rights Audit Standards impose stringent processes on the Company. The Supporting Statement touches on only a few of these strictures:

The Standards require that the auditor be independent and have a commitment to civil rights and racial justice; that the auditor meaningfully engage key stakeholders such as employees, customers, and civil rights groups; and that the company publicly share the final audit report on its website in an easily accessible location.

The Civil Rights Audit Standards are even more prescriptive. For example, Standard 6 details the manner by which the Company must communicate the results of the audit, stating that the Company must “publicly announced [sic] that it has decided to conduct a civil rights audit, the name of the lead auditor, and the proposed timeline for the audit” and that this announcement must be made “as soon as practicable but no later than 30 days after a lead auditor has been secured and timeline finalized.” It goes on to detail the public report to be issued, which must describe “the audit’s scope, methodology, findings, and recommendations,” be “publicly announced and made available to the public in an easily accessible location on the company’s website,” be “sufficiently detailed” and “set forth a plan of action” for the Company to address its findings. The foregoing discussion addresses only two of the nine steps in the Civil Rights Audit Standards. As such, the Proposal dictates a specific means for analyzing the impact of Company policies and practices on workforce hiring, retention, and development issues, customer relations, revenue growth, and “other business objectives.”

In this regard, the Proposal does not provide the Company “high-level direction on large strategic corporate matters” and is not “suggest[ing] targets or timelines.” See SLB 14L. Instead, the Proposal seeks to restrict management discretion by “impos[ing] a specific method” and “granularity” as to how the Company is to assess risks of policies and practices on human capital management, customer and revenue growth, and other business objectives. See *id.* The Proposal thus falls clearly within the scope of the 1998 Release and SLB 14L by addressing intricate, granular details and prescribing a specific method for implementing complex policies. Similar to *Home Depot (Wrobel)* and *Delta Air Lines*, the Proposal is exactly the type that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7).

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 15

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 in Section II.C. above, the focus of the Proposal is not on a significant policy issue that transcends the Company's ordinary business. Instead, the Proposal is an attempt to direct how the Company addresses the complex and granular issue of risks to its human capital management, customer and revenue growth, and other business objectives. But even if the Proposal were viewed as focused on a significant public policy issue that transcends the Company's ordinary business, it is well established that a proposal that seeks to micromanage a company's business operations is, regardless, excludable under Rule 14a-8(i)(7). 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." Thus, regardless of whether the Proposal is viewed as implicating a significant social policy issue, the Proposal is properly excludable under Rule 14a-8(i)(7) on account of seeking to micromanage how the Company addresses that issue.

CONCLUSION

As demonstrated by the foregoing analysis and precedent, the Proposal's references to inconsistent objectives for the requested civil rights audit causes the Proposal to be impermissibly vague and indefinite and renders it excludable under Rule 14a-8(i)(3). In addition, the Proposal addresses the Company's workforce management practices, prescribes an extensive and granular standard for an audit, and therefore relates to ordinary business and seeks to micromanage the topic, while failing to focus on a significant social policy issue. As demonstrated above, this is exactly the type of day-to-day business matter that Rule 14a-8(i)(7) is intended to avoid. Moreover, the Proposal may be omitted pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company by probing too deeply into complex matters upon which shareholders as a group would not be in a position to make an informed judgment. Accordingly, we respectfully request that the Staff concur that the Proposal may be excluded from the Company's 2025 Proxy Materials pursuant to Rule 14a-8(i)(7).

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) 955-8671.

Sincerely,



Ronald O. Mueller

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
January 27, 2025
Page 16

Enclosures

cc: John Chevedden

EXHIBIT A

[LOW – Rule 14a-8 Proposal, December 16, 2024]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Civil Rights Audit

RESOLVED that shareholders of Lowe’s Companies, Inc. (“Lowe’s”) urge the Board of Directors to commission and oversee a civil rights audit, conducted consistent with the Civil Rights Audit Standards discussed below,ⁱ analyzing the bias and discrimination risks of Lowe’s policies and practices on talent recruitment, advancement, and retention, customer and revenue growth, and other business objectives.

WHEREAS Lowe’s states a strong commitment to diversity, equity, and inclusion (“DEI”). According to the company’s 2023 Culture, Diversity & Inclusion report, “inclusion” is “intentional” and a central corporate value, and “[w]e know that creating a culture of belonging is a shared responsibility with each person contributing to it in every moment.” CEO Marvin Ellison notes in the report that, due to its efforts, Lowe’s now has “one of the most diverse executive and senior leadership teams of any FORTUNE® 500 company.”

In August 2024, however, Lowe’s suddenly announced that it would end or curtail some of its DEI commitments. According to news reports, Lowe’s would consolidate its several employee resource groups into a single, umbrella group and stop participating in or sponsoring events that are deemed to be outside its business areas. Lowe’s restated its commitment to an inclusive workforce that values diverse backgrounds but failed to explain how it would continue to build diverse, talented candidate pools; continue its progress in ensuring diversity and inclusion throughout the company, including at the executive and senior leadership levels; and grow an ever-increasing diverse customer base.

Shareholders need to understand the full impact of Lowe’s actions, including the legal and business risks and its ability to grow the customer base and revenue and to build a diverse, inclusive talented workforce. A civil rights audit is a tool to help companies and key stakeholders, including shareholders, identify and understand the bias and discrimination risks of a company’s policies, practices, products, and services. A civil rights audit also provides recommendations for addressing any adverse impacts of a company’s actions.

The Civil Rights Audit Standards, published by PolicyLink, were developed by an independent committee, including business executives, union and worker group representatives, investors, and civil rights experts. These Standards provide a roadmap for how a company should conduct a civil rights audit. The Standards require that the auditor be independent and have a commitment to civil rights and racial justice; that the auditor meaningfully engage key stakeholders such as employees, customers, and civil rights groups; and that the company publicly share the final audit report on its website in an easily accessible location.

We urge Lowe’s to conduct a civil rights audit consistent with the Civil Rights Audit Standards. A civil rights audit will provide Lowe’s management and its shareholders the information and analysis they need to evaluate the company’s recent actions and their impact on legal and business risks, as well as the company’s progress in meeting its DEI and other business objectives.

ⁱ <https://www.policylink.org/civil-rights-audit-standards>