



DIVISION OF
CORPORATION FINANCE

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

December 27, 2023

Lillian Brown
Wilmer Cutler Pickering Hale and Dorr LLP

Re: The Walt Disney Company (the "Company")
Incoming letter dated December 22, 2023

Dear Lillian Brown:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Nathan Cummings Foundation (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its November 22, 2023 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Laura Campos
Nathan Cummings Foundation

November 22, 2023

Lillian Brown

+1 202 663 6743 (t)
+1 202 663 6363 (f)
lillian.brown@wilmerhale.com

Via Online Shareholder Proposal Form

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

**Re: The Walt Disney Company
Exclusion of Shareholder Proposal by the Nathan Cummings Foundation**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareholders (the “Proxy Materials”), the enclosed shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by the Nathan Cummings Foundation (the “Proponent”) requesting that the Company establish a living wage policy.

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

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

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Background

On October 12, 2023, the Company received the Proposal from the Proponent. The Proposal states in relevant part as follows:

BE IT RESOLVED, shareholders ask that the board and management exercise their discretion to establish Company wage policies that are reasonably designed to provide workers with the minimum earnings necessary to meet a family's basic needs, such policies to include reference to established living wage frameworks and timeframes for adoption and to comply with relevant legal obligations.

Basis for Exclusion

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

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” See *Amendments to Rules on Shareholder Proposals*, Release No. 34-40018 (May 21, 1998) (the “1998 Release”). An exception to this principle may be made where a proposal focuses on significant social policy issues that transcend the day-to-day business matters of the company. See 1998 Release. The Staff most recently discussed its interpretation of how it will consider whether a proposal “transcends the day-to-day business matters” of a company in Staff Legal Bulletin No. 14L (November 3, 2021) (“[SLB 14L](#)”), noting that it is “realign[ing]” its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976 and reaffirmed in the 1998 Release. Under this realignment, the Staff 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.”¹

As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The other consideration is that a proposal should not “seek[] to ‘micro-manage’ the company by probing too deeply into matters of a

¹ SLB 14L also explicitly rescinded prior Staff Legal Bulletin Nos. 14I, 14J and 14K, which set out a company-specific approach to the significant social policy issue analysis.

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complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” We believe the Proposal implicates the first of these two considerations.

The Proposal may be excluded because it relates to general employee compensation.

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the Proposal relates to general employee wages, an aspect of the Company’s general employee compensation policies, which fall within the ordinary business operations of the Company. In *United Technologies Corp.* (February 19, 1993), the Staff provided the following examples of topics that involve a company’s ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): “employee health benefits, *general compensation issues not focused on senior executives*, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation” (emphasis added). In Staff Legal Bulletin No. 14A (July 12, 2002) (“SLB 14A”), the Staff confirmed this approach when it indicated that “[s]ince 1992, [the Staff has] applied a bright-line analysis to proposals concerning equity or cash compensation” under which companies “may exclude proposals that relate to general employee compensation matters in reliance on [R]ule 14a-8(i)(7).”

In requesting that the Company establish the specified wage policies, the Proposal is focused on one aspect of the Company’s broader compensation policies without taking into account the various other factors necessary to analyze and determine such policies and their applicability across the range of workers the Company employs. The broad, general employee compensation focus of the Proposal is embodied in the conclusion of the Proposal’s supporting statement, which says, “Please vote for: Set compensation policy that optimizes portfolio value for Company shareholders.” Consistent with the Staff’s statements in *United Technologies Corp.* and SLB 14A, the Staff has historically concurred in exclusion under Rule 14a-8(i)(7) of proposals that implicate a company’s ordinary business operations by addressing general employee compensation. For example, in *Amazon.com, Inc.* (April 8, 2022) and *Repligen Corporation* (April 1, 2022), the Staff recently concurred that in each instance the company could exclude under Rule 14a-8(i)(7) a proposal requesting a report assessing the distribution of stock-based incentives throughout the company’s workforce and sorted by EEO-1 or other appropriate classification with at least four categories. These recent positions are consistent with the Staff’s historic positions involving proposals addressing minimum wage and other general workforce-related matters. In *Amazon.com, Inc.*, *The Home Depot, Inc.*, and *The TJX Companies, Inc.* (March 1, 2017), the Staff concurred in exclusion under Rule 14a-8(i)(7) of proposals requesting that companies adopt and publish principles for minimum wage reform, on the basis that each such “proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters.” *See also McDonald’s Corporation* (March 18, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting an increased

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minimum wage of \$11.00 per hour, on the basis that the proposal “relates to general compensation matters”); *Yum! Brands, Inc.* (February 24, 2014) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that a report of executive compensation policies include a comparison of senior executive compensation and “store employees’ median wage,” noting that the proposal related to “[the company’s] ordinary business matters” because “the proposal relates to compensation that may be paid to employees and is not limited to compensation that may be paid to senior executive officers and directors”); and *International Business Machines Corp.* (January 22, 2009) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that no employee above a certain management level receive a salary raise in any year in which at least two-thirds of all company employees did not receive a three percent salary raise). Consistent with these proposals, including those decided after publication of SLB 14L, the Proposal’s focus on “living wage” falls squarely within general employee compensation and the Company’s ordinary business operations.

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

As in the above-cited precedent, the Proposal’s core focus is general employee compensation, an ordinary business matter, and does not focus on a significant social policy issue that transcends such ordinary business operations, as set out in the 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). While “proposals...focusing on sufficiently significant social policy issues...generally would not be considered to be excludable,” the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if the significant social policy issues do not cause the proposal to “transcend the day-to-day business matters.” *See* 1998 Release. Staff no-action responses have followed this approach over the years, establishing clear precedent that proposals that refer to topics that might raise significant social policy issues, but which do not focus on or have only tangential implications for such issues, are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business. Such proposals remain excludable under Rule 14a-8(i)(7).

The Staff has historically concurred in exclusion of shareholder proposals under Rule 14a-8(i)(7) relating to wage reform and wage inequality for hourly and non-executive employees, finding that such proposals did not implicate a significant social policy matter. *See, e.g., The Home Depot, Inc.* (March 1, 2017) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting adoption and publication of principles for minimum wage reform, noting that “the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters,” despite the proponent’s assertion that minimum wage was a significant social

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policy issue); *The TJX Companies, Inc.* (March 8, 2016) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company adopt minimum wage reform principles and publish them by October 2016, noting that the proposal “relates to general compensation matters”); *Apple, Inc.* (November 16, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company’s compensation committee “adopt new compensation principles responsive to America’s general economy, such as unemployment, working hour[s] and wage inequality” as relating to the company’s ordinary business operations); and *Wal-Mart Stores, Inc.* (March 15, 1999) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report that was to include, among other things, a description of “[p]olicies to implement wage adjustments to ensure adequate purchasing power and a sustainable living wage” and noting the proposal was excludable under Rule 14a-8(i)(7) because the quoted language “relate[d] to ordinary business operations”).

In addition, even after the Staff realigned its approach to evaluating significant social policy issues in SLB 14L, including in the context of human capital management, the Staff has continued to concur in the exclusion of shareholder proposals relating to general compensation matters under Rule 14a-8(i)(7). For instance, see the recent *Amazon.com, Inc.* (April 8, 2022) and *Repligen Corporation* (April 1, 2022) no-action letters discussed above. In both instances, the supporting statements focused on wealth inequality in the United States, indicating that the proposal would reduce “racial and gender wealth gaps” and cause the respective companies to “benefit shareholders, employees, and the economy.” However, the Staff concluded in each instance that “the Proposal relates to, and does not transcend, ordinary business matters.”

Similar to the precedents cited above, including *Amazon* and *Repligen*, the Proposal focuses on the ordinary business issue of general employee compensation, and, despite the passing references to wealth inequality and racial/gender disparity, does not implicate a significant social policy issue under Rule 14a-8(i)(7). As such, for the reasons set out above, and in accordance with the above-cited no-action letters, the Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the Proposal relates to the ordinary business operations of the Company and does not focus on a significant social policy issue that transcends the Company’s ordinary business operations.

Conclusion

For the foregoing reasons, and consistent with the Staff’s prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company’s ordinary business operations.

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If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

A handwritten signature in black ink, appearing to read "Lillian Brown".

Lillian Brown

Enclosures

cc: Jolene Negre, Associate General Counsel and Secretary
The Walt Disney Company

Laura Campos, Director, Corporate & Political Accountability
Nathan Cummings Foundation

EXHIBIT A

October 11, 2023

Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, California 91521

Re: Shareholder proposal submitted by the Nathan Cummings Foundation

Dear Secretary,

I write concerning a shareholder proposal (the "Proposal") submitted to The Walt Disney Company (the "Company") by the Nathan Cummings Foundation. The Nathan Cummings Foundation is an endowed institution with approximately \$450 million of investments. As an institutional investor, the Foundation believes that the way in which a company approaches environmental, social, and governance issues has important implications for long-term shareholder value.

It is with these considerations in mind that the Nathan Cummings Foundation is submitting the attached Proposal pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of The Walt Disney Company. The Nathan Cummings Foundation is the lead filer of the Proposal.

As of October 11, 2023, the Nathan Cummings Foundation beneficially owned, and had beneficially owned continuously for at least three years, shares of the Company's common stock worth at least \$2,000 (the "Shares"). Verification of this ownership will be provided by our past and current custodians, Amalgamated Bank and Northern Trust. Verification from Northern is included herewith. Verification from Amalgamated will follow under separate cover. Amalgamated Bank acted as record holder of the Shares and is a DTC participant. Northern Trust now acts as record holder of the Shares and is a DTC participant. The Nathan Cummings Foundation intends to continue to hold the Shares through the date of the Company's 2024 annual meeting of shareholders.

I am available to meet to discuss the proposal via teleconference on October 26th between 12:00 pm and 3:00 pm Eastern or on October 30th between 12:30 pm and 3:00 pm Eastern. We are filing this proposal in partnership with the Shareholder Commons and their representative is also available to join conversations. Please contact me at [REDACTED] to arrange a time to speak.

Sincerely,

Laura Campos
Director, Corporate & Political Accountability

[Walt Disney Co.: Rule 14a-8 Proposal, October 11, 2023]

[This line and any line above it – Not for publication.]

Set compensation policy that optimizes portfolio value for Company shareholders

WHEREAS: Company compensation practices that fail to provide a living wage are harmful to the economy and therefore to the returns of diversified shareholders;

BE IT RESOLVED, shareholders ask that the board and management exercise their discretion to establish Company wage policies that are reasonably designed to provide workers with the minimum earnings necessary to meet a family's basic needs, such policies to include reference to established living wage frameworks and timeframes for adoption and to comply with relevant legal obligations.

Supporting Statement:

The Company recently agreed to raise its starting wage to \$18 per hour by year's end.¹ While that is good progress, the living wage in 2022 was \$25.02 per hour per worker annually for a family of four (two working adults).² The Company's CEO, meanwhile, makes 446 times more than the Company's median employee. While people of color compose 46.7 percent of the Company's workforce, they account for only 27.5 percent of executive roles,³ indicating they make up a disproportionate number of employees not earning a living wage.

Such inequality and disparity harm the entire economy. For example, closing the living wage gap worldwide could generate an additional \$4.56 trillion every year through increased productivity and spending,⁴ translating to a more than 4 percent increase in annual GDP. A 2020 report found that had four key racial gaps for Black Americans—wages, education, housing, and investment—been closed in 2000, \$16 trillion could have been added to the U.S. economy. Closing those gaps in 2020 could have added \$5 trillion to the U.S. economy over the ensuing five years.⁵

By paying so many of its employees below a living wage, the Company may believe it will increase margins and thus financial performance. But gain in Company profit that comes at the expense of society and the economy is a bad trade for Company shareholders who are diversified and rely on broad economic growth to achieve their financial objectives. The costs and risks created by low wages and inequality will directly reduce long-term diversified portfolio returns because a drag on GDP directly reduces returns on diversified portfolios.⁶

This proposal asks the Board to set a Company compensation policy of paying a living wage to prevent contributing to inequality and racial/gender disparity. The Company could achieve this Proposal's

¹ <https://www.forbes.com/sites/suzannerowankelleher/2023/03/24/disney-world-workers-18-dollar-minimum-wage/?sh=7b7fd8f164ea>

² <https://livingwage.mit.edu/articles/103-new-data-posted-2023-living-wage-calculator>

³ <https://impact.disney.com/app/uploads/Current/FY22-Workforce-Diversity-Dashboard.pdf>

⁴ <https://tacklinginequality.org/files/introduction.pdf>

⁵

<https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBSaTOSdw2DF4xynPwFB8a2jV1FaA3ldy7vY59bOtN2lxVQM=>

⁶ <https://www.epi.org/publication/secular-stagnation/>

objective by securing Living Wage for US Employer certification.⁷ Additionally, MIT has an online living wage calculator, or the Company can work within frameworks promulgated by organizations such as IDH Sustainable Trade Initiative or The Living Wage Network. The Company should utilize such frameworks in a manner that allows shareholders to gauge compliance and progress, while providing the Company with discretion as to how to achieve the living-wage goal.

Please vote for: Set compensation policy that optimizes portfolio value for Company shareholders

⁷ <https://livingwageforum.org/becoming-certified/>



The Northern Trust Company
333 S. Wabash Avenue, WB-42
Chicago, Illinois 60604

October 30, 2023

Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, California 91521

Re: Shareholder proposal submitted by the Nathan Cummings Foundation

Dear Corporate Secretary,

We write concerning a shareholder proposal (the "Proposal") submitted by the Nathan Cummings Foundation.

Northern Trust:

As of October 11, 2023, the Nathan Cummings Foundation beneficially owned, and has beneficially owned continuously from 11/04/22 to 10/11/23, shares of the Company's common stock worth at least \$2,000 (the "Shares").

Northern Trust has acted as record holder of the Shares and is a DTC participant. The Shares are held by the Bank through DTC Account #2669. If you require any additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ryan Stack', written in a cursive style.

Ryan Stack
Vice President
Northern Trust



October 18, 2023

Via Mail

Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, California 91521

Re: Shareholder proposal submitted by The Nathan Cummings Foundation

Dear Corporate Secretary,

I write concerning a shareholder proposal (the "Proposal") submitted to The Walt Disney Company (the "Company") by the Nathan Cummings Foundation. As of November 3, 2022, the Nathan Cummings Foundation beneficially owned, and had beneficially owned continuously for at least three years, shares of the Company's common stock worth at least \$2,000 (the "Shares").

Amalgamated Bank acted as record holder of the Shares and is DTC participant through November 3, 2022. Until that date, the Shares were held by the Bank through DTC Account #2352.

If you require any additional information, please do not hesitate to contact me at 781-724-4251, investorrelations@amalgamatedbank.com

Very truly yours,

A handwritten signature in blue ink that reads "James Ryan". The signature is written in a cursive style and is set against a light yellow rectangular background.

James Ryan
First Vice President

Lillian Brown

+1 202 663 6743 (t)
+1 202 663 6363 (f)
lillian.brown@wilmerhale.com

December 22, 2023

Via Online Shareholder Proposal Form

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

**Re: The Walt Disney Company
Withdrawal of No-Action Request Dated November 22, 2023, Relating to Shareholder
Proposal Submitted by the Nathan Cummings Foundation**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), with regard to our letter dated November 22, 2023 (the “No-Action Request”) concerning the shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by the Nathan Cummings Foundation (the “Proponent”) for inclusion in the proxy statement and proxy to be filed and distributed in connection with the Company’s 2024 annual meeting of shareholders (the “Proxy Materials”). In the No-Action Request, the Company sought concurrence from the staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Staff”) that the Company may exclude the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended, on the basis that the Proposal relates to the Company’s ordinary business operations.

On December 20, 2023, the Proponent withdrew the Proposal by email (attached as Exhibit A to this letter). In reliance on the Proponent’s email, the Company is withdrawing the No-Action Request.

December 22, 2023

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If the Staff has any questions with respect to this matter, or requires additional information, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743.

Best regards,

A handwritten signature in black ink, appearing to read "Lillian Brown". The signature is written in a cursive, flowing style.

Lillian Brown

Enclosures

cc: Jolene Negre, Associate General Counsel and Secretary
The Walt Disney Company

Laura Campos, Director, Corporate & Political Accountability
Nathan Cummings Foundation

EXHIBIT A

From: Laura Campos [REDACTED]
Sent: Wednesday, December 20, 2023 9:25 AM
To: Negre, Jolene E. [REDACTED]
Cc: Young, Karen [REDACTED]; Silva, Carla [REDACTED] Sara Murphy
[REDACTED]
Subject: Re: Investor Statement on a Living Wage

This Message is From an External Sender

Caution: Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Jolene,

I hope you are doing well. I am contacting you on behalf of the Foundation and our partners at the Shareholder Commons to withdraw our 2024 shareholder proposal asking the Walt Disney Company to pay a living wage. The no-action letter you filed provided us with some useful feedback that was helpful in refining and strengthening the proposal for future submissions.

We are currently filing the revised proposal with other companies and may consider filing it with Disney in the future. We hope you will continue to engage with us about this important topic.

Happy holidays.

Sincerely,

Laura

Laura Campos (she/her)

Director of Corporate and Political Accountability

The Nathan Cummings Foundation

[REDACTED]
[REDACTED]

[REDACTED]
