



DIVISION OF
CORPORATION FINANCE

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

March 17, 2025

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: PepsiCo, Inc. (the "Company")
Incoming letter dated February 22, 2025

Dear Elizabeth A. Ising:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Mercy Investment Services, Inc. and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the board of directors issue a report detailing the effectiveness of the Company's efforts to uphold its human rights standards throughout its sugar supply chain in India.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(5). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(5).

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: Caroline Boden
Mercy Investment Services, Inc.

February 22, 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: *PepsiCo, Inc.*
Shareholder Proposal of Mercy Investment Services, Inc., et al.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

We hereby request on behalf of our client, PepsiCo, Inc. (the “Company”), that the staff of the Division of Corporation Finance (the “Staff”) concur that it will take no action if the Company excludes 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 Mercy Investment Services, Inc.; BNP Paribas Asset Management; the Congregation of St. Joseph; The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America; and the UAW Retiree Medical Benefits Trust (collectively, the “Proponents”).

We also request that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j). Rule 14a-8(j)(1) states that a company that “intends to exclude a proposal from its proxy materials . . . must file its reasons with the Securities and Exchange Commission (the “Commission”) no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission.” However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission within 80 days of filing its definitive proxy materials if the company demonstrates “good cause” for missing the deadline. In Staff Legal Bulletin No. 14M (Feb. 12, 2025) (“SLB 14M”), the Staff stated that it “consider[s] the publication of [SLB 14M] to be ‘good cause’ if it relates to legal arguments made by” a new no-action request. The legal arguments set forth in this request relate to the Staff’s guidance in SLB 14M. Accordingly, we believe that the Company has “good cause” for its inability to meet the 80-day requirement, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter. Please note that the Company plans to begin printing its 2025 Proxy Materials on March 14, 2025, which is in advance of the date that it plans to file its proxy materials with the Commission due to the size of the Company’s shareholder base impacting printing logistics.

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Consistent with Rule 14a-8(j), we have concurrently sent a copy 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. 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 this 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 of PepsiCo Inc. ("PepsiCo") request that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo's efforts to uphold its human rights standards throughout its sugar supply chain in India. The report should address working conditions and recruitment practices that can contribute to allegations of forced labor, child labor, a disproportionately high rate of hysterectomies, and other human rights abuses affecting sugarcane cutters. The report should be publicly disclosed within one year from PepsiCo's 2025 annual meeting.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

Although the Company believes that human rights abuses of any kind are unacceptable, for the reasons discussed below, we respectfully request that the Staff concur with our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Commission Rule 14a-8(i)(5) because the Proposal relates to operations of the Company that account for less than five percent of the Company's total assets on December 28, 2024 (the end of its fiscal year 2024) and less than five percent of each of the Company's net earnings and gross sales for its most recent fiscal year, and the Proposal "is not otherwise significantly related to the Company's business."

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(5) Because It Relates To Operations That Account For Less Than Five Percent Of The Company's Total Assets, Net Earnings And Gross Sales, And "Is Not Otherwise Significantly Related To" The Company's Business

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

Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded "[i]f the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business." Historically, issues of broad social or ethical concern were often determined by the Staff to be "otherwise significantly related to the company's business" regardless of the economic relevance of such matter to a company. In Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("SLB 14M"), the Staff explained that in interpreting Rule 14a-8(i)(5) going forward, it "will focus on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales." *Id.* The Staff noted that under this framework, "proposals that raise issues of social or ethical significance may be excludable, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business." *Id.* In addition, the Staff stated that "[w]here a proposal's significance to a company's business is not apparent on its face . . . [it] may be excludable unless the proponent demonstrates that it is 'otherwise significantly related to the company's business'" and "the mere possibility of reputational or economic harm alone will not demonstrate that a proposal is 'otherwise significantly related to the company's business.'" *Id.*

B. The Proposal Relates To Operations That Account For Less Than Five Percent Of The Company's Total Assets, Net Earnings And Gross Sales

The Proposal requests that the Board issue a report related to "[the Company's] sugar supply chain in India." The Company's operations related to "[the Company's] sugar supply chain in India" accounted for less than five percent of the Company's total assets on December 28, 2024 (the end of its fiscal year 2024) and less than five percent of the Company's net earnings and gross sales during its fiscal year ended December 28, 2024, as PepsiCo itself purchased no sugar from India.

In India, PepsiCo also licenses the rights to produce and distribute its branded products to local, independent, third-party franchise bottlers. These franchise bottlers manage their own procurement of cane sugar and other materials for production of licensed products. As licensees, the sugar sourced by the Company's third-party franchise bottlers is not within the Company's supply chain. As a result, they are outside of the scope of the Proposal, which

requests a report on “PepsiCo’s . . . sugar supply chain in India” (emphasis added). Even if the Rule 14a-8(i)(5) calculations are expanded to include all of the Company’s business in India during its 2024 fiscal year, that business represented less than five percent of the Company’s total assets at the end of fiscal year 2024 and less than five percent of the Company’s net earnings and gross sales for fiscal year 2024.¹

Accordingly, as the Proposal does not relate to Company operations that are economically significant to the Company, the Proposal satisfies the first prong of the Rule 14a-8(i)(5) test.

C. The Proposal “Is Not Otherwise Significantly Related To” The Company’s Business

Even when a proposal relates to operations that are not economically significant to a company, Rule 14a-8(i)(5) provides that to exclude a proposal it also must be “not otherwise significantly related to the company’s business.” In SLB 14M, the Staff indicated that determining whether a proposal is “otherwise significantly related to the company’s business” is “dependent upon the particular circumstances of the company to which the proposal is submitted,” and that the proponent must “tie those matters to a significant effect on the company’s business.” *Id.*

Based on an evaluation of the Proposal and consideration of the nature of the Company’s operations related to “[the Company’s] sugar supply chain in India,” the Proposal “is not . . . significantly related to” the Company’s business. The determination is supported by a number of factors, including that:

- **All of the Company’s business in India (which is broader than the Proposal’s scope regarding Company purchases of cane sugar in India) is a small part of the Company’s global business.** The Company is a leading global beverage and convenient food company. Through the Company’s operations—as well as those of third parties—the Company makes, markets, distributes and sells thousands of different beverages and convenient foods, serving customers and consumers in more than 200 countries and territories. In assessing this global business, it is important to note, as described above, that all of the Company’s India business represented less than five percent of the Company’s total assets at the end of fiscal year 2024 and less than five percent of the Company’s net earnings and gross sales for fiscal year 2024.

¹ For purposes of these financial statement calculations, the Company voluntarily calculated all of its business in India, which consists of its beverage and snack businesses, including revenues from the independent, third-party franchise bottlers in India. As disclosed in the Company’s Form 10-K for fiscal year 2024, the Company reports net revenue from its franchise-owned beverage businesses based on Concentrate volume sold to independent bottlers. This is reported in concentrate shipments and equivalents (CSE).

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- **The Company did not purchase cane sugar in India in 2024 and purchased a limited amount in 2023.** The Company itself purchased no cane sugar from India in 2024. In addition, although the Company purchased a very small amount of sugar from India in 2023—collectively amounting to less than 0.0005% of India’s total sugar sales that year—the vast majority of this sugar was purchased in connection with the manufacture of a particular product that has since been discontinued. Therefore, the Company purchases an altogether insignificant amount of sugar from India—relative to both the Company’s global operations and total Indian sugar sales—and it has no current plans to change this in the foreseeable future.
- **The Company does not purchase cane sugar produced in the State of Maharashtra and has no current plans to do so in the future.** The Supporting Statement relies extensively on the reported treatment of workers in the cane sugar industry in the State of Maharashtra outlined in the cited March 2024 *New York Times* article. The Company believes that human rights abuses of any kind are unacceptable and shares the Proponents’ concerns regarding the reports of human rights abuses in Maharashtra. However, as relevant here, the Company did not purchase cane sugar produced in the State of Maharashtra in 2024 or 2023. Accordingly, the human rights concerns related to the production of cane sugar products produced in the State of Maharashtra are “not . . . significantly related to” the Company’s business.
- **The Company expects its local, independent, third-party franchisees to communicate and apply the Company’s human rights policies, including its Global Supplier Code of Conduct, throughout their own supply chains.** The Company takes human rights seriously and has accordingly established a Global Supplier Code of Conduct that applies to direct suppliers of the Company. The Company’s Global Supplier Code of Conduct outlines the expectations the Company has established for its direct suppliers, including the expectation that suppliers will uphold the same standards in their own supply chains, which standards include: treating employees fairly, including with respect to wages, working hours, and benefits; prohibiting all forms of forced or compulsory labor; prohibiting use of child labor; providing safe and healthy working conditions; and reporting any suspected violations of the Global Supplier Code of Conduct. In certain geographic locations, including India, the Company licenses the rights to produce and distribute its branded products to local, independent, third-party franchisees. Franchisees manage their own procurement of materials, such as cane sugar, for the production of licensed products, placing the materials they source outside of the Company’s supply chain. Nevertheless, the Company has sought to apply the Global Supplier Code of Conduct to independent, third-party franchisees. In India, the Company’s agreements with third-party franchisees incorporate the Global Supplier Code of Conduct.

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We also note that the Proponents have not provided factual or other support in the Proposal to meet their burden of demonstrating that the Proposal is “significantly related to” the Company’s business. Specifically, nothing in the Proposal indicates that the Proposal relates to matters of significance to the Company’s business within the meaning of Rule 14a-8(i)(5). While the Proposal includes certain allegations regarding “PepsiCo’s largest international franchisee, responsible for 90% of the company’s beverage sales in India,” we note that that this local, independent, third-party franchisee is not part of “[the Company’s] sugar supply chain in India,” the Company’s referenced beverage business in India accounted for less than one-half of one percent of each of the Company’s total assets, net earnings and gross sales in 2024, and (as discussed above) the Company expects its local, independent, third-party franchisees to communicate and apply the human rights principles reflected in its Global Supplier Code of Conduct throughout their own supply chains. Thus, the facts discussed above significantly reduce the likelihood that the issues raised by the Proposal could have a significant effect on the Company’s business. SLB 14M makes clear that “[t]he mere possibility of reputational or economic harm alone will not demonstrate that a proposal is ‘otherwise significantly related to the company’s business.’” Accordingly, the Supporting Statement’s references to potential “enterprise, legal, regulatory, and reputational risks” to the Company related to the concerns at the center of the March 2024 *New York Times* article are not sufficient to demonstrate that the Proposal is “significantly related to” Company’s business. For these reasons, the Proposal satisfies the second prong of the Rule 14a-8(i)(5) test.

Based on the analysis above, the Proposal is similar to proposals excluded under Rule 14a-8(i)(5) prior to the issuance of Staff Legal Bulletin No. 14L (Nov. 3, 2021), which was rescinded by SLB 14M. Specifically, the Staff’s concurrence with the exclusion of proposals was consistent with the underlying purpose of Rule 14a-8(i)(5) and the Staff’s most recent guidance in SLB 14M, even where such proposals raised an issue of social or ethical significance. For example, in *Chubb Ltd.* (avail. Mar. 26, 2021), the Staff concurred with the exclusion under Rule 14a-8(i)(5) of a proposal requesting a report on the company’s policies to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality or associate the company’s brand with police violations of civil rights and liberties. The company represented that the volume of business for insurance offerings that could cover law enforcement activities related to operations that accounted for less than five percent of the company’s total assets, net earnings and gross sales. In addition, although the proposal raised the ethical issues of racist police brutality and civil rights violations, the company determined that the proposal was not otherwise significantly related to the company’s business. The company’s determination was based on its consideration of a number of specific factors, including that the company’s insurance policies that could cover law enforcement liability did not cover criminal activity or insure individual law enforcement officers personally for their law enforcement activities. Similarly, in *Dunkin’ Brands Group, Inc.* (avail. Feb. 22, 2018) the Staff concurred with the exclusion under Rule 14a-8(i)(5) of a proposal seeking a report assessing the environmental impacts of continuing to use K-Cup Pods brand packaging where the company determined that its use of K-Cup Pods brand packaging related to operations that accounted for less than five percent of the company’s total assets, net earnings and gross sales

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and the proposal was not otherwise significantly related to the company's business. In concurring with exclusion in *Dunkin' Brands Group*, the Staff noted "that the [p]roposal's significance to the [c]ompany's business is not apparent on its face, and that the [p]roponent has not demonstrated that it is otherwise significantly related to the [c]ompany's business." See also *Marriott International, Inc.* (avail. Mar. 13, 2020) (concurring with exclusion under Rule 14a-8(i)(5) of a proposal requesting that the company prohibit wild-animal displays at all of its hotels); *ResMed Inc.* (avail. Aug. 27, 2020) (concurring with exclusion under Rule 14a-8(i)(5) of a proposal requesting a semi-annual report on the company's political contributions and expenditures); *Reliance Steel & Aluminum Co.* (avail. Apr. 2, 2019) (concurring with exclusion under Rule 14a-8(i)(5) of a proposal requesting a report on political contributions and expenditures that contains information specified in the proposal).

Based on the foregoing information, the Proposal relates to operations that account for less than five percent of the Company's total assets, net earnings and gross sales and "is not otherwise significantly related to" the Company's business. Accordingly, like the proposals in *Marriott International*, *Dunkin' Brands Group* and the other precedents discussed above, the Proposal may be properly excluded under Rule 14a-8(i)(5).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2025 Proxy Materials.

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 Josh Dell, the Company's Counsel, Securities & Corporate Governance, at (646) 239-1985.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Josh Dell, PepsiCo, Inc.
Caroline Boden, Mercy Investment Services, Inc.
Adam Kanzer, BNP Paribas Asset Management
Dieter Waizenegger, UAW Retiree Medical Benefits Trust

EXHIBIT A



[REDACTED] | St. Louis, Missouri 63131
[REDACTED] mercyinvestmentservices.org

November 19, 2024

PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577
Attn: David Flavell, Executive Vice President, General Counsel and Corporate Secretary

Dear Mr. Flavell:

Mercy Investment Services, Inc. ("Mercy"), the investment program of the Sisters of Mercy of the Americas, has long been concerned not only with the financial returns of its investments, but also with their social and ethical implications. We believe that demonstrated corporate responsibility in matters of the environment, and social and governance concerns fosters long-term business success. Mercy Investment Services, Inc., a long-term investor, is currently the beneficial owner of shares of PepsiCo, Inc. ("PepsiCo").

The enclosed proposal requests that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo's efforts to uphold its human rights standards throughout its sugar supply chain in India.

Mercy is the lead filer for the enclosed proposal for inclusion in the 2025 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. As of November 19, 2024, Mercy has been a shareholder continuously for more than three years, holding at least \$2,000 in market value and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. The verification of ownership by our custodian, a DTC participant, is included in this packet. One of the filers will attend the Annual Meeting to present the proposal as required by SEC rules.

We look forward to having productive conversations with the company. Per SEC requirements, I am available to meet with the company via teleconference on December 11 from 10 – 11 am or 3 – 4 pm ET; or December 12 between 2 – 4 pm ET. Co-filers will participate if available or authorize us to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B). Please direct all future correspondence regarding this proposal to me via the information below.

Best regards,

Caroline Boden
Director of Shareholder Advocacy

[REDACTED]

Resolved: Shareholders of PepsiCo Inc. (“PepsiCo”) request that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo’s efforts to uphold its human rights standards throughout its sugar supply chain in India. The report should address working conditions and recruitment practices that can contribute to allegations of forced labor, child labor, a disproportionately high rate of hysterectomies, and other human rights abuses affecting sugarcane cutters. The report should be publicly disclosed within one year from PepsiCo’s 2025 annual meeting.

Whereas:

The New York Times¹ has identified serious human rights abuses, including forced labor, child labor, and gender-based exploitation, in India’s sugar production, implicating brands, including PepsiCo. According to the Times, PepsiCo has “helped turn the Indian state of Maharashtra into a sugar-producing powerhouse.”² The Times accuses PepsiCo of financing “a brutal system of labor that exploits young girls”³ and their families who are recruited to cut sugarcane for PepsiCo’s largest international franchisee, responsible for 90% of the company’s beverage sales in India.⁴

These human rights abuses are linked to a deeply flawed and opaque recruitment system, where sugar mills rely on labor contractors to hire workers from rural areas.⁵ Labor contractors typically offer these workers advances to cover migration costs, then deduct wages for medical leave or unworked days, effectively trapping workers in cycles of debt bondage, a form of forced labor.⁶ Children are subjected to illegal labor, working in hazardous conditions alongside their parents instead of attending school. An especially severe consequence for female workers is the disproportionately high rate of hysterectomies. Facing financial entrapment and harsh working conditions without access to proper sanitation, women feel pressured to undergo unnecessary surgeries to avoid menstruation-related work disruptions. Labor contractors provide loans for these procedures, indebting workers even further.⁷

PepsiCo committed to addressing forced labor and human trafficking risks through its *Modern Slavery and Human Trafficking Statement*, *Supplier Code of Conduct*, and

¹ <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

² <https://www.nytimes.com/video/world/asia/100000009363281/sugar-industry-exploitation-of-women.html>

³ <https://www.nytimes.com/video/world/asia/100000009363281/sugar-industry-exploitation-of-women.html>

⁴ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁵ https://www.oxfamindia.org/sites/default/files/2020-02/%23Human%20Cost%20of%20Sugar_Maharashtra%20Case.pdf

⁶ <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

⁷ <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

leadership in multi-stakeholder initiatives, including Bonsucro. Additionally, PepsiCo publicly committed to eradicate recruitment fees globally by 2026 through the *Employer Pays* principle⁸ and identified sugar as high-risk in a 2022 Human Rights Impact Assessment.⁹

However, PepsiCo does not disclose sufficient information to gauge the effectiveness of the company's efforts to mitigate human rights risks in its sugar supply chain. The reported persistent labor abuses, including the weaknesses of Bonsucro's certification program,¹⁰ suggest gaps in PepsiCo's human rights due diligence approach.

Combined with increasing global regulatory requirements mandating supply chain due diligence and disclosure to which the company is subject, these issues may contribute to enterprise, legal, regulatory, and reputational risks for PepsiCo and its shareholders.

This report will enable investors to assess the effectiveness of the company's due diligence efforts and help PepsiCo identify, prioritize, remedy, and avoid adverse impacts throughout its Indian sugar supply chain. Strengthening its commitment to human rights should enhance long-term shareholder value by mitigating the associated risks.

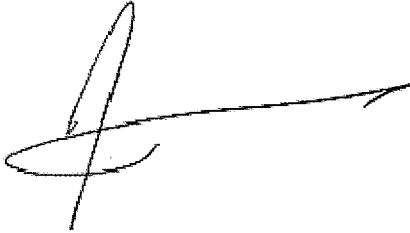
⁸ <https://www.pepsico.com/our-impact/esg-topics-a-z/forced-labor>

⁹ https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6

¹⁰ <https://www.nytimes.com/2024/07/30/world/asia/sugar-human-rights-bonsucro-india-hysterectomies.html>

I can be reached at [REDACTED] or at [REDACTED]. We hope that we will be able to reach agreement to withdraw this proposal.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized capital letter 'A' followed by a long horizontal stroke that tapers to the right.

Adam M. Kanzer
Head of Stewardship – Americas

Encl.

cc:

Caroline Boden, Director of Shareholder Advocacy, Mercy Investment Services
Cynthia Nastanski, Senior VP, Corporate Law and Deputy Corporate Secretary (via email)
Jaren Dunning, Senior Employment Counsel & Global Head of Human Rights (via email)

Resolved: Shareholders of PepsiCo Inc. (“PepsiCo”) request that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo’s efforts to uphold its human rights standards throughout its sugar supply chain in India. The report should address working conditions and recruitment practices that can contribute to allegations of forced labor, child labor, a disproportionately high rate of hysterectomies, and other human rights abuses affecting sugarcane cutters. The report should be publicly disclosed within one year from PepsiCo’s 2025 annual meeting.

Whereas:

The New York Times¹ has identified serious human rights abuses, including forced labor, child labor, and gender-based exploitation, in India’s sugar production, implicating brands, including PepsiCo. According to the Times, PepsiCo has “helped turn the Indian state of Maharashtra into a sugar-producing powerhouse.”² The Times accuses PepsiCo of financing “a brutal system of labor that exploits young girls”³ and their families who are recruited to cut sugarcane for PepsiCo’s largest international franchisee, responsible for 90% of the company’s beverage sales in India.⁴

These human rights abuses are linked to a deeply flawed and opaque recruitment system, where sugar mills rely on labor contractors to hire workers from rural areas.⁵ Labor contractors typically offer these workers advances to cover migration costs, then deduct wages for medical leave or unworked days, effectively trapping workers in cycles of debt bondage, a form of forced labor.⁶ Children are subjected to illegal labor, working in hazardous conditions alongside their parents instead of attending school. An especially severe consequence for female workers is the disproportionately high rate of hysterectomies. Facing financial entrapment and harsh working conditions without access to proper sanitation, women feel pressured to undergo unnecessary surgeries to avoid menstruation-related work disruptions. Labor contractors provide loans for these procedures, indebting workers even further.⁷

PepsiCo committed to addressing forced labor and human trafficking risks through its *Modern Slavery and Human Trafficking Statement*, *Supplier Code of Conduct*, and

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⁴ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁵ https://www.oxfamindia.org/sites/default/files/2020-02/%23Human%20Cost%20of%20Sugar_Maharashtra%20Case.pdf

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⁷ <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

leadership in multi-stakeholder initiatives, including Bonsucro. Additionally, PepsiCo publicly committed to eradicate recruitment fees globally by 2026 through the *Employer Pays* principle⁸ and identified sugar as high-risk in a 2022 Human Rights Impact Assessment.⁹

However, PepsiCo does not disclose sufficient information to gauge the effectiveness of the company's efforts to mitigate human rights risks in its sugar supply chain. The reported persistent labor abuses, including the weaknesses of Bonsucro's certification program,¹⁰ suggest gaps in PepsiCo's human rights due diligence approach.

Combined with increasing global regulatory requirements mandating supply chain due diligence and disclosure to which the company is subject, these issues may contribute to enterprise, legal, regulatory, and reputational risks for PepsiCo and its shareholders.

This report will enable investors to assess the effectiveness of the company's due diligence efforts and help PepsiCo identify, prioritize, remedy, and avoid adverse impacts throughout its Indian sugar supply chain. Strengthening its commitment to human rights should enhance long-term shareholder value by mitigating the associated risks.

⁸ <https://www.pepsico.com/our-impact/esg-topics-a-z/forced-labor>

⁹ https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6

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November 20, 2024

PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577
Attn: David Flavell, Executive Vice President, General Counsel and Corporate Secretary

Dear Mr. Flavell:

The Congregation of St. Joseph is concerned not only with the financial returns of its investments, but also with the social and ethical implications of its investments. We believe that a demonstrated corporate responsibility in matters of the environment, social and governance concerns fosters long-term business success. The Congregation of St. Joseph is currently the beneficial owner of shares of PepsiCo, Inc. ("PepsiCo").

The enclosed proposal requests that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo's efforts to uphold its human rights standards throughout its sugar supply chain in India.

The Congregation of St. Joseph is co-filing the enclosed shareholder proposal for inclusion in the 2025 proxy statement with lead filer, Mercy Investment Services, Inc., in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. As of November 20, 2024, the Congregation of St. Joseph has been a shareholder continuously for more than three years holding at least \$2,000 in market value and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. The verification of ownership by our custodian, a DTC participant, is included with this letter. A representative of the filers will attend the Annual Meeting to present the resolution as required by SEC rules.

We will plan to participate in any meetings on this proposal to the extent we are available at the time selected by the lead filer and our company. Please direct **all future correspondence** regarding this proposal to Caroline Boden of Mercy Investment Services, Inc. who is authorized to speak and negotiate on Congregation of St. Joseph's behalf. Caroline's contact information is: [REDACTED]. We authorize Mercy Investment Services, Inc. to withdraw on our behalf if an agreement is reached.

Best regards,

Karen Watson, CFA Chief Investment Officer
Congregation of St. Joseph

That all may be one...

Resolved: Shareholders of PepsiCo Inc. ("PepsiCo") request that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo's efforts to uphold its human rights standards throughout its sugar supply chain in India. The report should address working conditions and recruitment practices that can contribute to allegations of forced labor, child labor, a disproportionately high rate of hysterectomies, and other human rights abuses affecting sugarcane cutters. The report should be publicly disclosed within one year from PepsiCo's 2025 annual meeting.

Whereas:

The New York Times¹ has identified serious human rights abuses, including forced labor, child labor, and gender-based exploitation, in India's sugar production, implicating brands, including PepsiCo. According to the Times, PepsiCo has "helped turn the Indian state of Maharashtra into a sugar-producing powerhouse."² The Times accuses PepsiCo of financing "a brutal system of labor that exploits young girls"³ and their families who are recruited to cut sugarcane for PepsiCo's largest international franchisee, responsible for 90% of the company's beverage sales in India.⁴

These human rights abuses are linked to a deeply flawed and opaque recruitment system, where sugar mills rely on labor contractors to hire workers from rural areas.⁵ Labor contractors typically offer these workers advances to cover migration costs, then deduct wages for medical leave or unworked days, effectively trapping workers in cycles of debt bondage, a form of forced labor.⁶ Children are subjected to illegal labor, working in hazardous conditions alongside their parents instead of attending school. An especially severe consequence for female workers is the disproportionately high rate of hysterectomies. Facing financial entrapment and harsh working conditions without access to proper sanitation, women feel pressured to undergo unnecessary surgeries to avoid menstruation-related work disruptions. Labor contractors provide loans for these procedures, indebting workers even further.⁷

PepsiCo committed to addressing forced labor and human trafficking risks through its *Modern Slavery and Human Trafficking Statement*, *Supplier Code of Conduct*, and

¹ <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

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⁴ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁵ https://www.oxfamindia.org/sites/default/files/2020-02/%23Human%20Cost%20of%20Sugar_Maharashtra%20Case.pdf

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3

leadership in multi-stakeholder initiatives, including Bonsucro. Additionally, PepsiCo publicly committed to eradicate recruitment fees globally by 2026 through the *Employer Pays* principle⁸ and identified sugar as high-risk in a 2022 Human Rights Impact Assessment.⁹

However, PepsiCo does not disclose sufficient information to gauge the effectiveness of the company's efforts to mitigate human rights risks in its sugar supply chain. The reported persistent labor abuses, including the weaknesses of Bonsucro's certification program,¹⁰ suggest gaps in PepsiCo's human rights due diligence approach.

Combined with increasing global regulatory requirements mandating supply chain due diligence and disclosure to which the company is subject, these issues may contribute to enterprise, legal, regulatory, and reputational risks for PepsiCo and its shareholders.

This report will enable investors to assess the effectiveness of the company's due diligence efforts and help PepsiCo identify, prioritize, remedy, and avoid adverse impacts throughout its Indian sugar supply chain. Strengthening its commitment to human rights should enhance long-term shareholder value by mitigating the associated risks.

⁸ <https://www.pepsico.com/our-impact/esg-topics-a-z/forced-labor>

⁹ https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6

¹⁰ <https://www.nytimes.com/2024/07/30/world/asia/sugar-human-rights-bonsucro-india-hysterectomies.html>

THE
Episcopal
CHURCH



VIA E-MAIL and MAIL: investor@pepsico.com

November 20, 2024

David Flavell
Executive Vice President, General Counsel and Corporate Secretary
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577

Dear Mr. Flavell:

The Episcopal Church, along with many other churches and socially concerned investors, has long been concerned not only with the financial return on its investments, but also with the social, ethical, and environmental implications of its investments. We believe that a demonstrated corporate responsibility in matters of environmental, social and governance concerns fosters long-term business success. The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America (DFMS or Episcopal Church) is the beneficial owner of shares of PepsiCo, Inc. (PepsiCo).

The enclosed proposal requests that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo's efforts to uphold its human rights standards throughout its sugar supply chain in India.

The DFMS is co-filing the enclosed shareholder proposal with lead filer, Mercy Investment Services, Inc., for inclusion in the 2025 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. The DFMS has been a shareholder continuously for more than three years holding at least \$2,000 in market value and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. A representative of the filers will attend the Annual Meeting to move the resolution as required by SEC rules. The verification of ownership by our custodian, a DTC participant, is included with this letter. We authorize Mercy Investment Services, Inc. to withdraw on our behalf if an agreement is reached. We respectfully request direct communications from PepsiCo and to have our supporting statement and organization name included in the proxy statement.

We'll plan to participate in any meetings on this proposal to the extent we are available at the time selected by the lead filer and our company. Please acknowledge receipt and direct **all future correspondence** regarding this proposal to Caroline Boden of Mercy Investment Services, Inc. who is authorized to speak and negotiate on behalf of the DFMS. Caroline's contact information is: [REDACTED]

Best regards,

N. Kurt Barnes
Treasurer and CFO

Resolved: Shareholders of PepsiCo Inc. (“PepsiCo”) request that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo’s efforts to uphold its human rights standards throughout its sugar supply chain in India. The report should address working conditions and recruitment practices that can contribute to allegations of forced labor, child labor, a disproportionately high rate of hysterectomies, and other human rights abuses affecting sugarcane cutters. The report should be publicly disclosed within one year from PepsiCo’s 2025 annual meeting.

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These human rights abuses are linked to a deeply flawed and opaque recruitment system, where sugar mills rely on labor contractors to hire workers from rural areas.⁵ Labor contractors typically offer these workers advances to cover migration costs, then deduct wages for medical leave or unworked days, effectively trapping workers in cycles of debt bondage, a form of forced labor.⁶ Children are subjected to illegal labor, working in hazardous conditions alongside their parents instead of attending school. An especially severe consequence for female workers is the disproportionately high rate of hysterectomies. Facing financial entrapment and harsh working conditions without access to proper sanitation, women feel pressured to undergo unnecessary surgeries to avoid menstruation-related work disruptions. Labor contractors provide loans for these procedures, indebting workers even further.⁷

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leadership in multi-stakeholder initiatives, including Bonsucro. Additionally, PepsiCo publicly committed to eradicate recruitment fees globally by 2026 through the *Employer Pays* principle⁸ and identified sugar as high-risk in a 2022 Human Rights Impact Assessment.⁹

However, PepsiCo does not disclose sufficient information to gauge the effectiveness of the company's efforts to mitigate human rights risks in its sugar supply chain. The reported persistent labor abuses, including the weaknesses of Bonsucro's certification program,¹⁰ suggest gaps in PepsiCo's human rights due diligence approach.

Combined with increasing global regulatory requirements mandating supply chain due diligence and disclosure to which the company is subject, these issues may contribute to enterprise, legal, regulatory, and reputational risks for PepsiCo and its shareholders.

This report will enable investors to assess the effectiveness of the company's due diligence efforts and help PepsiCo identify, prioritize, remedy, and avoid adverse impacts throughout its Indian sugar supply chain. Strengthening its commitment to human rights should enhance long-term shareholder value by mitigating the associated risks.

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⁹ https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6

¹⁰ <https://www.nytimes.com/2024/07/30/world/asia/sugar-human-rights-bonsucro-india-hysterectomies.html>

November 20, 2024

Via UPS

PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577
USA

Attn: David Flavell, Executive Vice President, General Counsel and Corporate Secretary

Re: Shareholder proposal for 2025 Annual Shareholder Meeting

Dear Mr. Flavell,

The UAW Retiree Medical Benefits Trust ("We") is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of PepsiCo (the "Company") for its 2025 annual meeting of shareholders. We are co-filing the Proposal with lead filer Mercy Investments. In its submission letter, Mercy Investments will provide dates and times of ability to meet. I designate the lead filer to meet initially with the Company but may join the meeting subject to my availability.

The UAW Retiree Medical Benefits Trust has continuously beneficially owned, for at least one year as of the date hereof, at least \$25,000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. We intend to continue to hold such shares through the date of the Company's 2025 annual meeting of shareholders.

If you have any questions or need additional information, I can be contacted on [REDACTED] or by email at [REDACTED]

Sincerely,



Dieter Waizenegger
UAW Retiree Medical Benefits Trust
Director, Investment Stewardship

Resolved: Shareholders of PepsiCo Inc. (“PepsiCo”) request that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo’s efforts to uphold its human rights standards throughout its sugar supply chain in India. The report should address working conditions and recruitment practices that can contribute to allegations of forced labor, child labor, a disproportionately high rate of hysterectomies, and other human rights abuses affecting sugarcane cutters. The report should be publicly disclosed within one year from PepsiCo’s 2025 annual meeting.

Whereas:

The New York Times¹ has identified serious human rights abuses, including forced labor, child labor, and gender-based exploitation, in India’s sugar production, implicating brands, including PepsiCo. According to the Times, PepsiCo has “helped turn the Indian state of Maharashtra into a sugar-producing powerhouse.”² The Times accuses PepsiCo of financing “a brutal system of labor that exploits young girls”³ and their families who are recruited to cut sugarcane for PepsiCo’s largest international franchisee, responsible for 90% of the company’s beverage sales in India.⁴

These human rights abuses are linked to a deeply flawed and opaque recruitment system, where sugar mills rely on labor contractors to hire workers from rural areas.⁵ Labor contractors typically offer these workers advances to cover migration costs, then deduct wages for medical leave or unworked days, effectively trapping workers in cycles of debt bondage, a form of forced labor.⁶ Children are subjected to illegal labor, working in hazardous conditions alongside their parents instead of attending school. An especially severe consequence for female workers is the disproportionately high rate of hysterectomies. Facing financial entrapment and harsh working conditions without access to proper sanitation, women feel pressured to undergo unnecessary surgeries to avoid menstruation-related work disruptions. Labor contractors provide loans for these procedures, indebting workers even further.⁷

PepsiCo committed to addressing forced labor and human trafficking risks through its *Modern Slavery and Human Trafficking Statement*, *Supplier Code of Conduct*, and

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⁴ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁵ <https://www.oxfamindia.org/sites/default/files/2020-02/%23Human%20Cost%20of%20Sugar%20Maharashtra%20Case.pdf>

⁶ <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

⁷ <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

leadership in multi-stakeholder initiatives, including Bonsucro. Additionally, PepsiCo publicly committed to eradicate recruitment fees globally by 2026 through the *Employer Pays* principle⁸ and identified sugar as high-risk in a 2022 Human Rights Impact Assessment.⁹

However, PepsiCo does not disclose sufficient information to gauge the effectiveness of the company's efforts to mitigate human rights risks in its sugar supply chain. The reported persistent labor abuses, including the weaknesses of Bonsucro's certification program,¹⁰ suggest gaps in PepsiCo's human rights due diligence approach.

Combined with increasing global regulatory requirements mandating supply chain due diligence and disclosure to which the company is subject, these issues may contribute to enterprise, legal, regulatory, and reputational risks for PepsiCo and its shareholders.

This report will enable investors to assess the effectiveness of the company's due diligence efforts and help PepsiCo identify, prioritize, remedy, and avoid adverse impacts throughout its Indian sugar supply chain. Strengthening its commitment to human rights should enhance long-term shareholder value by mitigating the associated risks.

⁸ <https://www.pepsico.com/our-impact/esg-topics-a-z/forced-labor>

⁹ https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6

¹⁰ <https://www.nytimes.com/2024/07/30/world/asia/sugar-human-rights-bonsucro-india-hysterectomies.html>



2039 North Geyer Road | St. Louis, Missouri 63131
314.909.4609 | mercyinvestmentservices.org

March 5, 2025

Via SEC Shareholder Proposals Portal

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

Re: Request by PepsiCo, Inc. to omit proposal submitted by Mercy Investment Services and co-filers

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Mercy Investment Services, Inc., as lead filer, and co-filers BNP Paribas Asset Management, the Congregation of St. Joseph, The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, and the UAW Retiree Medical Benefits Trust (together, the “Proponents”) submitted a shareholder proposal (the “Proposal”) to PepsiCo, Inc. (“PepsiCo” or the “Company”). The Proposal asks PepsiCo to report on the effectiveness of its efforts to uphold its human rights standards throughout its sugar supply chain in India.

In a letter to the Division dated February 22, 2025, PepsiCo stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2025 annual meeting of shareholders. PepsiCo argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(5), on the ground that the Proposal is not sufficiently related to PepsiCo’s business. As discussed more fully below, PepsiCo has not met its burden of proving it is entitled to exclude the Proposal in reliance on that exclusion and the Proponents respectfully ask that PepsiCo’s request for relief be denied.

The Proposal

The Proposal states:

RESOLVED: Shareholders of PepsiCo Inc. (“PepsiCo”) request that the Board of Directors issue a report, at reasonable cost and omitting proprietary information, detailing the effectiveness of PepsiCo's efforts to uphold its human rights standards throughout its sugar supply chain in India. The report should address working conditions and recruitment practices that can contribute to allegations of forced labor, child labor, a disproportionately

high rate of hysterectomies, and other human rights abuses affecting sugarcane cutters. The report should be publicly disclosed within one year from PepsiCo's 2025 annual meeting.

The Relevance Exclusion

Rule 14a-8(i)(5) (the “Relevance Exclusion”) allows a company to exclude a proposal that:

1. Relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year;
2. Relates to operations which account for less than 5 percent of the company’s net earnings and gross sales for its most recent fiscal year; and
3. Is not “otherwise significantly related to the company’s business.”

PepsiCo asserts that its operations related to its sugar supply chain in India accounted for less than 5% of the Company’s net assets as of December 28, 2024 and less than 5% of its net income and gross sales for its fiscal year ended December 28, 2024. PepsiCo also argues that the Proposal’s subject is not otherwise significantly related to the Company’s business.

PepsiCo is not entitled to rely on the Relevance Exclusion to omit the Proposal for two reasons:

- PepsiCo should not be permitted to rely solely on its own purchases of Indian sugar for purposes of the 5% tests, given the critical role played by its franchisee bottler in that market.
- Human rights in the Indian sugar supply chain are “otherwise significantly related” to PepsiCo’s business, as shown by PepsiCo’s own human rights salience assessment, non-enforcement of human rights policies, and the importance of the Indian market to PepsiCo’s future growth.

PepsiCo’s Own Sugar Purchases Should Not Be Dispositive For Purposes of the 5% Tests, Given the Central Role Played By its Franchisee Bottler in Making and Distributing its Products in India

As the No-Action Request relates, PepsiCo “licenses the rights to produce and distribute its branded products to local, independent, third-party franchise bottlers” in India.¹ Bottlers are the ones that purchase cane sugar and other ingredients to make PepsiCo products there. For that reason, PepsiCo claims that cane sugar is not part of PepsiCo’s supply chain, absolving PepsiCo of responsibility for abuses associated with it.

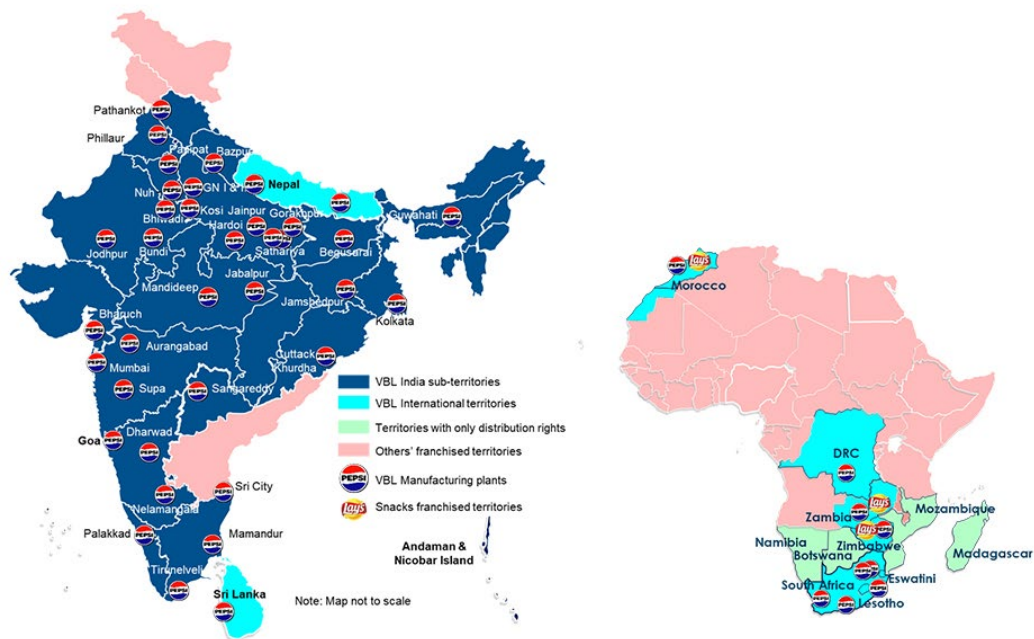
That view elevates form over substance, though. The importance of bottler Varun Beverages (“Varun”) to PepsiCo’s beverages business means that Varun’s conduct, like that of a key supplier, has the potential to damage PepsiCo’s reputation and financial prospects. A March 2024 New York Times article reported on labor abuses affecting sugar cane cutters in the Indian state of Maharashtra, describing child labor; debt bondage, which is a form of forced labor; and medically unnecessary hysterectomies obtained (in some cases using money borrowed from labor contractors)

¹ No-Action Request, at 3

in order to allow women to keep working and avoid missing work for doctor visits. The article described a practice by which labor contractors provide “advances” to cane cutters that ostensibly represent prepaid wages but inevitably end up saddling workers with balances at the end of the season. PepsiCo confirmed to the New York Times that Varun purchases sugar from Maharashtra.²

Varun accounts for approximately 90% of beverage sales for PepsiCo India and sells over a dozen PepsiCo beverage products in India.³ Varun is one of PepsiCo’s largest non-U.S. franchisees.⁴ According to Varun, it “has been associated with PepsiCo since the 1990s and have [sic] over two and half decades consolidated its business association with PepsiCo, increasing the number of licensed territories and sub-territories covered by the Company, producing and distributing a wider range of PepsiCo beverages, introducing various SKUs in the portfolio, and expanding the distribution network.”⁵

Varun’s website evidences this symbiotic relationship. It includes the logos of numerous PepsiCo beverages⁶ alongside a timeline of corporate events, and the Pepsi logo is used to represent each Varun manufacturing plant in India, including three in Maharashtra.⁷



Varun’s 2023 annual report⁸ (the “Annual Report”) also bolsters Varun’s identification with PepsiCo. The cover is emblazoned with pictures of PepsiCo beverages:

² <https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html>

³ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁴ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁵ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁶ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁷ <https://www.varunbeverages.com/vbl-at-a-glance/>

⁸ <https://www.varunbeverages.com/wp-content/uploads/2024/03/VBL-AR-2023.pdf>

An image of a bottle of Pepsi appears on the next page, alongside the table of contents, and images of PepsiCo beverage logos accompany text throughout the Annual Report. The Annual Report's second page touts that Varun was awarded PepsiCo's International Bottler of the Year 2022, and other awards from PepsiCo are depicted later in the Annual Report.⁹

The "About Us" section on page 4 speaks solely in terms of Varun's relationship with PepsiCo:

⁹ Annual Report, at 77, 100

Varun boasts that its sustainability efforts are “not only part of our endeavor to achieve a net positive environmental impact but are also aligned with PepsiCo’s global PEP+ objectives.”¹⁰ For example, Varun describes PepsiCo India’s introduction of recyclable plastic packaging for certain carbonated beverages as a “highlight” of Varun’s own sustainability initiatives.¹¹ The Annual Report describes PepsiCo as a “key partner,” provides data on the “enduring partnership” with PepsiCo,¹² and touts the “symbiotic relationship” between the two companies.

PepsiCo’s Global Human Rights Policy (“HRP”) applies to Varun. Not only does PepsiCo state in the HRP that it expects both direct suppliers and business partners to adhere to it,¹³ but Varun has also adopted PepsiCo’s Global Supplier Code of Conduct (the “Supplier Code”),¹⁴ which incorporates the HRP.¹⁵ The No-Action Request asserts that PepsiCo’s agreements with franchisees in India “incorporate” the Supplier Code.¹⁶ The HRP addresses wages, use of forced/bonded labor, child labor, and workplace health and safety, all concerns that are directly relevant to the Proposal.¹⁷

PepsiCo is trying to have its cake and eat it too. The No-Action Request professes to offload responsibility for human rights issues related to PepsiCo beverage production to franchisees such as Varun. But PepsiCo also expects business partners to adhere to the HRP and Supplier Code; though this falls short of a formal requirement, it is easy to imagine how PepsiCo’s expectations shape the behavior of business partners that wish to preserve their relationships with PepsiCo. In other words, PepsiCo seeks control without responsibility.

¹⁰ Annual Report, at 7

¹¹ Annual Report, at 7

¹² Annual Report, at 7, 13, 15

¹³ <https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/pepsico-global-human-rights-policy.pdf>

¹⁴ Annual Report, at 56

¹⁵ HRP, at 1

¹⁶ No-Action Request, at 5

¹⁷ <https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/pepsico-global-human-rights-policy.pdf>

As well, PepsiCo's HRP states that the company is "committed to implementing the U.N. Guiding Principles on Business and Human Rights" throughout its business and reporting.¹⁸ The Guiding Principles provide that a company's responsibility to respect human rights requires companies to avoid causing or contributing to adverse human rights impacts "that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."¹⁹ Where PepsiCo conducts business through a franchise relationship, then, it should not be permitted to exclude a Proposal on relevance grounds by not including the franchisee's activities in the 5% test.

Human Rights in the Indian Sugar Supply Chain is Otherwise Significantly Related to PepsiCo's Business

Even if the 5% test is deemed not to apply to Varun's purchases of Indian cane sugar, the Company is still not entitled to omit the Proposal because it is "otherwise significantly related" to PepsiCo's business.

PepsiCo recognizes the salience of the matters raised in the Proposal to its business. The Company's 2022 human rights assessment identified seven human rights issues, including fair pay and employment conditions, forced labor and workplace health and safety, as salient for PepsiCo's business.²⁰ The assessment also identified labor contractors, which were a major focus of the New York Times article, as a target supply chain segment, and cane sugar as a priority raw material.²¹ The assessment states that PepsiCo is "continuing to focus [its] efforts on addressing the forced labor related impacts most frequently encountered by [vulnerable] groups, including bonded labor and recruitment fees."²²

PepsiCo's response to the allegations detailed in the New York Times article discussed above seems to reflect a belief that the abuses merited action by PepsiCo. In that article, PepsiCo is quoted as saying, "The description of the working conditions of sugar-cane cutters in Maharashtra is deeply concerning . . . We will engage with our franchisee partners to conduct an assessment to understand the sugar-cane cutter working conditions and any actions that may need to be taken."

In the No-Action Request, PepsiCo claims that the issues raised by the Proposal are not likely to have a significant effect on the Company's business because of the policies PepsiCo has adopted and expects its franchisees to follow and communicate to suppliers.²³ But policies that exist on paper may not be implemented effectively, and that appears to be the case in Maharashtra. The New York Times article stated:

Major buyers like PepsiCo and Coca-Cola say they hold their suppliers to exacting standards for labor rights. But that promise is only as good as their willingness to monitor thousands of farms at the base of their supply chains.

¹⁸ HRP, at 1

¹⁹ https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, at 14

²⁰ https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6, at 3

²¹ https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6, at 6

²² https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/2022-pepsico-salient-human-rights-issues-update.pdf?sfvrsn=43ad8aaa_6, at 6

²³ See No-Action Request, at 6

That rarely happens. An executive at NSL Sugars, a Coca-Cola and PepsiCo franchisee supplier that has mills around the country, said that soda-company representatives could be scrupulous in asking about sugar quality, production efficiency and environmental issues. Labor issues in the fields, he said, would almost never come up.

Soda-company inspectors seldom if ever visit the farms from which NSL sources its sugar cane, the executive said. The PepsiCo franchisee, Varun Beverages, did not respond to calls for comment.

Mill owners, too, rarely visit the fields. Executives at Dalmia and NSL Sugars say they keep virtually no records on their laborers.

It is precisely these kinds of implementation efforts on which the Proposal seeks information. Proponents' efforts have found no disclosures regarding PepsiCo's promise to engage with its franchisees regarding the abuses raised in the New York Times article, including in PepsiCo's Human Rights ESG Brief that was last updated on February 27, 2025.²⁴

The importance of the Indian market also supports a conclusion that the Proposal is otherwise significantly related to PepsiCo's business. The No-Action Request asserts that PepsiCo's India business represents less than 5% of the Company's assets, net income, and gross sales for the most recent reporting periods.²⁵ However, India is a rapidly growing market for PepsiCo.

In 2024, both convenience food and beverage unit volumes in India grew by double digit amounts, higher than any other market except Thailand.²⁶ Similar unit volume increases for both categories of product were reported in 2021,²⁷ and double-digit growth in beverage unit volume was reported in 2022²⁸ and 2023.²⁹ PepsiCo has identified growth rates in emerging markets like India as a risk factor: "Our success depends in part on our ability to grow our business in developing and emerging markets, including Mexico, the Middle East, China, South Africa, Brazil and India. . . . Our business can be adversely affected if we are unable to expand our business in developing and emerging markets, effectively operate, or manage the risks associated with operating, in these markets, or achieve the return on capital we expect from our investments in these markets."³⁰

On earnings calls in 2024, PepsiCo's CEO singled out India as an important growth market for the Company (all emphases added):

Q2 2024 Earnings Call:

*We continue to see a lot of growth in many parts of our AMESA region, in particular, **India is a big***

²⁴ <https://www.pepsico.com/our-impact/esg-topics-a-z/human-rights>

²⁵ No-Action Request, at 4

²⁶ PepsiCo Inc., Filing on Form 10-K for the FY ended December 28, 2024, filed on Feb. 4, 2025, at 46 (hereinafter, "2024 10-K")

²⁷ PepsiCo Inc., Filing on Form 10-K for the FY ended December 25, 2021, filed on Feb. 10, 2022, at 42 (hereinafter, "2021 10-K")

²⁸ PepsiCo Inc., Filing on Form 10-K for the FY ended December 31, 2022, filed on Feb. 9, 2023, at 43 (hereinafter, "2022 10-K")

²⁹ PepsiCo Inc., Filing on Form 10-K for the FY ended December 30, 2023, filed on Feb. 9, 2024, at 45

³⁰ 2022 10-K, at 16; 2021 10-K, at 16

*growth space for us and is an investment area for sure. The opportunity is massive if you take a decade perspective...., a high demand market for many, many years.*³¹

Q3 2024 Earnings Call:

*There are pockets of strength in international. **India is a market that is growing nicely...** There are other markets where we're seeing a bit of a deceleration. So, China is slowing down, but we are still gaining share.*³²

What's more, PepsiCo recently identified India as one of 13 "anchor markets," which the Company anticipates will account for more than 85% of future growth.³³ When the company announced a \$151.8 million investment in its second flavor manufacturing facility in India last year, PepsiCo India's senior vice president said, "We aim to ramp up the production of our beverages to meet the rising demand in the country."³⁴ All of these facts indicate that the Indian market has more significance for PepsiCo's financial prospects than current financial results suggest and that association with labor abuses there could harm PepsiCo's long-term growth.

Considering the importance of India to PepsiCo's future prospects would be consistent with the Division's approach to materiality as set forth in Staff Accounting Bulletin 99 ("SAB 99").³⁵ SAB 99 explained that companies could not solely use numerical rules of thumb, such as a 5% cutoff, when making accounting materiality determinations because qualitative factors could make an item with a smaller quantitative impact material. One example of such a factor identified in SAB 99 was "whether the misstatement concerns a segment or other portion of the registrant's business that has been identified as playing a significant role in the registrant's operations or profitability." That is to say, something that is a key driver of value can have an importance greater than quantitative measurements would suggest, and in Proponents' view this is exactly the kind of situation the "otherwise significantly related" provision of the Relevance Exclusion was designed to capture.

For the reasons set forth above, PepsiCo has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(i)(5). The Proponents thus respectfully request that PepsiCo's request for relief be denied.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely Yours,

Caroline Boden

³¹ https://investors.pepsico.com/docs/default-source/investors/q2-2024/q2-2024-pep_transcript_uncal2rq1xjk443o.pdf

³² https://investors.pepsico.com/docs/default-source/investors/q3-2024/q3-2024-pep_transcript_r4j2debb9dorzppf.pdf

³³ <https://economictimes.indiatimes.com/industry/cons-products/food/india-now-an-anchor-market-says-pepsico/articleshow/116263009.cms>

³⁴ <https://www.pepsicoindia.co.in/our-stories/press-release/pepsico-india-announces-an-investment-of-inr-1266-cr-to-set-up-a-flavour-manufacturing-facility-in-ujjain-madhya-pradesh>

³⁵ <https://www.sec.gov/interp/account/sab99.htm>

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Mercy Investment Services, Inc.

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Kurt Barnes, The Domestic and Foreign Missionary Society of the Protestant Episcopal
Church in the United States of America
Adam Kanzer, BNP Paribas Asset Management
Dieter Waizenegger, UAW Retiree Medical Benefits Trust
Karen Watson, Congregation of St. Joseph

March 12, 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: *PepsiCo, Inc.*
Supplemental Letter Regarding Shareholder Proposal of Mercy Investment Services, Inc., et al.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On February 22, 2025, we submitted a no-action request (the “No-Action Request”) to the staff of the Division of Corporation Finance (the “Staff”) on behalf of our client, PepsiCo, Inc. (the “Company”), relating to the shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from Mercy Investment Services, Inc., BNP Paribas Asset Management, the Congregation of St. Joseph, The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, and the UAW Retiree Medical Benefits Trust (collectively, the “Proponents”) for inclusion in the Company’s proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders (collectively, the “2025 Proxy Materials”). The No-Action Request sets forth the basis for our view that the Proposal properly may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(5) because the Proposal relates to operations of the Company that account for less than five percent of the Company’s total assets on December 28, 2024 (the end of its fiscal year 2024), and less than five percent of each of the Company’s net earnings and gross sales for its most recent fiscal year, and the Proposal is not otherwise significantly related to the Company’s business.

On March 5, 2025, the Proponents submitted a response to the No-Action Request (the “Response Letter”). In the Response Letter, the Proponents assert that: (1) the Company should not be permitted to focus on the Company’s own sugar supply chain in India for purposes of the analysis under the “5% tests” of Rule 14a-8(i)(5); and (2) the Proposal is otherwise significantly related to the Company’s business because the Company has identified India as “an important growth market.” We write to respond to these assertions.

1. The Proposal Relates To Operations That Account For Less Than Five Percent Of The Company’s Total Assets, Net Earnings And Gross Sales

As noted in the No-Action Request, the first prong of Rule 14a-8(i)(5) provides that a shareholder proposal may be excluded on this basis “[i]f the proposal relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year”

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The Proposal requests a report related to “[the Company’s] sugar supply chain in India.” As discussed in the No-Action Request, the Company’s operations related to “[the Company’s] sugar supply chain in India” accounted for less than five percent of the Company’s total assets on December 28, 2024 (the end of its fiscal year 2024), and less than five percent of the Company’s net earnings and gross sales during its fiscal year ended December 28, 2024, as PepsiCo itself purchased no sugar from India. Moreover, even if the Rule 14a-8(i)(5) calculations are expanded to include all of the Company’s business in India during its 2024 fiscal year, that business represented less than five percent of the Company’s total assets at the end of fiscal year 2024 and less than five percent of the Company’s net earnings and gross sales for fiscal year 2024.¹

The Response Letter suggests that, despite the plain language of the Proposal’s focus on “[the Company’s] sugar supply chain in India,” the Company’s calculations described above “should not be dispositive,” and the Company should include the activities of one of the Company’s third-party franchisees in the five percent tests. At the outset, we note that the activities of the Company’s franchisees in India are in fact already included in the calculation of the Rule 14a-8(i)(5) quantitative tests to the extent relevant as explained in note 1 in the No-Action Request.² The Response Letter also states that the Company “should not be permitted to rely solely on its own purchases of Indian sugar for purposes of the 5% tests, given the critical role played by its franchisee bottler in that market.” Thus, the Response Letter suggests that purchases of Indian sugar by one of the Company’s “franchisee bottler[s]” should also be included. Such an approach would be inconsistent with both the express language of Rule 14a-8(i)(5) and the Rule’s intent to assess the relevance of the Proposal to the Company’s business, not the relevance of the Proposal to the business of a third party. Moreover, the Company has three franchise bottlers in India, each of whom manages their own procurement of cane sugar and other materials for production of licensed products. The Company is not privy to the economic terms agreed to by these independent companies as part of their production processes and thus could not incorporate the costs of purchases of Indian sugar by the Company’s third-party franchisee bottlers into the calculations required under Rule 14a-8(i)(5), nor is it required to do so.³

Accordingly, as established in the No-Action Request, the Proposal relates to Company operations that represented less than five percent of the Company’s total assets at the end of

¹ For purposes of these financial statement calculations, the Company voluntarily calculated all of its business in India, which consists of its beverage and snack businesses, including net revenues received from the independent, third-party franchise bottlers in India.

² “As disclosed in the Company’s Form 10-K for fiscal year 2024, the Company reports net revenue from its franchise-owned beverage businesses based on Concentrate volume sold to independent bottlers. This is reported in concentrate shipments and equivalents (CSE).”

³ In addition, the Response Letter’s extensive discussion of Varun Beverages, including Varun’s description of its business relationship with the Company, is irrelevant to the No-Action Request. The discussion of Varun merely addresses the importance of the Company to Varun’s operations and the extent to which Varun “identif[ies] with [the Company],” neither of which has any bearing on whether the Proposal relates to operations of the Company that are significant for purposes of Rule 14a-8(i)(5).

fiscal year 2024 and less than five percent of the Company's net earnings and gross sales for fiscal year 2024.

2. The Proposal “Is Not Otherwise Significantly Related To” The Company’s Business

In arguing that the Proposal is significantly related to the Company's business, the Proponents have failed to meet their burden under Staff Legal Bulletin No. 14M (Feb. 12, 2025) (“SLB 14M”). In SLB 14M, the Staff explained that in interpreting Rule 14a-8(i)(5) going forward, it “will focus on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales.” *Id.* The Staff indicated that determining whether a proposal is “otherwise significantly related to the company’s business” is “dependent upon the particular circumstances of the company to which the proposal is submitted.” *Id.* Moreover, SLB 14M makes clear that the burden is on the proponent to “tie those matters to a significant effect on the company’s business.” *Id.*

Instead of focusing on the Company's sugar supply chain in India, the Response Letter merely asserts the possibility of reputational or economic harm by discussing a variety of matters and third-party actors related to the general sugar supply chain in India, not the Company's operations. Specifically, the Response Letter provides no evidence demonstrating that the Proposal relates to matters that could have “a significant effect” on the Company's business within the meaning of Rule 14a-8(i)(5). For example, in discussing the Company's policies, the Response Letter expresses concerns that “policies that exist on paper may not be implemented effectively, and that appears to be the case in Maharashtra.” However, as noted in the No-Action Request, the Company did not purchase any cane sugar produced in the State of Maharashtra in 2024 or 2023, and it has no current plans to do so in the future. Moreover, even if the Proposal were revised to address the franchise bottlers' sugar supply chains in India, the Company understands that in 2024 the amount of sugar purchased by the Company in India (which was none) and by its franchise bottlers in India for Company franchised products collectively accounted for less than 2% of all sugar annually produced in India.⁴

The Response Letter also asserts that the Company's growth plans for its business in India demonstrate that the Proposal is otherwise significantly related to the Company's business. However, the Response Letter fails to put these aspirational plans in the context of the Company's overall business. First, India is the third smallest of the Company's 13 “anchor markets” based on net revenues in 2024. Moreover, not all of the Company's business in India requires the use of sugar, so doubling the Company's business in India (even if all through franchise bottler arrangements) does not equate to doubling the use of sugar. In fact, the Company continues to reformulate many of its beverage products to specifications that require the use of “low sugar” and “no sugar” inputs, so it is especially unlikely that any increase in beverage sales in the coming years would equate to pro-rata growth in sugar procurement by third-party franchisees. Also, the Response Letter misconstrues the economic significance of

⁴ We note that this calculation is based on total sugar production in India for the year 2023, which is the most recent year for which the Company is able to obtain reliable data at this time.

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the franchise bottler arrangements in India: only approximately 20% of the Company's net revenues in India in 2023 and in 2024 came from its beverages segment. Finally, even if the Company's entire business in India were to double just in 2025 and we were to assume that all of it related to operations involving sugar purchased in India, those operations would still account for significantly less than five percent of each of the Company's total assets, net earnings and gross sales.⁵ Accordingly, as established in the No-Action Request, the Proposal is not otherwise significantly related to the Company's business.

* * *

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2025 Proxy Materials under Rule 14a-8(i)(5).

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 Josh Dell, the Company's Counsel, Securities & Corporate Governance, at (646) 239-1985.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Josh Dell, PepsiCo, Inc.
Caroline Boden, Mercy Investment Services, Inc.
Adam Kanzer, BNP Paribas Asset Management
Dieter Waizenegger, UAW Retiree Medical Benefits Trust

⁵ Assumes no changes to the Company's 2024 total assets, net earnings and gross sales except for the 100% increase in total assets, net earnings and gross sales in India.