



DIVISION OF  
CORPORATION FINANCE

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

April 18, 2024

Rick Wirthlin  
Irell & Manella LLP

Re: Big 5 Sporting Goods Corporation (the "Company")  
Incoming letter dated February 19, 2024

Dear Rick Wirthlin:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Chris Mueller for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(e)(2) because the Company received it after the deadline for submitting proposals. 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(e)(2).

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/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Chris Mueller

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February 19, 2024

VIA ONLINE PORTAL SUBMISSION

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

Re: *Big 5 Sporting Goods Corporation*  
*Shareholder Proposal of Chris Mueller*  
*Securities Exchange Act of 1934 ("Exchange Act") — Rule 14a-8*

Dear Ladies and Gentlemen:

This letter is to inform you that our client, Big 5 Sporting Goods Corporation (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal and statement in support thereof (the "Proposal") from Chris Mueller (the "Proponent"). A copy of the Proposal is attached to this letter as Exhibit A.

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

- filed this letter with the Securities and Exchange Commission (the "Commission"); and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) provides 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, if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k).

Rule 14a-8(j) requires that a company file with the staff of the Division of Corporation Finance (the "Staff") its reasons for excluding a shareholder proposal no later than 80 days prior to the filing of its definitive proxy statement and form of proxy with the Commission. However, Rule 14a-8(j) also provides that the Staff may permit a company to make its

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submission after that deadline if the company demonstrates good cause for missing the deadline.

The Company intends to file its definitive 2024 Proxy Materials no later than April 29, 2024. (April 29, 2024 is 120 days after the end of the Company's 2023 fiscal year, and, pursuant to Instruction G(3) of Form 10-K, the Company must file its 2024 Proxy Statement no later than that date in order to be able to incorporate by reference certain information from its 2024 Proxy Statement into Part III of its Form 10-K for its fiscal year ended December 31, 2023.)

The 80<sup>th</sup> calendar day prior to the Company's anticipated April 29, 2024 proxy filing date is February 9, 2024 and this submission is being made after that date. The timing of this submission by the Company is driven by the fact that the Company did not receive the Proposal itself until February 8, 2024—81 days prior to the latest date on which the Company intends to file its 2024 Proxy Statement, which did not give the Company adequate time to respond to the Proposal prior to the deadline imposed by Rule 14a-8(j). The Company believes that these circumstances constitute "good cause" for accepting a submission later than the deadline that is normally imposed pursuant to Rule 14a-8(j). Accordingly, the Company hereby respectfully requests, pursuant to Rule 14a-8(j), that the Staff accept this submission notwithstanding that it is being delivered less than 80 calendar days prior to the latest anticipated filing date of its 2024 Proxy Statement.

### **THE PROPOSAL**

The Proposal states in relevant part as follows:

My proposal: Big 5 Sporting Goods should disclose registered shareholder share totals on 10-Q and 10-K reports. Registered share totals should include separate tallies of shares held by investors in DRS and DSPP form (and CEDE if possible). In addition, our company should upgrade its investment plan, and move away from Computershare's boilerplate DirectStock plan.

### **BASIS FOR EXCLUSION**

The Company respectfully requests the Staff's concurrence that the Company may exclude the Proposal from its 2024 Proxy Statement materials in reliance on Rule 14a-8(e) because the Proposal was received by the Company on February 8, 2024, which is 40 days after the December 30, 2023 deadline for submitting shareholder proposals that the Company disclosed in its 2023 proxy materials.

### **ANALYSIS**

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Rule 14a-8(e) provides that a proposal may be excluded if it is not submitted prior to the deadline set forth in the company's proxy statement for the prior year's annual meeting.

The Company's definitive proxy statement for its 2023 annual stockholders meeting provided in relevant part as follows:

#### STOCKHOLDER PROPOSALS

In order to be eligible for inclusion in the Company's proxy statement and proxy card for the next annual meeting of the Company's stockholders ("2024 Annual Meeting") pursuant to Rule 14a-8 under the Exchange Act, stockholder proposals must be received by the Secretary of the Company at its principal executive offices no later than **December 30, 2023**, if the Company's 2024 Annual Meeting is held within 30 days of June 7, 2024. [emphasis added]

A copy of page 47 from the Company's proxy statement for its 2023 annual meeting is attached to this letter as Exhibit B. The Company calculated the December 30, 2023 deadline in the manner described in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001). In calculating the deadline, the Company (i) started with the release date of the 2023 Proxy Statement (i.e., April 28, 2023), (ii) increased the year by one (i.e., April 28, 2024), and then (iii) counted back 120 calendar days, with the result of a December 30, 2023 deadline.

The Company did not receive the Proposal, which was sent by US mail certified, until February 8, 2024, which was 40 calendar days after the applicable deadline. In fact, the Proposal was dated January 28, 2024 (29 days after the deadline in the Company's 2023 proxy statement) and according to USPS records (see Exhibit C), the Proposal was not deposited into the mails until January 30, 2024, which was 31 days after the applicable deadline.

The Staff has strictly construed the deadline for submitting shareholder proposals under Rule 14a-8(e) and has permitted companies to exclude proposals received at a company's principal executive offices after the submission deadline. See, e.g., Etsy, Inc. (avail. Apr. 19, 2022) (concurring with the exclusion of a proposal received one day after the submission deadline); Dow Inc. (Feb. 15, 2022) (concurring with the exclusion of a proposal submitted via email 32 minutes following the close of business on the deadline date when the proxy statement disclosed that a physical mailing was required); Walgreens Boots Alliance, Inc. (Oct. 12, 2021) (concurring with the exclusion under Rule 14a-8(e)(2) of a proposal received two days after the submission deadline). Accordingly, the Proposal is excludable under Rule 14a-8(e) because the Proposal was received after the applicable submission deadline.

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## 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 2024 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 [rwirthlin@irell.com](mailto:rwirthlin@irell.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (310) 277-1010.

Sincerely,



Rick Wirthlin

RCW

cc: Ian Landgreen, Senior Vice President of Business Affairs, General Counsel and  
Secretary, Big 5 Sporting Goods Corporation  
Chris Mueller

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Exhibit A

PROPOSAL

January 28, 2024

Big 5 Sporting Goods  
2525 East El Segundo Boulevard  
El Segundo, California 90245

Members of the board.

My name is Chris Mueller, and I would like to submit a shareholder proposal for the 2024 annual shareholder meeting. I am an individual investor with a directly registered ownership position in our company. I intend to hold my position through the date of the 2024 annual shareholder meeting. I would be happy to meet with the board to discuss my proposal at any time.

**My proposal: Big 5 Sporting Goods should disclose registered shareholder share totals on 10-Q and 10-K reports. Registered share totals should include separate tallies of shares held by investors in DRS and DSPP form (and Cede if possible). In addition, our company should upgrade its investment plan, and move away from Computershare's boilerplate DirectStock plan.**

Several issuers already disclose registered share totals with a couple sentences on each 10-Q or 10-K report. Registered holders are passionate and loyal investors who disclose their personal information to and desire a direct and close relationship with the company they invest with. Registered holder information is of material interest to investors who want to track distribution and commitment of an investor base, and can inspire more long term investors.

Regarding the investment plan, there are several reasons why we should upgrade. First - DirectStock plan does not allow hybrid holding methods in a single account. All accounts are either fully enrolled or fully not enrolled in the plan. Accounts NOT enrolled are "all DRS" (owned exclusively by the investor). By comparison, accounts that are fully enrolled are what Computershare calls DSPP consisting of "shares that underpin the plan".

Second, recurring buys through DirectStock plan are scheduled and predictable - making them prone to arbitrage and manipulation. The purchases tend to be processed through a single broker-dealer (often BofA Securities) and they tend to happen T+3 from the 1<sup>st</sup> and 15<sup>th</sup> (excluding weekends and bank holidays). The 2024 dates that these purchases will likely occur for our company are: Jan 5, Jan 19, Feb 6, Feb 21, Mar 6, Mar 20, April 4, April 18, May 6, May 20, June 6, June 21, July 5, July 18, Aug 6, Aug 20, Sept 6, Sept 19, Oct 4, Oct 18, Nov 6, Nov 21, Dec 5, and Dec 19.

Upgrading our investment plan would allow Big 5 Sporting Goods the ability to allow hybrid registered holding methods and meet the needs of materially interested long term retail investors. It would also allow for our company to either put an end to the predictable and vulnerable recurring purchases, or make sure they are less predictable and vulnerable. While it would represent an additional cost, sponsoring and administering a customized plan will be worth it.

Thank you for your time,



Chris Mueller

PII

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**Exhibit B**

**[COPY OF PAGE 47 FROM 2023 PROXY STATEMENT]**

**CAUTION CONCERNING FORWARD-LOOKING STATEMENTS**

Statements made in this Proxy Statement that are not historical in nature, or that state our or our management's intentions, hopes, beliefs, expectations or predictions of the future, may constitute "forward-looking statements" within the meaning of Section 21E of the Exchange Act. Forward-looking statements can often be identified by the use of forward-looking language, such as "could," "should," "will," "intend," "continue," "believe," "may," "expect," "hope," "anticipate," "goal," "forecast," "plan," or "estimate" or variations thereof or similar expressions. Forward-looking statements are not guarantees of future performance. These forward-looking statements may include, without limitation, discussions of our business strategies, future operations, financial condition and prospects, and market factors influencing our results.

Forward-looking statements involve risks, uncertainties and assumptions. It is important to note that any such performance and actual results, financial condition or business, could differ materially from those expressed in such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, the risk factors discussed under "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended January 1, 2023, as well as factors discussed elsewhere in this and other reports and documents we file with the Securities and Exchange Commission. Other unforeseen factors not identified herein could also have such an effect. We undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes in future operating results, financial condition or business over time unless required by law. Interested persons are urged to review the risks described under "Risk Factors" and in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the fiscal year ended January 1, 2023, as well as in our other public disclosures and filings with the Securities and Exchange Commission.

**OTHER MATTERS**

Management knows of no business which will be presented for consideration at the Annual Meeting other than as stated in the Notice of Annual Meeting. If, however, other matters are properly brought before the Annual Meeting, it is the intention of the proxyholders to vote the shares represented by the proxies on such matters in accordance with the recommendation of the Board of Directors and authority to do so is included in the proxy.

**STOCKHOLDER PROPOSALS**

In order to be eligible for inclusion in the Company's proxy statement and proxy card for the next annual meeting of the Company's stockholders ("2024 Annual Meeting") pursuant to Rule 14a-8 under the Exchange Act, stockholder proposals must be received by the Secretary of the Company at its principal executive offices no later than December 30, 2023, if the Company's 2024 Annual Meeting is held within 30 days of June 7, 2024. In the event that the Company elects to hold the 2024 Annual Meeting more than 30 days before or after June 7, 2024, such stockholder proposals would have to be received by the Company a reasonable time before the Company's solicitation is made. Further, in order for the stockholder proposals to be eligible to be brought before the Company's stockholders at the 2024 Annual Meeting, the stockholder submitting such proposals must also comply with the procedures, including the deadlines, required by the Company's Amended and Restated Bylaws ("Bylaws").

Pursuant to the Bylaws, in order for director nominations or other proposals of stockholders intended to be presented at the 2024 Annual Meeting (excluding proposals pursuant to Rule 14a-8 under the Exchange Act) to be timely, such proposals must be received by the Company at its principal executive offices not less than 90 nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting of stockholders. Accordingly, except as noted below, any stockholder proposals intended to be presented at the 2024 Annual Meeting outside of Rule 14a-8 must be received in writing by the Company at its principal executive offices no later than March 9, 2024 and no sooner than February 7, 2024. However, if the date of the 2024 Annual Meeting is advanced more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be delivered not more than the 120th day prior to 2024 Annual Meeting and not

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## Exhibit C

### [US POSTAL SERVICE RECORDS REGARDING PROPOSAL]

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**In Transit to Next Facility**

February 8, 2024

**Arrived at USPS Regional Facility**

LOS ANGELES CA DISTRIBUTION CENTER  
February 3, 2024, 1:05 pm

**Arrived at USPS Origin Facility**

TAMPA, FL 33630  
January 30, 2024, 7:28 pm

**USPS picked up item**

TAMPA, FL 33606  
January 30, 2024, 3:14 pm

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